

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1971 OF 2012

@ Special Leave Appeal (Crl.) No. 9343 of 2011

Jodhbir Singh

.. Appellant(s)

Versus

State of Punjab

.. Respondent(s)

J U D G M E N T**K. S. Radhakrishnan, J.**

1. Leave granted.

2. The appellant and one Sandeep Singh were apprehended by the SP/Anti Smuggling Squad on 26.09.2012 near Gurdwara Atari Sahib Sulthanwind, Amritsar while they were waiting for a party to deliver the consignment of 2 kg Heroin on their Motor Cycle No. PB-02-BC-1089. FIR No. 26 dated 26.09.2010 was registered by PS State Special Operation Cell under Sections 21, 25, 29, 61, 85 of the NDPS Act. An application was filed by the appellant before the

Judge, Special Court, Amritsar for sending the case against him to the Juvenile Justice Board for trial.

3. The appellant stated before the Judge, Special Court, Amritsar that he was a juvenile on the date of the incident since he was born on 20.07.1996. A certificate dated 19.10.2010 issued by the Government High School, Naushehra Cheema (Tarn Taran) was also produced in support of his contention that his date of birth was 20.07.1996. The application was opposed by the State stating that during interrogation, he had stated he was born in the year 1991 and as such he was not a juvenile on the date of the incident. Further, reference was also made to the certificate issued by the Chowkidar of the village which showed that the date of birth of the appellant was 05.07.1993.

4. After hearing the counsel on either side at length and perusing the records, the Sessions Court passed the following order which reads as follows:

“A perusal of the record has shown that as per the certificate Ex.A1 passing of 5th Class, issued by the Education Department, Punjab shows the date of birth of the applicant-accused Jodhbir Singh to be 20.07.1996 AW1 Parkash Kaur, mother of the applicant-accused has

mentioned the date of birth of Jodhbir Singh to be 20.07.1996. She has stated that the age of Jodhbir Singh is 14 ½ years. However, in her cross examination, the said witness Parkash Kaur had categorically mentioned the date of birth of Jodhbir Singh to be 20.07.1996 has feigned for ignorance regarding the date of her marriage. Regarding her elder son, she had stated that he was born on 15 Magh, but she could not tell year of birth of her eldest son Gursahib Singh. She has also not been able to tell the date of birth of Jodhbir Singh during the course of her cross examination though she had specifically told the date during the course of her examination in chief. Even she could not tell after how many years of her marriage Jodhbir Singh was born. This shows that Parkash Kaur, mother of the applicant-accused Jodhbir Singh is not aware about the date of birth of her son as well as his age. RW2 Jagjit Singh, Chokidar has stated that as per the record of his Chowkidar register, the date of birth of Jodhbir Singh was 5.7.1993. Even here, in the document Ex.RW2/A there is cutting. All this shows that the document Ex.A1 and the document Ex.RW2/A are contrary to each other not showing the real date of birth of the accused. The record of the criminal case bearing FIR No.26 dated 26.09.2010 shows that during the course of interrogation, the accused had not disclosed himself to be a minor or juvenile. Though his maternal uncle Dalbir Singh also informed regarding the complicity of the accused in the commission of the offence under Sections 21, 25, 29 of the NDPS Act, but neither his maternal uncle nor his parents had told the police that applicant-accused Jodhbir Singh was minor at the time of commission of the offence. In the identification certificate of accused Jodhbir Singh, his age has been mentioned as 19/20 years. In such like circumstances, the school certificate as well as the entry in the register of the chowkidar regarding date of birth of the applicant-accused Jodhbir Singh does not seem to be true and that the said record seems to be maneuvered only to get

undue benefit of the provision of Juvenile Justice (Care and Protection of Children) Act, 2000.”

5. The appellant, aggrieved by the above order, filed Criminal Revision No. 1440 of 2011 before the High Court of Punjab and Haryana at Chandigarh. The High Court concurred with the views expressed by the Sessions Court and heavily relied on the following circumstances to dismiss the revision petition on 07.07.2011.

“(i) The mother of the petitioner Parkash Kaur while appearing as AW1 has not been able to tell the date of birth of the petitioner during the cross-examination. She was not even able to tell after how many years of her marriage the petitioner was born.

(ii) The petitioner himself during the course of interrogation had not disclosed himself to be minor or juvenile.

(iii) His maternal uncle Dalbir Singh had also not supplied any information to the police regarding the age.

(iv) In the identification certificate, the petitioner has given his age as 19/20 years.”

6. Aggrieved by the said order, this appeal has been preferred.

7. Mr. Siddharth Mittal, learned counsel appearing for the appellant submitted that the Sessions Court has committed a grave

error in not properly appreciating the scope of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the JJ Act') and Rule 12 of the Juvenile Justice Rules, 2007 (for short 'the JJ Rules'). Learned counsel submitted that the courts have committed a grave error in placing reliance on the certificate issued by the village Chowkidar as against the certificate issued by the State Council for Education Research and Training Punjab, Chandigarh dated 05.04.2006 and the certificate dated 19.10.2000 issued by the Government High School, Naushehra Cheema (Tarn Taran). Learned counsel submitted that both the abovementioned certificates indicate that the date of birth of the appellant is 20.07.1996 and therefore on the date of the incident i.e. 26.09.2010, the appellant was a juvenile. Considerable reliance was placed on judgment of this Court in **Ashwani Kumar Saxena v. State of M.P.** [(2012) 9 SCC 750] in support of his contention.

8. Mr. Saurabh Ajay Gupta, learned counsel appearing for the respondent-State, submitted that there is no illegality in the order passed by the Sessions Court, which was confirmed by the High Court. Learned counsel submitted that since there is some conflict

on the date of birth shown in the school register and that of the certificate issued by village Chowkidar, the Sessions Court and the High Court were justified in placing reliance on the certificate issued by village Chowkidar to reject the claim of juvenility.

9. When the matter came up for hearing, we passed the order dated 29.08.2012 which reads as follows:

“Learned counsel appearing for the petitioner placed reliance on certificate issued by the State Council for Education Research and Training, Punjab, Chandigarh dated 5.4.2006, where it is stated that the date of birth of the petitioner is 20.7.1996. A photo copy of the same has been made available to the Court as well as to the counsel appearing for the state Government.

Learned counsel for the petitioner also placed reliance on a copy of certificate dated 19.10.2000 issued by the Government High School, Naushehra Cheema (Tarn Taran) which also shows date of birth of the petitioner as 20.07.1996 and reference was also made to the Admission and Withdrawal Register, Govt. High School, Naushera Cheema (Tarn Taran) issued by the Headmaster/Principal of the Govt. High School, Naushera Cheema (Tarn Taran).

Under such circumstances, we are inclined to give a direction to the State to examine the genuineness of these documents and file an affidavit to that effect.”

10. In pursuance of that order, an affidavit dated 14.11.2012 was filed by Dy. Superintendent of Police, State Special Operation Cell,

Amritsar, Punjab who examined the genuineness of the certificates referred to in our order. Relevant portion of the order reads as follows:

“3. That as per the directions, following documents furnished by the petitioner have been examined to ascertain their genuineness.

(A) A Certificate issued by the State Council of Education Research and Training Punjab, Chandigarh dated 05.04.2006.

(B) A Certificate issued by Govt. High School, Nausherha Cheema, Tarn Taran.

(C) A copy of admission and withdrawal register of Govt. High School Nausherha Cheema.

4. That, Sh. Manjinderjit Singh Head Master Govt. High School Nausherha Cheema, Tarn Taran has certified the genuineness of the documents on the basis of the record maintained in the school.

5. That, the copy of the statement furnished by Sh. Manjinderjit Singh Head Master Govt. High School Nausherha Cheema, Tarn Taran to this effect is attached as Annexure R-1.”

11. We notice the genuineness of the certificate issued by the State Council of Education Research and Training Punjab, Chandigarh dated 05.04.2006 and the certificate issued by Govt. High School Nausherha Cheema, Tarn Taran and the admission and

withdrawal register of Govt. High School, Naushera Cheema has not been questioned.

12. In **Ashwani Kumar Saxena** case (supra), this Court has explained how “Age determination inquiry” has to be conducted under Section 7A of the JJ Act read with Rule 12 of the JJ Rules.

Relevant portion of the same is extracted hereunder:

“32. “Age determination inquiry” contemplated under Section 7A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the abovementioned procedures, passes an order, that order shall be the

conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. Further, Section 49 of the JJ Act also draws a presumption of the age of the juvenility on its determination.”

13. We are of the view that in a case where genuineness of the school leaving certificate has not been questioned, the Sessions Court and the High Court were not justified in placing reliance on certain statements made by Parkash Kaur, mother of the accused in the cross-examination. The Sessions Court also committed an error in placing reliance on the certificate issued by the village Chowkidar who was examined as RW2. When the law gives prime importance to the date of birth certificate issued by the school first attended, the genuineness of which is not disputed, there is no question of placing reliance on the certificate issued by the village Chowkidar.

14. We may indicate that all these legal aspects has already been dealt with in **Ashwani Kumar Saxena** case (supra), hence, further elucidation of the question raised does not arise. The issue raised,

in our view, is fully covered by the abovementioned judgment. In such circumstances, we are inclined to allow this appeal and set aside the order passed by the Sessions Court dated 16.04.2011 and the impugned judgment and order dated 07.07.2011 in Criminal Revision No. 1440 of 2011. We hold that the appellant was a juvenile on the date of the incident and has to be tried by the Juvenile Justice Board. The Sessions Court is directed to make over the files to the Juvenile Justice Board to proceed with the trial, so far as the appellant is concerned.

.....J.
(K.S. Radhakrishnan)

.....J.
(Dipak Misra)

New Delhi,
December 3, 2012