

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

Criminal Rev.1859 of 2006

DATE OF DECISION : SEPTEMBER , 2008

GURWINDER SINGH @ GINDER ..... PETITIONER(S)

VERSUS

CENTRAL BUREAU OF INVESTIGATION .... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE AJAI LAMBA

PRESENT: Mr. Kuldeep Tiwari, Advocate, for the petitioner(s).  
Mr. SS Sandhu, Advocate, for  
Dr. AR Sidhu, Standing counsel for the CBI.

AJAI LAMBA, J.

This petition is directed against order dated 12.7.2006, whereby Additional Sessions Judge, Patiala, has dismissed the application for bail filed by the petitioner. The prayer for bail has been made on the ground that the petitioner was a juvenile as provided under the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act') on the date of commission of the alleged offence.

The contention of the learned counsel for the petitioner is that sufficient material has been placed on record by the petitioner to indicate that he was a juvenile where-against the respondent-CBI has not produced any evidence to indicate otherwise and, therefore, the petitioner ought to have been declared a juvenile and granted bail.

Contention of the learned counsel for the petitioner also is that under Section 49 of the Act, an inquiry is required to be conducted. In the case in hand, the onus has been shifted to the petitioner, which is not permissible in law and no inquiry has been conducted, therefore, prejudice has been caused to the petitioner, who was a juvenile on the date of commission of the alleged offence.

The contention of the learned counsel for the respondent is that no legal infirmity can be traced in the impugned order, as the inquiry as contemplated under the Act, had been conducted. The evidence produced by the petitioner and the circumventing circumstances have been considered before concluding that the petitioner was not a juvenile.

I have heard the learned counsel for the parties and have gone through the impugned order.

The impugned order notices that vide order dated 27.1.2006, the Court had come to the conclusion that an inquiry is necessary to decide whether the accused is a juvenile or not. The petitioner was not a juvenile by appearance and was not treated as such. The petitioner, however, asserted that he was a juvenile and, therefore, was required to prove that fact.

On a consideration of the impugned order, I find that the petitioner was given sufficient opportunity to bring evidence to show that he was a juvenile. A perusal of the impugned order indicates that the age of the father and his statement given in Court in regard to the age of the petitioner, have been considered in extenso.

The original birth entry in the register of Chowkidar or in the

office of the Civil Surgeon to prove the date of birth of the petitioner has not been produced. The father of the petitioner, rather, stated in his statement that he had mentioned the date of birth of the petitioner in the school record as per his estimate.

The school leaving certificate has been produced on record, which indicates the date of birth of the petitioner to be 17.4.1984. The petitioner has been shown to have been admitted in the school on 18.4.1995 and he left the school on 7.4.1997. The entry in the Register has been found to be suspicious by the court in so much as the name of the students are written in one hand and, apparently, in one sitting. It has been concluded that since the students were admitted on different dates, the entries made in the Register could not be in one hand and in one sitting.

Judicial notice has also been taken of the fact that the school leaving certificate was issued on 8.7.2005 and the murder of Jaswinderpal Singh took place on 3.2.1999. It has been noticed that the case remained untraced till it was transferred to the CBI. Even the CBI could not trace the accused and it filed a closure report on 29.4.2002. Subsequently, however, the CBI could lay its hands on credible evidence and permission of the court was sought on 9.5.2005 to further investigate the matter and it is, thereafter, that the accused were arrested. The school leaving certificate having been issued on 8.7.2005 i.e. after the CBI had become active and started inquiring the role of the petitioner, the circumstances indicate suspicion.

The court has also recorded its observations in regard to the physique of the petitioner that he is well built.

It has been vehemently contended by the learned counsel for the petitioner that the school leaving certificate was evidence enough to indicate that the petitioner was a juvenile. In this regard, reference has been made to a judgment of this Court in Balkar Singh v. State of Punjab, 2005(1) RCR (Criminal) 576, wherein it has been held that the school record is the next best evidence in the absence of any entry in the office of Registrar of Births and Deaths.

Reference has been made to a judgment of the Delhi High Court in Manoj Kumar v. The State, NCT Delhi, 2007(1) RCR (Criminal) 687, wherein it has been held that it is not necessary that the birth certificate must be produced by the person claiming to be a juvenile. There are other pieces of evidence which can be looked into and the school certificate is one such piece of evidence.

Reliance has been placed on a Division Bench judgment of this Court in Updesh and others v. State of Haryana, 2008(3) RCR (Criminal) 676, wherein it has been held that while dealing with the question of determining the age of the accused, hyper technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused and if two views are possible on the basis of such evidence, the court should lean in favour of holding the accused as juvenile in borderline cases.

Reference has also been made to a judgment of this Court in Santokh Singh v. Harkirat Singh alias Kirat and another, 2008(2) RCR

(Criminal) 938, wherein no record with regard to the age of the accused was available in Municipal Hospital and the register maintained for births and deaths. In the circumstances, the accused was declared a juvenile on the basis of age recorded in the school record, which is the next best evidence.

The judgments, the gist of which has been noticed above, do not, however, help the case of the petitioner for the reason that a suspicion has been shown by the court below in regard to the entries made in the school register, as discussed above. The father of the petitioner has given a statement that the entry in the school register was made “by way of estimate”. After appreciating the evidence, a conclusion has been drawn that the petitioner was not a juvenile on the given date. This court, in revisional jurisdiction, has no reason to record a finding to the contrary.

I am also convinced that the impugned order does not suffer from any illegality because the petitioner has not been able to show that the school register, which is the basis of the case set up by the petitioner, was being maintained under a particular statute. Since it is not a public record, therefore, it would not be evidence under Section 35 of the Indian Evidence Act. In this regard, reference may be made to the judgment in Ravinder Singh Gorkhi v. State of U.P., 2006(3) RCR (Criminal) 156. In paras 21 to 28, 30, 31 and 34 of the judgment, it has been held as under :-

“21. 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.

22. A question was raised as to whether the determination of the age of a child should be made on the basis of the date on which the occurrence took place or when, he was produced before the court. The said question came up for consideration in the context of the provisions of the Juvenile Justice Act, 2000 before a Constitution Bench in *Pratap Singh v. State of Jharkhand and Anr.*, 2005(1) RCR (Cr.) 836 : [(2005) 3 SCC 551]. It was held that the date of commission of the offence would be the relevant date.

23. In terms of the aforementioned decision of the Constitution Bench such determination is required to be made even if at the relevant time, the juvenile crossed the age of eighteen years. In absence of any other statute operating in the field, Section 35 will have application and the court, while determining such age would depend upon the materials brought on records by the parties which would be admissible in evidence in terms of Section 35 of the Act.

24. In *Birad Mal Singhvi v. Anand Purohit* [(1988 Supp. SCC 604)], this Court held:

"To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book,

register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded." (Emphasis supplied)

25. In *Sushil Kumar v. Rakesh Kumar* [(2003) 8 SCC 673], this Court as regards determination of age of a candidate in terms of Section 36(2) of the Representation of the People Act, 1951 observed :

"32. The age of a person in an election petition has to be determined not only on the basis of the materials placed on record but also upon taking into consideration the circumstances attending thereto. The initial burden to prove the allegations made in the election petition although was upon the election petitioner but for proving the facts which were within the special knowledge of the respondent, the burden was upon him in terms of Section 106 of the Evidence Act. It is also trite that when both parties have adduced evidence, the question of the onus of proof becomes academic [see *Union of India v. Sugauli Sugar Works (P) Ltd. and Cox and Kings (Agents) Ltd. v. Workmen*. Furthermore, an admission on the part of a party to the lis shall be binding on him and in any event a presumption must be made that the same is taken to be established."

This Court therein followed, inter alia, *Birad Mal Singhvi* (supra) and several other decisions.

26. In *Updesh Kumar and Others v. Prithvi Singh and Others* [(2001) 2 SCC 524], this Court having regard to the overwhelming evidence came to the opinion that the Respondent No. 1 had attained the age of 21 years as on the date of his application for the allotment of the retail outlet. In that case also reliance was placed on the matriculation certificate holding that the correction of the date of the birth in the certificate was an official act and the must be presumed to have been done in accordance with law.

27. We, however, notice that in *Ramdeo Chauhan alias Raj Nath v. State of Assam* [(2001) 5 SCC 714], as regard applicability of the provision of Section 35 of the Indian Evidence Act, 1872 vis-à-vis a school register, it was stated :

"19. It is not disputed that the register of admission of students relied upon by the defence is not maintained under any statutory requirement. The author of the register has also not been examined. The register is not paged (sic) at all. Column 12 of the register deals with "age at the time of admission". Entries 1 to 45 mention the age of the students in terms of years, months and days. Entry 1 is dated 25-1-1988 whereas Entry 45 is dated 31-3-1989. Thereafter except for Entry 45, the page is totally blank and fresh entries are made w.e.f. 5-1-1990, apparently by one person up to Entry 32. All entries are dated 5-1-1990. The other entries made on various dates appear to have been made by one person though in different inks. Entries for the years 1990 are up to Entry 64 whereafter entries of 1991 are made again apparently by the same person. Entry 36 relates to Rajnath Chauhan, son of Firato Chauhan. In all the entries except Entry 32, after 5-1-1990 in column 12 instead of age some date is mentioned which, according to the defence is the date of birth of the student concerned. In Entry 32 the age of the student concerned



has been recorded. In column 12 again in the entries with effect from 9-1-1992, the age of the students are mentioned and not their dates of birth. The manner in which the register has been maintained does not inspire confidence of the Court to put any reliance on it. Learned defence counsel has also not referred to any provision of law for accepting its authenticity in terms of Section 35 of the Evidence Act. The entries made in such a register cannot be taken as a proof of age of the accused for any purpose."

28. We are, however, not oblivious of a decision of this Court in *Bhola Bhagat v. State of Bihar*, 1998(1) RCR (Crl.) 21 : [(1997) 8 SCC 720], wherein an obligation has been cast on the court that where such a plea is raised having regard to the beneficial nature of the socially-oriented legislation, such a plea should be examined with great care. We are, however, of the opinion that the same would not mean that a person who is not entitled to the said benefit would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit. Each case has to be considered on the basis of the materials brought on records.

30. Mr. Mishra, however, relied upon *Umesh Chandra v. State of Rajasthan* [(1982) 2 SCC 202]. Therein a register maintained by a public school of repute had been produced. This Court relied thereupon, opining that Section 35 cannot be read with Sections 73 and 74 of the Evidence Act. If a public school maintains a register in ordinary course of business, the same would be admissible in evidence.

31. We have not been shown as to whether any register was required to be maintained under any statute. We have further not been shown as to whether any register was maintained in the school at all. The original register has not been produced. The authenticity of the said register, if produced, could have been looked into. No person had been examined to prove as

to who had made entries in the register. The school leaving certificate which was not issued by a person who was in the school at the time when the appellant was admitted therein, cannot be relied upon.

34. The age of a person as recorded in the school register or otherwise may be used for various purposes; namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum, e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted.”

In the present case, the relevant entry has not been made by the public servant in discharge of official duties. Rather, the Additional Sessions Judge has observed that one of the witnesses; namely, Rajvinder Singh son of Ajit Singh, who appeared as AW-2, and was working as Clerk in the Government Senior Secondary School, Kalanaur, District Gurdaspur, who had brought the Certificate, had admitted that the

petitioner was son of sister of his father. The statement of Rajvinder Singh, AW-2, has been placed on record as Annexure P-8. I have referred to the statement and this fact finds mentioned specifically. Rather, AW-2 has admitted in his cross-examination that he did not know as to on the basis of which document the petitioner was admitted in the School and his age was entered.

I have also referred to the statement of father of the petitioner; namely, Sukhwinder Singh (Annexure P-4), who appeared in the inquiry. In the cross-examination, this witness has stated that "I do not remember how the date of birth of Gurwinder Singh was recorded in the school record. I had mentioned the date of birth of Gurwinder Singh in the school record by way of estimate giving approximate age".

In view of the law laid down by the Hon'ble Supreme Court of India and the peculiar facts and circumstances of the case, as discussed above, I find that it has rightly been held in the impugned order that the petitioner was not a juvenile on the date of the alleged incident.

Having regard to the above facts and circumstances which have been relied upon by the trial court, I do not find any fault in the findings recorded in the impugned order.

So far as reference to the provisions of Section 49 of the Act is concerned, the provision provides that where it appears to a competent authority that the person brought before it under any of the provisions of this Act is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose, shall take such evidence as may be necessary and shall record a finding whether the

person is a juvenile or the child or not, stating his age as nearly as may be.

In the case in hand, it has been brought out that the arrest of the petitioner was effected on 7.7.2005. The petitioner did not claim that he was a juvenile. The fact that the petitioner is a juvenile was asserted, for the first time, on 14.11.2005 when the issue of bail arose. There is no material to indicate that at the time of arrest, it had appeared to any person that the petitioner was a juvenile nor the petitioner himself had asserted this fact. In view of these facts, the petitioner cannot derive any benefit from the argument raised in this context.

The petition is, accordingly, dismissed.

September , 2008  
Kang

( AJAI LAMBA )  
JUDGE