
(2011) 11 DEL CK 0481
In the Delhi High Court
Case No : Criminal MC No.1108 of 2010

Vikas @ Sonu

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 35
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12
Juvenile Justice Act, 1986 — Section 14, 54, 7(A)
Penal Code, 1860 (IPC) — Section 302, 34, 365

Citation : (2011) 10 AD 109 : (2011) 185 DLT 515 : (2011) 4 JCC 3065

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Vikram Singh Saini and Mr. Sunil Raghav, for the Appellant; Fizani Husain, APP for State with Insp. Sanjay Kumar, for the Respondent

Final Decision : Disposed Off

Judgement

M.L. Mehta, J.—This is a petition u/s 482 Cr.P.C preferred by the petitioner for quashing of the impugned order dated 23.1.2010 passed by learned ASJ whereby the petitioner's application for declaring him juvenile under Amended Section 7(A) of the Juvenile Justice Act was dismissed and his claim of juvenility was rejected.

2. The petitioner along with other co-accused was involved in a case u/s 365/302/34 IPC. The petitioner claimed to be juvenile at the time of alleged commission of offence. The other co-accused Mohar Pal also claimed to be a juvenile. Both of them have filed applications for transferring their case to Juvenile Justice Board claiming themselves to be juvenile. The petitioner claimed to be aged about 15 years and 2 months at the time of occurrence of alleged offence and having studied up to 5th class at Gomti Prathmik Vidyalaya, Attroli, Aligarh. In support of these contentions, he filed school leaving certificate issued by the school and counter signed by the District Basic Education Officer, Aligarh.

The Magistrate sent the said certificate for verification as per which the same was reported to be forged. The detailed report was given by District Basic Education Officer, Aligarh dated 28.3.2009. Thereafter, the concerned MM directed for ossification test of the petitioner in a government hospital and as per which he was reported to be aged more than 20 years. The verification report was also sought from the SHO concerned who vide report dated 2.9.2009 given by constable Inderraj reported the date of birth of the petitioner to be 4.9.1993 as per school certificate. The certificate issued by the Principal stating the date of birth of the petitioner to be 4.9.1993 was also annexed along with the report. The learned ASJ while replying upon the verification report dated 28.3.2009 issued by the District Basic Education Officer, Aligarh and discarding the verification report of constable Inderraj recorded as under:

v) The school leaving certificate of the accused Vikas Chauhan @ Sonu was verified on two occasions. The verification report dated 26.3.2009 issued by Dr. Mukesh Kumar Singh, District Basic Education Officer, Aligarh appears to be genuine and more authentic. In the said report, it is stated that the school leaving certificate submitted by the accused Vikas Chauhan @ Sonu is forged. The District Basic Education Officer, Aligarh passed his findings on the basis of inquiries made by Deputy Basic Education Officer-III namely Shri Jagdish Prasad Pachori. Report is detailed one where all the records have been examined. The subsequent report given by the constable Indu Raj does not inspire any confidence as it is based on the school records maintained in Gomti Prathmik Vidyalaya which have already been found not correct by the District Basic Education Officer, Aligarh. As per the ossification test, the accused. Vikas Chauhan @ Sonu is also found to be more than 20 years. After considering all facts, the application filed by the Vikas Chauhan @ Sonu is dismissed.

3. However, with regard to the school leaving certificate of co-accused Mohar Pal who had also claimed to be a juvenile with his date of birth to be 2.1.1993 as per the school leaving certificate duly verified and whose age was also reported to be 20 years as per the ossification test, the learned ASJ recorded that, "The correctness of the entry recording the age of accused Mohar Pal is seriously disputed by the State and accordingly it will be appropriate to ask the accused Mohar Pal to lead evidence in support of his actual date of birth/age." Accordingly the matter was adjourned for recording the evidence on behalf of co-accused Mohar Pal to prove his assertion of being a juvenile.

4. From the above, it is seen that on the one hand there was a report submitted by the SHO verifying from the Principal of the school about the age of the petitioner being 4.9.1993 as per school record and on the other hand there was a report of District Basic Education Officer dated 28.3.2009 stating therein that the school leaving certificate issued by the principal of the school showing the date of birth of the petitioner to be 4.9.1993 to be a forged and fabricated document. Then there was also a report of ossification test mentioning the age of the petitioner to be over 20 years. Learned ASJ proceeded to record that the report

of District Basic Education Officer appears to be genuine and more authentic than the report of constable Inder Raj submitted by the SHO. The submission of learned counsel for the petitioner was that there was no reason or basis for learned ASJ to rely upon the report of District Basic Education Officer and to discard the verification report submitted by the SHO after verifying the date of birth from the principal of the school. He also submitted that an inquiry was required to be conducted by the concerned court before recording the finding as regards the juvenility of the petitioner. The learned counsel for the petitioner relied upon the judgment of this Court in *Puneet Vasudeva v. State* [2009 (2) JCC 1415].

5. Undisputedly, a delinquent juvenile has to be dealt under the provisions of Juvenile Justice Act, 1958, which are curative and reformatory in nature than punitive. The benefit of provisions of this Act are available to a juvenile only i.e. a boy who had not attained the age of 16 years or a girl who has not attained the age of 18 years on the date of occurrence thereby granting them a special status as a class. That being so, the age of the accused persons on the date of occurrence has its own importance. Section 54 of this Act provides that an inquiry ought to be made under any of the provisions of this Act. This section reads as under:

54. Procedure in inquiries, appeals and revision proceedings.- (1) Save as otherwise expressly provided by this Act, a competent authority while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974) for trials in summons cases.

(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

6. The above section provides that the procedure laid down under the Code of Criminal Procedure in summoning cases shall be followed as far as may be. The procedure for trial in summoning cases is provided in Chapter XX of the Code.

7. Section 14 of the Act makes it obligatory to make an inquiry about the age of the accused and for that purpose to take such evidence as may be necessary. Rule 12 of the Juvenile Justice (Care & Protection) Rules, 2007 also prescribes for the procedure to be followed in deciding juvenility. From the scheme of provisions of this Act, it would be seen that a due inquiry is required to be conducted by the Magistrate by taking such evidence as may be deemed necessary in the manner as prescribed for trial in summoning cases under the Code for arriving at a finding as regards the accused being a juvenile or not. In other words, the age is required to be determined on the basis of evidence that may be adduced and other materials in support thereto.

8. From the aforesaid provisions, it is also seen that there cannot be any hard and fast rule as to what in the given case would be the evidence to be sufficient to arrive at such a finding. All will depend upon the nature and the quality of the evidence that may be presented before the Court for recording such finding. In a situation like the one in hand where there is a school record being relied upon by the school as correct, but being treated by the District Basic Education Officer as forged, the right course was not to rely upon the one and discard the other, but to arrive at the truth of the matter by examining the concerned and relevant witnesses with the record. This was all the more necessary in view of there being large difference of five years about the age of the delinquent as per the ossification test report. Such an inquiry could only be held by recording oral evidence with right of cross examination to be given to the opposite side. Since the petitioner was claiming to be a juvenile, the onus was primarily upon him to prove his claim by examining his witnesses who of course shall be subject to the opportunity of cross examination by the opposite side. The learned ASJ seems to have chosen to rely upon the report of the District Basic Education Officer even without examining him and affording any opportunity of cross examination to the petitioner. In the case of *Ravinder Singh Gorkhi v. State of U.P.* [2006 (2) JCC 856], with regard to the manner of proving the entry regarding date of birth in the school register, the Supreme Court held as under:-

22. Section 35 of the Evidence Act would be attracted both in civil and criminal proceedings. The Evidence Act does not make any distinction between a civil proceeding and a criminal proceeding. Unless specifically provided for, in terms of Section 35 of the Evidence Act, the register maintained in ordinary course of business by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which, inter alia, such register is kept would be a relevant fact. Section 35, thus, requires the following conditions to be fulfilled before a document is held to be admissible thereunder: (i) it should be in the nature of the entry in any public or official register; (ii) it must state a fact in issue or relevant fact; (iii) entry must be made either by a public servant in the discharge of his official duty, or by any person in performance of a duty specially enjoined by the law of the country; and (iv) all persons concerned indisputably must have an access thereto.

9. The Supreme Court further held that in a case of dispute regarding the date of birth, the court may appreciate the evidence having regard to the facts and circumstances of each case and different standards to prove the same should not be adopted for determining the age of a person in the manner laid down under the statute.

10. The learned ASJ proceeded to conduct an inquiry about the age of co-accused Mohar Pal by permitting the parties to adduce evidence and which to my mind was required to be done in the case of the petitioner herein as well. Apparently, the learned ASJ seems to have been swayed with the report dated 28.3.2009 coming from the Senior Officer of District Basic Education, which to

my mind, led to miscarriage of justice qua petitioner. It may be that the petitioner was not a juvenile at the time of occurrence of the crime, but he could not be deprived of his legal right to prove himself to be a juvenile and entitled to the benefits thereof.

11. Having regard to the above facts and circumstances, the impugned order seems to be untenable qua the petitioner. The same is hereby quashed to that extent as discussed above. IO is directed to produce the petitioner before the concerned court which will conduct the appropriate proceedings as per law and in the manner as indicated above.

12. The petition stands disposed of.