
(2015) 03 P&H CK 0113
In the Punjab And Haryana At Chandigarh
Case No : C.R.R. No. 2543 of 2014

Tamanna

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Evidence Act, 1872 — Section 35

Citation : (2015) 03 P&H CK 0113

Hon'ble Judges : M.M. Singh Bedi, J.

Bench : Single Bench

Advocate : Arun Singal, for the Appellant; M.S. Sidhu, A.A.G, Advocates for the Respondent

Final Decision : Allowed

Judgement

M.M. Singh Bedi, J.—The petitioner claims that respondent No. 2 Sandeep, an accused in a case of rape, was born on 11.09.1995 as per the birth certificate issued by Registrar of Birth and Deaths, Sonapat whereas the respondent No. 2 claims that he was born on 11.10.1997 as per the matriculation certificate Ex. R-2 proved by a Clerk of Sir Chhotu Ram Modern Senior Secondary School, Rattangarh Majra and the Principal of Oasis Modern High School, Bhatgaon, Sonapat.

2. As per Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules 2007, procedure has been prescribed for determining the age. The evidence for the aforesaid purpose can be obtained in the shape of:

"(i) the matriculation or equivalent certificates; and in the absence whereof:

(ii) the date of birth certificate from the school (other than a play school) first attended and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iv) and only in the absence of any of the clauses above, the medical opinion will be sought from duly constituted Medical Board."

3. As per Rule 11 of Haryana Juvenile Justice (Care and Protection of Children) Rules, 2009 the evidence can be obtained by the Court or the Board in an inquiry regarding juvenile status by obtaining matriculation certificate, date of birth certificate from the school, or birth certificate given by a corporation or a municipal authority or panchayat. Rule 11 of above said rules is *pari materia* with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007.

4. The short question which is required to be determined in the present case is whether the sequence of the evidence mentioned in Rule 11 of Haryana Juvenile Justice (Care and Protection of Children) Rules 2009 and Rule 12 of Juvenile Justice (Care and Protection of Children) Rules 2007, mentioned hereinabove, would be given priority for determining the age of an accused or it is the birth certificate which has to be given priority in view of admissibility of the same as per Section 35 of the Indian Evidence Act.

5. In this context, there are two judgments. One is Harpreet Singh Vs. State of Haryana and another--> wherein it has been held that under Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules 2007, evidence to be considered for the purpose of determining the juvenility of an incumbent will be sought in the form of matriculation or equivalent certificates, if available and in the absence whereof, the date of birth certificate from the School, other than a play School first attended and in the absence whereof, the birth certificate given by a corporation or a municipal authority or a panchayat and if none of these are available, then the medical opinion is to be sought from a duly constituted Medical Board which will declare the age of such juvenile.

6. In another judgment Surender Vs. State of Haryana, , it has been held as follows:

"13. In view of the above discussion, it is apparent that while framing Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000, it could not have been the intention of the legislature to ignore the primary evidence in the form of Birth Certificate issued by its own appropriate authority under Section 17 of the Birth and Deaths Registration Act, 1969 in preference to the School Leaving Certificate. In fact, Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 has to be resorted to for determining the age of juvenile in the absence of the certificate issued by the appropriate issuing authority under the Births and Deaths Registration Act, 1969, which is a primary document of proof and admissible under Section 35 of the Indian Evidence Act, 1872.

14. Thus, the trial Court seems to have committed grave error in determining the age of the petitioner on the basis of School Leaving Certificate ignoring the birth certificate issued by an appropriate authority."

7. In another judgment passed by this Court in Criminal Revision No. 779 of

2012 titled Amit @ Nanha v. State of Haryana, decided on 27.11.2012, it has been held that the birth certificate is to be given preference over the matriculation certificate in case it is proved to be authentic and valid. It has been held as follow:

"I have also gone through the judgment in Hari Ram v. State of Rajasthan and another, AIR 2011 SC (Criminal) 2053, wherein Rule 12 of the Rules mentioned hereinabove was considered. Even the said judgment does not lay down that evidence under Rule 12(3)(a)(i) is more authenticated than evidence available under Rule 12(3)(a)(ii) or that evidence available under Rule 12(3)(a)(ii) is more authenticated than the evidence available under Rule 12(3)(a)(iii). The evidence produced in each case is to be appreciated on individual merits to the satisfaction of the Court. It will not be out of place to observe here that the date of birth as recorded in the School records has not been considered to be conclusive evidence as per few of the judgments laid down by Supreme Court. Reference can be made to the following judgments wherein the Apex Court on different occasions has held that the school record is not generally accurate and it is improper for Court to base conclusion regarding date of birth of a person on the same:--

1. Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others,
2. 1989 (1) RCR 307 Brij Mohan v. State.
3. 1991 CAR 127 (SC) Daya Chand v. Saheb Singh and another.
4. 1983 (2) RCR 432 Gulab Singh v. State of Punjab.
5. 1983 (2) RCR 545.
6. 1974 CLR (Short Notes 6) Jai Narain v. State of Haryana.

It is not out of place to refer to the judgments in Bhagwan Dass Singh v. Harchand Singh, 1990 CrL. L.J. 2671, Bhoop Ram v. State of U.P. 1989 (1) RCR (CrL.) 573, wherein the School registers and School certificates have been held to be relevant. The objective of reference to the abovesaid judgments is only to express an opinion that the school record cannot be said to be an authenticated and certain evidence, to establish the age of a person, in preference to the established birth certificate of a particular person.

In view of the above discussion, I am of the considered opinion that the sequence of evidence under Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules 2007, the evidence regarding date of birth from the school first attended and the matriculation or equivalent certificate cannot be said to be a superior evidence than birth certificate issued by Corporation or Municipal authority or Panchayat, in age determination inquiry by a Court, Board or committee. The evidence specified in any of the clauses under Rule 12(3) a(i), a(ii) or a(iii) or in the absence whereof clause (b), shall be the conclusive proof of the age as regards the age of juvenile in conflict with law. The evidence

regarding the age of a person as per the school record is not authenticated proof and it cannot be said to be a superior form of evidence than the evidence of birth certificate given by Corporation or Municipal Authority or Panchayat or the Matriculation or equivalent certificate.

In view of the above discussion, I do not find any infirmity in the order passed by the Court below in relying upon the birth certificate issued by the Corporation.

Dismissed."

8. Learned counsel for the respondent has vehemently contended that the scope for interference in revision petition is limited and the revisional Court cannot sit as an Appellate Court to determine the age of a juvenile. In support of his contention he relies upon judgment in Jabar Singh Vs. Dinesh and Another, . He also placed reliance on Vijay Singh v. State of Delhi 2012 (4) RCR (Criminal) 532 in which the Apex Court had determined the juvenile status of an accused on the basis of school leaving certificate issued to the juvenile.

9. I have considered the ratio of judgment of Jabar Singh's case and Vijay Singh's case (supra). There was no matriculation certificate or birth certificate available as such the Court had placed reliance on the school leaving certificate to determine the status of the accused as a juvenile. In case of Jabar Singh, the jurisdiction of the High Court in the exercise of the revisional powers has not been curtailed to hold that there was no jurisdiction to determine the legality and propriety of the order. There is no controversy regarding legal proposition that the scope of interference in the revisional jurisdiction is limited.

10. With the assistance of learned counsel for the parties, I have gone through the statements of the witnesses.

11. In this case the date of occurrence is April 23, 2014, As per birth certificate the age of Sandeep is September 11, 1995. In order to prove that he as major as per birth certificate on the date of occurrence i.e. April 23, 2014, the complainant and State had produced A.W. 1 Vikas, an Assistant from the office of Civil Surgeon, Sonapat. He proved birth certificate A.W. 1/A issued by the office of Registrar of Births and Deaths. A.W. 2 Bijender, a neighbour of accused Sandeep has stated that he lives just opposite the house of father of accused, namely, Ramesh. He stated that Sandeep was born on September 11, 1995 and that he was 19 years of age. He corroborated the birth certificate Ex. A.W. 1/A. He was cross-examined by suggesting him that Amit elder son of Ramesh was born on March 3, 1996 and second son Sandeep was born on October 11, 1997.

12. On the other hand, the respondent-accused has examined Principal of Oasis Modern High School, Bhatgaon, Sonapat as R.W.-1, who from the school record stated that date of birth of Sandeep is October 11, 1997 as per the school record. Sandeep had joined the school in 6th class and the aforesaid date of birth was disclosed by his parents. They had not given any certificate or other document to establish the date of birth at the time of admission. R.W. 2 Ajit

Malik, Clerk from Sir Chottu Ram Modern Senior Secondary School, Rattangarh Majra was examined who has stated that Sandeep and his brother Amit and their cousin Mohit were admitted in the school on the basis of their earlier school leaving certificate and no other document about their date of birth was given by them. As per their school record, date of birth of Sandeep is recorded as October 11, 1997.

13. I have considered the entire evidence produced on the record by the complainant/State and the accused for establishing the age of Sandeep. It is not disputed that co-accused Mohit is proved to be a minor. In the present revision petition, the date of birth of only Sandeep is to be determined for establishing his status as a juvenile. Neither the age of Sandeep nor his brother Amit as claimed is based upon the first attended school certificates. Both of them were admitted on one day in the same school in 6th class by giving different dates of birth which date was incorporated in the matriculation certificate. A doubt is created regarding the date of birth of both Sandeep and Amit as birth certificate issued by Registrar of Births and Deaths pertaining to the brother of Sandeep has not been made available before the trial Court or before this Court. It is settled principles of law that the school record is not sufficient enough to establish the date of birth of a person. When a matriculation certificate is prepared on the basis of a school record, the authenticity of said matriculation certificate cannot be considered to be more authenticated than the birth certificate issued by a Corporation or Municipal authority. The said question has been considered by this Court by relying upon various judgments of Supreme Court in *Amit @ Nanha v. State of Haryana*, CRR No. 779 of 2012, decided on November 27, 2012 wherein it was held that the evidentiary value of matriculation certificate, birth certificate issued by a school first attended or the birth certificate issued by a Corporation or Municipal Authority cannot be treated comparatively to lower or higher status. It was observed in the said judgment that it would be misinterpretation of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, for short "the Rules" to classify the nature of the evidence which is admissible for determination of age as mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the Rules. If Rule 12(3)(a) is read alongwith clause (b) it makes it clear that Court can give finding in respect of age on the basis of either of the evidence specified in any of the clauses i.e. a (i), a (ii) and a (iii). It has been held in the said judgment that the evidence regarding the age of a person as per the school record is not authenticated proof and it cannot be said to be of superior form of evidence than the evidence of birth certificate given by Corporation or Municipal Authority or Panchayat or the matriculation or equivalent certificate. Similar is the ratio of judgment passed by another Bench of this Court in *Surender Vs. State of Haryana*, . This judgment has been passed on the basis of the judgment of the Apex Court in *Jabar Singh Vs. Dinesh and Another*, , holding that entry of date of birth in admission form of school record did not satisfy the conditions laid down in Section 35 of the Indian Evidence Act inasmuch as the entry was not in any public or official register and was not made by a public servant in discharge

of his official duties. In *Bikram Ray Vs. Smt. Jema Hembram and Another*, , it was held that the entries in a birth and death register are public documents and are admissible under Section 35 of the Evidence Act and that the said register being a public document presumption of correctness is attached to it and heavy onus lies on a party who wants to dispute the presumption. Similarly in *Jeeta @ Jitendra Vs. State*, , it was held that entry of date of birth in birth certificate issued by Registrar, Births and Deaths is primary evidence. Similarly in *Harpal Singh and Another Vs. State of Himachal Pradesh*, , it has been held that the certified copy of entry of date of birth in register of Births and Deaths is authenticated and admissible evidence under Section 35 of the Evidence Act.

14. The ratio of the judgment of the Apex Court in *Vijay Singh Vs. State of Delhi*, is not applicable in the present case as in the said case the date of birth of an accused was to be determined on the basis of a school leaving certificate but there was no issue regarding comparative authenticity of a school leaving certificate with a birth certificate issued by Registrars of Births and Deaths which is admissible under Section 35 of the Evidence Act.

15. Since the judgment cited by counsel for the respondent i.e. *Harpreet Singh Vs. State of Haryana and another*--> , is not based on observations of the Apex Court, I deem it appropriate to rely upon the ratio of the judgment in *Amit @ Nanha* case (supra) and *Surender's* case (supra) to hold that when a birth certificate issued by Registrar of Births and Deaths is produced and proved in contrast to a matriculation certificate which is based merely on the school entries, the preference can be given to the birth certificate which is a document prepared on the basis of a register maintained in ordinary course of business by public servant in the discharge of his official duty.

16. In view of the above said circumstances, the judgment passed by Juvenile Justice Board dated August 5, 2014 dismissing the application of the State for declaring Sandeep as major is hereby set aside and it is held that Sandeep was not a juvenile on the date of occurrence i.e. April 23, 2014 as per matriculation certificate rather on the basis of birth certificate he was born on September 11, 1995. The order declaring him juvenile is hereby set aside.

17. Allowed in the aforesaid terms.