IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.604 of 2007
Date of decision: March 30, 2007.

Harpreet Singh

...**Petitioner(s)**

v.

State of Punjab

...**Respondent(s)**

CORAM:HON'BLE MR. JUSTICE SURYA KANT

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest.

Present: S/Shri Mansur Ali & H.S. Deol, Advocates, for the petitioner.

ORDER

Surya Kant, J. - This Revision Petition is directed against the order dated 24.2.2006 passed by the Principal Magistrate, Juvenile Justice Board, Faridkot-cum-Chief Judicial Magistrate whereby upon an application filed by the prosecution to the effect that the petitioner was not a juvenile at the time of the occurrence and, thus, the case is liable to be tried by the Court of Sessions Judge, has been accepted, as well as against the order dated 14.2.2007 passed by the learned Sessions Judge, Faridkot whereby the afore-mentioned order of the Juvenile Justice Board has been upheld.

[2]. The petitioner is one of the accused facing trial in FIR No.118 dated 27.3.2002, under sections 302, 148, 149 IPC, registered at Police

Station Kotwali, Bhatinda. After his arrest, the petitioner took a plea that he was a juvenile and sought his release on bail under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short the Act). Pursuant to the said application, an ossification test was held and a report dated 30.4.2002 was submitted by the Civil Surgeon, Bhatinda in terms whereof, the petitioner was treated as a juvenile and was released on bail. Thereafter, he was being tried as a juvenile only.

[3]. Meanwhile, the prosecution moved an application dated 25.10.2004, *inter-alia*, alleging that on the date of occurrence, the petitioner was more than 18 years old and was, thus, not a juvenile, therefore, he was liable to be tried by the Court of Sessions Judge.

[4]. According to the prosecution, the date of birth of the petitioner is 29.9.1982 and at the time of occurrence, he was about 19-1/2 years old and, therefore, the protection of the Act is not available to him. On the other hand, the petitioner took the plea that he was born on 26.5.1985 and was, thus, below 18 years on the date of alleged occurrence.

[5]. In order to substantiate the plea that the petitioner was more than 18 years of age as on 27.3.2002, i.e., the date of occurrence, the prosecution produced on record the petitioner's birth certificate, Ex.A1, in which he has been shown to have been born on 29.9.1982.

[6]. On the other hand, the petitioner placed reliance upon his Secondary School Examination Certificate, Ex.R1, showing his date of birth as 26.1.1985. He also placed reliance upon the LIC policy, Ex.R3, which was purchased by him on 15.11.2002, i.e., after the occurrence had taken place.

[7]. So far as the oral evidence is concerned, the prosecution

produced one Ramesh Kumar, who incidentally also happens to be an eye witness to the murder of deceased Rajiv Kumar. The petitioner produced his father, namely, Jagjit Singh, as RW1.

[8]. Out of the two sets of documentary and oral evidence, the learned Principal Magistrate, Juvenile Justice Board-cum-Chief Judicial Magistrate as well as the learned Sessions Judge have relied upon the birth certificate produced by the prosecution and have discarded the evidence led by the petitioner, *inter-alia*, for the following reasons:-

(i) the birth certificate has more evidentiary value and carries presumption of truth; it is *per se* admissible in evidence;

(ii) a birth certificate also reflects the first version of the parents of a newly born child;

(iii) it is a matter of common knowledge that at the time of admission in school, there is a tendency to reduce the age of the child for long-term benefits, like government employment, etc.;

(iv) the petitioner and his father themselves are not sure about the exact date of the petitioner's birth, inasmuch in his oral deposition, the father of the petitioner stated that the petitioner was born on 26.5.1985 whereas the documents relied upon by them show that he was born on 26.1.1985;

(v) the petitioner failed to produce the birth certificates of his other brothers and sisters, though, according to his father, 5 children, including the petitioner, were born out of the wedlock. Had the certificates of all the children been produced, a clear picture would have emerged as to on what

date the petitioner was born.

[9]. The courts below have, thus, drawn an adverse inference against the petitioner for withholding the material piece of evidence.

[10]. For the reasons afore-stated, the courts below have held that the petitioner was not a juvenile on the date of occurrence, therefore, he is liable to be tried by the Sessions Court.

[11]. Aggrieved, the petitioner has approached this Court.

[12]. Learned Counsel for the petitioner has raised three-fold submissions. Firstly, he relies upon Section 49(2) of the Act and contends that once the petitioner had been treated as a juvenile and was being tried as such, "no subsequent proof" that he was not a juvenile or a child at the time of occurrence, would invalidate the previous order. Secondly, it is argued that as per the ossification test, which was conducted in the year 2005 (Annexure P-4), the petitioner was found to be of 20 years of age in the year 2005, i.e., he was 17 years or so in the year 2002 when the alleged occurrence took place and was, thus, a juvenile. Thirdly, Learned Counsel relies upon a judgment of the Apex Court in the case of **Rajinder Chandra v. State of Chhattisgarh**, 2002(1) RCR (Crl.) 586, as also two judgments of the Madhya Pardesh High Court and Orissa High Court respectively in the cases of **Radhe Shyam Varma v. State of M.P. & Anr.**, 1996(2) RCR (Crl.) 648 and **Dhobeidhar Naik v. State**., 2002(1) Crl. Court Cases 71 (Orissa).

[13]. Having heard Learned Counsel for the petitioner, I do not find any merit in either of the contentions.

[14]. The statutory presumption under Section 49(2) of the Act can be drawn only if a person has been tried as a juvenile and subsequently

some evidence is led to show as if he was not a juvenile at the time of trial or conclusion thereof. No such statutory presumption can be inferred or comes to the aid of the petitioner for the reason that at the initial stage of the trial itself, the prosecution has taken a specific plea that the petitioner was born in the year 1982 and not 1985 and he was not a juvenile on the date of occurrence.

[15]. So far as the ossification test relied upon by the petitioner is concerned, true it is that in the absence of any other reliable evidence, the Juvenile Justice Board could be well within its right to rely upon such a piece of evidence to determine as to whether the subject-person was a juvenile or not. However, the evidentiary value of ossification test loses its significance when there is conclusive evidence on record to the contrary. In the case in hand, the undisputed birth certificate of the petitioner leaves no manner of doubt that he was born on 29.9.1982, therefore, mere opinion of the Medical Board cannot rebut the presumption attached thereto, more so when such an opinion carries a variation of 2 to 3 years on either side.

[16]. As regard to the judicial precedents relied upon by the learned counsel, it may be noticed that in **Rajinder Chandra**'s case (supra), the Apex Court observed that when an accused is claiming himself to be a juvenile and the birth certificate, school record and ossification test consistently showed that he was on border of 16 years, the benefit should go to the accused. The facts of the present case are totally distinguishable. The birth certificate of the petitioner belies the entry in the school register as well as the opinion based upon the ossification test. That apart, the inconsistent stand taken by the petitioner and his father with regard to the petitioner's date of birth also creates doubts regarding the genuineness of

the date of birth mentioned in the school record.

[17]. Consequently, and for the reasons afore-stated, no exception can be taken to the views formed by the courts below.

[18]. Dismissed.

March 30, 2007. [**Surya Kant**]
kadyan **Judge**