

**Mahender Singh Vs. State**

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**Court :** Delhi

**Decided On :** Feb-10-2014

**Judge :** Kailash Gambhir

**Appellant :** Mahender Singh

**Respondent :** State

**Advocate for Def. :** Ms. Richa Kapoor

**Advocate for Pet/Ap. :** Mr. B.D. Goel, Mr. Ankur Goel

**Judgement :**

§~2 \* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 343/1999 & CrI. M.A. No.18412/2013 MAHENDER SINGH Through: ..... Appellant Mr. B.D. Goel and Mr. Ankur Goel, Advocates versus STATE Through: ..... Respondent Ms. Richa Kapoor, Additional Public Prosecutor for the State CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MR. JUSTICE G.P. MITTAL

ORDER

% 10.02.2014 KAILASH GAMBHIR, J.

(ORAL) CrI. M.A. No.18412/2013 [under Section 7(A) of the Juvenile Justice (Care and Protection of Children) Act, 2000]. By this order we propose to dispose of the application filed by the applicant under Section 7(A) of the Juvenile Justice (Care and Protection of Children) Act, 2000. It has been stated in the application that it

came to the knowledge of the counsel for the applicant that he had disclosed his age as 21 years in his statement recorded under Section 313 Cr.P.C. on 24.7.1998, through which counsel learnt that the applicant was a juvenile at the date of the alleged occurrence of the incident, which happened on 21.12.1992. It is further stated that thereafter the counsel for the applicant made necessary enquiries from the applicant and examined his ration card, Election Commission identity card and Adhaar card wherefrom it was found that the applicant was born in the year 1976. After making further enquiries with the school authorities where the applicant had studied upto 5th standard it could be found that as per the records maintained in Gaushala Sanatan Dharam Primary School, Bholanath Nagar, Shahadara, Delhi, the date of birth of the applicant was entered as 21st March, 1976 and date of his admission in the school was mentioned as 18.8.81. It was also found from the school record that the applicant has completed his 5th standard on 30th April, 1986. Photocopies of all these documents have been placed on record by the applicant in support of his averments forming part of his said application. On the last date, this Court directed notice of this application to the State, in response thereto, status report has been filed by the State. Alongwith the status report, the State has placed on record the certificate issued by Principal, Sanatan Dharam Devnagri Pathshala, Shahdara, Delhi certifying that the applicant had studied in the said school from 1st standard to 5th standard and as per their records, his date of birth mentioned therein is 21.3.76. State has already placed on record photocopy of the sheet taken out from the admission and withdrawal register of the said school wherein also the date of birth of the applicant has been disclosed as 21.3.1976. Photocopies of two other documents have also been placed on record for confirming the said date of birth of the applicant. State thus has not disputed the said claim of the applicant that he was born on 21.3.1976. This factum of the date of birth of the applicant primarily has been verified from the school records of the applicant where he had studied from 1st to 5th standard. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 prescribes the following procedure to be followed by the Court for determining the age of a person claiming himself to be a juvenile. The same is reproduced as under:

Rule 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 a 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 conclusion 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.

From the perusal of Rule 12(3) of the Rules of 2007, it is evident that the certificates as mentioned in this Rule have to be relied on in order of precedence. Thus, if a Matriculation Certificate is available, the date of birth mentioned in any other certificate cannot be gone into. If a Matriculation Certificate is not available, then date of birth as mentioned in the birth certificate from the school first attended is to be taken into consideration. If the said certificate is also not available, then the date of birth certificate given by the Corporation or a Municipal Authority or Panchayat has to be considered. Clause (b) of Rule 12 (3) of the Rules of 2007 regarding medical evidence comes into operation only when the three certificates as mentioned in Rule 12 (3)(a) are not available. According to the applicant, he has not studied beyond 5<sup>th</sup> standard. The school first attended by him was Gaushala Sanatan Dharam Primary School, Bholanath Nagar, Shahdara, Delhi. The same has been verified by the State. Thus, age of the applicant has to be determined in terms of Rule 12(3)(a)(ii) of the Rules of 2007 on the basis of the date of birth certificate from the school (other than the play school) first attended. From the certificate duly verified by the State, it is established that the applicant was born on 21.03.1976 and thus, on the date of commission of the offence on 21.12.1992, the applicant was about 16 years and 09 months old. As per provision of Section 2(h) of Juvenile Justice Act, 1986 (now repealed) which was in force at the time of commission of the offence, any boy who had not completed the age of 16 years only could be treated as a juvenile. However, as per the provision of Section 20 of the Juvenile Justice(Care and Protection of Children) Act, 2000 as amended by Act 33 of 2006 with effect from 22.08.2006, in all pending cases including trial, revision, appeal or other criminal proceedings, juvenile in conflict with law is to be determined in accordance with clause (l) of Section 2 of the Act of

2000. Section 20 of the 2000 Act is extracted hereunder:

20. Special provision in respect of pending cases. Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence: [Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile. Explanation.-In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.]. In *Hari Ram v. State of Rajasthan*, reported in (2009) 13 SCC211 while interpreting the proviso inserted to Section 20 of the Act of 2000 in 2006, the Supreme Court held that a juvenile who had not completed 18 years of age on the date of commission of the offence is also entitled to the benefits of the Act of 2000 in all pending cases as if the provisions of Section 2(k) had always been in existence even during the operation of the Juvenile Justice Act, 1986. Since it is not in dispute that the age of the applicant was 16 years and 09 months on the date of commission of the offence, i.e., 21.12.1992, the applicant is held to be a juvenile. The application is accordingly allowed. CrI.A.No.343/1999 In view of the above, the appellant is held to be a juvenile on the date of the commission of the offence. The learned counsel for the appellant, on instructions from the appellant who is present in the Court and is now aged about 38 years states that the appellant does not dispute the order of conviction passed by the learned Additional Sessions Judge. The learned counsel requests that the matter may be remitted to the Juvenile Justice Board with the direction to hear the appellant on the point of sentence. Taking into consideration

the aforesaid stand taken by the learned counsel for the appellant, the matter is remitted back to the Juvenile Justice Board for awarding suitable punishment to the appellant. The appellant is directed to appear before the Juvenile Justice Board on 24.02.2014. The appeal stands disposed of in aforesaid terms. KAILASH GAMBHIR, J G.P. MITTAL, J FEBRUARY10 2014 pkb

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