

Before Mahesh Grover, J.

HARPREET SINGH,—Petitioner

versus

STATE OF HARYANA AND ANOTHER,—Respondents

Crl. M. No. 14887/M of 2009

1st September, 2009

*Juvenile Justice (Care and Protection of Children) Act, 2000-
Ss. 2(k) & (1) 12, & 14—Juvenile Justice (Care and Protection of
Children) Rules, 2007—Rl. 12—Certificate issued by school
authorities showing petitioner a juvenile on the date of commission
of offence—Trial Court not recording prima facie opinion as required
under Rule 12(2) of 2007 Rules—Date of commission of offence is
of an utmost significance as juvenility of a person in conflict with
law is to be seen at that point of time, therefore, it is imperative for
Court to prima facie record its opinion by adhering to provisions
of Rule 12(2) of 2007 Rules—School certificate and a copy of marks
sheet were in consonance with mandate of Rule 12(3) for determining
date of birth of a juvenile or date of birth certificate from a school
first attended and it is only in absence of this material, Court is
required to proceed to enquire and look into some other material—
Trial Court committing error choosing to rely upon some entry of
insurance policy and by relying upon entry in register of Chowkidar-
Petition allowed while declaring petitioner to be a juvenile.*

Held. that the trial Court has clearly erred in not recording the *prima facie* opinion as is required under Rule 12(2) of the Rules. These provisions are not merely an empty formality. The implicit reason behind these provisions is that the Court, who, first has the occasion to gauge the physical appearance of juvenile in conflict with law has to record its satisfaction or a *prima facie* impression for two reasons, one- the enquiry can take some time and second, the Court may be convinced on seeing a person that he is a juvenile and thereby take prompt measures that are required under Sections 12 or 15 of the Act. The date of commission of offence is of an utmost significance as juvenility of a person in conflict with

law is to be seen at that point of time and, therefore, it is imperative for the Court to *prima facie* record its opinion by adhering to the provisions of Rule 12(2) of the Rules.

(Para 14)

Further held, that the school certificate issued by the Principal, Summerhill Covent School, Bathinda and a copy of the marks sheet of the Secondary School Examination, 2007, according to which date of birth of petitioner is 15th August, 1991, were in consonance with the mandate of Rule 12(3) of the Rules, which warrants basing an opinion on the matriculation or equivalent certificate for determining the date of birth of a juvenile or the date of birth certificate from a school first attended (other than a play school) and is only in the absence of this material that the Court is required to proceed to enquire and look into some other material. The trial Court was therefore, clearly in error when it chose to rely upon some entry on the basis of which the insurance policy was given and likewise, was also in error by relying upon the entry in the register of the Chowkidar which vaguely recorded that third son was born to the father of the petitioner on 3rd February, 1987.

(Para 17)

Mrs. Baljeet Mann, Advocate, *for the Petitioner*

Mrs. Sushma Chopra, Addl. Advocate General, *for Respondent No. 1*

A.P.S. Deol, Senior Advocate with Arvind Thakur, Advocate, *for respondent No. 2*

MAHESH GROVER, J.

(1) The instant petition is directed against order dated 5th May, 2009 of the Sessions Judge, Sirsa (hereinafter described as the trial Court) by which the claim of the petitioner of his being declared juvenile in the criminal proceedings which he is facing was declined.

(2) Learned Counsel for the petitioner has contended that the impugned order is erroneous and that the certificate issued by the school authorities has been ignored in preference to the one which could not have

been considered at all as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'the Act') and the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for brevity, the Rules'). It is her contention that the petitioner was born on 15th August, 1991 and, therefore, he was a minor on the date of occurrence which took place on 15th June, 2008. Learned counsel for the petitioner submitted that there is on record a certificate issued by the school authorities which recorded his date of birth as 15th August, 1991. That certificate is Annexure A1 and was duly proved by Shri Krishan Kumar, Chairman, Summerhill Convent School, Bathinda, who had appeared as AW2. According to learned counsel, this witness had also brought the admission form and proved a photocopy of the relevant entry, i.e. certificate, Annexure A1. Learned counsel for the petitioner further referred to the statement of AW3 Smt. Saroj Chopra, Principal, Sumerhill Convent School, Bathinda, who stated that writing, Annexure A3 was issued by her. She contended that in view of this overwhelming evidence, the material, i.e. the date of birth recorded in the insurance policy (Exhibit R1) which reflected the date of birth of the petitioner as 2nd October, 1987, could not have been relied upon by the trial Court to discard his claim. Her contention is that this entry could not have been given preference over the school certificate. Besides this material, the other material which has been relied upon by the trial Court is the entry contained in the register of the Village Chowkidar, which is on record as Mark-A and which shows that third son was born to the father of the petitioner on 3rd February, 1987, whereas Exhibit R1 showed the date of birth of the petitioner as 2nd October, 1987 as per school record which was submitted by him at the time of getting admission. Learned counsel for the petitioner further contended that both these materials were unsubstantiated and were never proved in accordance with law. The insurance policy could not have established the date of birth and could not have been preferred over and above the school certificate, and besides, the other record was not proved in accordance with law.

(3) By way of Crl. Misc. No. 41891 of 2009, the petitioner has also placed on record copy of detailed marks sheet of Secondary School Examination, 2007 (Annexure A1), which shows the date of birth of the petitioner as 15th August, 1991.

(4) To support her contentions/submissions, learned counsel for the petitioner placed reliance on a judgment of the Supreme Court in **Hari Ram versus State of Rajasthan & Anr. (1)**

(5) On the other hand, learned counsel for the respondent No. 2 contended that according to the insurance policy, the date of birth of the petitioner was clearly recorded as 2nd October, 1987 and similarly, the entry in the register which was maintained by the Chowkidar of the village also showed the date of birth of the petitioner as 2nd October, 1987 and, therefore, there was no ambiguity in the date of birth and consequently, the impugned order cannot be faulted with. In support of this contention, he placed reliance on **Umesh Chandra versus State of Rajasthan, (2)**.

(6) I have thoughtfully considered the rival contentions and have gone through the paper-book as well as the relevant provisions of law.

(7) Sections 2 (k) and (1) of the Act define “juvenile” or “child” and “juvenile in conflict with law” to mean a person who is alleged to have committed an offence and not completed eighteenth year of age as on the date of commission of such offence. The same is reproduced below :—

“2.(k)“juvenile” or “child” means a person who has not completed eighteenth year of age ;

(l) “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.”

(8) It is, thus, abundantly clear that a juvenile who is in conflict with law has to be below eighteen years of age on the date of commission of offence by him.

(9) Section 12 of the Act further lays down that such a juvenile is to be released on bail unless there are cogent reason from which the Court can infer that his release as such is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger and that his release would defeat the ends of justice.

(1) 2009 (2) RCR (Criminal) 878

(2) 1982 S.C.C. (Cri.) 396

(10) Section 14 of the Act contemplates an enquiry by the Juvenile Justice Board which enquiry is to be completed within four months. This section is extracted below :—

“14. Inquiry by Board regarding juvenile.—(1) Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit :

Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

(2) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings and may cause the constitution of additional Boards.”

(11) Rule 12 of the Rules then goes on to describe the procedure to determine the age of a juvenile. This rule is also extracted below :—

“12. Procedure to be followed in determination of Age.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, *prima facie* on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining :—

- (a) (i) the matriculation or equivalent certificates, if available; 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 ;
- (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be, the Committee, shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

- (5) Save and except, where, further inquiry or otherwise is required, *inter alia*, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.
- (6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the act for passing appropriate order in the interest of the juvenile in conflict with law.”

(12) A persual of the above quoted provisions shows that in every case concerning a child or a juvenile in conflict with law, the Court or the Board or as the case may be, the Committee referred to in rule 19 of the Rules, shall determine the age of such juvenile or child or a juvenile conflict with law within a period of thirty days from the date of making of the application for that purpose. Sub-rule (2) of Rule 12 further provides that while doing so, *prima facie* on the basis of physical appearance, pr documents, if the available, the Court or the Board or the Committee can decide the question of juvenility while sub-rule (3) lays down that the 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 bith certificate given by 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. Sub-rule (4) contemplates the passing of and order after such an enquiry.

(13) The above reproduced rule, thus, contemplates in its fold the first and foremost requirement that initaly a satisfaction has to be recorded by the Court on the *prima facie* appearance of the juvenile and thereafter, further enquiry on the basis of certificates or medical opinion has to be undertaken.

(14) If the facts of the instant case are to be seen, then it appears that the trial Court has clearly erred in not recording its *prima facie* opinion as is required under Rule 12(2) of the Rules. These provisions are not merely an empty formality. The implicit reason behind these provisions is that the Court, who, first, has the occasion to gauge the physical appearance of a juvenile in conflict with law has to record its satisfaction or a *prima facie* impression for two reasons, one the enquiry can take some time and second, the Court may be convinced on seeing a person that he is a juvenile and thereby take prompt measures that are required under Section 12 or Section 15 of the Act. The date of commission of offence is of an utmost significance as juvenility of a person in conflict with law is to be seen at that point of time and, therefore, it is imperative for the Court to *prima facie* record its opinion by adhering to the provisions of Rule 12(2) of the Rules.

(15) In this case, the trial Court did not do so, but it had the opportunity to evaluate the school certificate issued by the Principal, Summerhill Convent School, Bathinda, who had also appeared as a witness to support the date of birth of the petitioner, which had been recorded as 15th August, 1991. The occurrence took place in the year 2008 and the Court ought to have evaluated this certificate as seemingly there was no reason to record a wrong date of birth by the school authorities at the time of seeking admission by the petitioner in the school which admission took place a couple of years back.

(16) That apart, by way of Crl. Misc. No. 41891 of 2009, the petitioner has placed on record a copy of the marks sheet of the Secondary School Examination, 2007, according to which also his date of birth is 15th August, 1991.

(17) These two pieces of material were in consonance with the mandate of Rule 12(3) of the Rules, which warrants basing an opinion on the matriculation or equivalent certificate for determining the date of birth of a juvenile or the date of birth certificate from a school first attended (other than a play school) and it is only in the absence of this material that the Court is required to proceed to enquire and look into some other material.

The trial Court was, therefore, clearly in error when it chose to rely upon some entry on the basis of which the insurance policy was given and likewise, was also in error by relying upon the entry in the register of the Chowkidar which vaguely recorded that third son was born to the father of the petitioner on 3rd February, 1987.

(18) The relevant portion of paragraph 18 of the judgment in **Hari Ram's case (supra)** wherein their Lordships of the Supreme Court dealt with the provisions of Rule 12 of the Rules and made certain observations, is produced below : —

“18. Section 7-A makes provision for a claim of juvenility to be raised before any Court at any stage, even after final disposal of a case and sets out the procedure which the Court is required to adopt, when such claim of juvenility is raised. It provides for an inquiry, taking of evidence as may be necessary (but not affidavit) so as to determine the age of a person and to record a finding whether the person in question is a juvenile or not. The aforesaid provisions were, however confined to Courts and proved inadequate as far as the Boards were concerned. Subsequently, in the Juvenile Justice (Care and Protection of Children) Rules, 2007, which is a comprehensive guide as to how the provisions of the Juvenile Justice Act, 2000, are to be implemented, Rule 12 was introduced providing the procedure to be followed by the Courts, the Boards and the Child Welfare Committeess for the purpose of determination of age in every case concerning a child or juvenile or a juvenile in conflict with law. Since the aforesaid provisions are interconnected and lay down the procedure for determination of age, the said Rule is reproduced hereinbelow :—

xx xx xx xx xx xx xx xx

Sub Rules (4) and (5) of Rule 12 are of special significance in that they provide that once the age of a juvenile or child in conflict with law is found to be less than 18 years on the date of offence on the basis of any proof specified in sub-rule (3) the Court or

the Board or as the case may be the Child Welfare Committee appointed under Chapter IV of the Act, has to pass a written order stating the age of the juvenile or stating the status of the juvenile, and no further inquiry is to be conducted by the Court or Board after examining and obtaining any other documentary proof referred to in Sub-rule (3) of Rule 12. Rule 12, therefore, indicates the procedure to be followed to give effect to the provisions of Section 7A when a claim of juvenility is raised.”

(19) That apart, in **Rajinder Chandra versus State of Chhattisgarh & Anr., (3)**, the Apex Court in paragraph 5 of the judgment, observed as under :—

“It is true that the age of the accused is just on the border of sixteen years and on the date of the offence and his arrest he was less than 16 years by a few months only. In **Arnit Das versus State of Bihar [(2005)5 SCC 488]** this Court has, on a review of judicial opinion, held that while dealing with the question of determination of the age of the accused for the purpose of finding out whether he is juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be juvenile in borderline cases. The law so laid down by this Court squarely applies to the facts of the present case.”

(20) For the reasons aforesaid, I am of the opinion that the trial Court has clearly fallen in error while determining the question of the petitioner being a juvenile.

(21) Section 7-A of the Act, which is as follows, lays down that the question of a person in conflict with being a juvenile can be raised at any stage before any Court :—

“7A. Procedure to be followed when claim of juvenility is raised before any court.—(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an

accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be :

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be soon or before the date of commencement of this Act.

(2) If the court finds a person to be juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.”

(22) I am, hence, of the opinion that while accepting the revision petition, I declare the petitioner to be a juvenile.

(23) Before parting with the judgment, I deem it proper to express my opinion that the directions be issued to all the Courts/Principal Magistrates to strictly comply with the above mentioned observations regarding the compliance of Rule 12(2) of the Rules and while determining the age of a juvenile to first record *prima facie* opinion regarding physical appearance of such juvenile and then resort to the enquiry by considering the material as contemplated in sub-rule (3) of Rule 12.

R. N. R.