

Krishan Kumar vs.state & Anr.

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Court : Delhi

Decided On : Oct-26-2018

Appellant : Krishan Kumar

Respondent : State & Anr.

Judgement :

\$~18 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

26. 10.2018 CRL.REV. P. 311/2017 KRISHAN KUMAR STATE & ANR versus

... Petitioner

.....

... RESPONDENTS

Advocates who appeared in this case: For the

... Petitioner

: Mr. A.U. Khan, Mr. Jeewan Chandra and Mr. S. Firoz, Advs. . For the

... RESPONDENTS

: Mr. Hirein Sharma, Addl. PP for the State with SI Ravinder Kumar Mr. Aakanksha Bansal, Adv. for R-2 . CORAM: HON'BLE MR. JUSTICE SANJEEV SACHDEVA %

ORDER

(ORAL) 1.

... Petitioner

impugns order dated 14.09.2016 whereby the appeal of the petitioner impugning order dated 20.02.2016 and 26.03.2016 of the Juvenile Justice Board (JJB) declaring respondent No.2 to be a juvenile has been dismissed.

2. The appellate Court found that the JJB had determined the age CRL.REV.P.311/2017 Page 1 of 9 of respondent No.2 on the basis of the matriculation certificate. Reliance was placed on the decision of the Supreme Court in Prag Bhati Vs. State of UP & Ors. 2016 (12) SCC744.

3. Learned counsel for the petitioner contends that the JJB as well as the appellate court erred in relying on the matriculation certificate as there were doubts on the school leaving certificate based on which the respondent No.2 had left the earlier school and taken admission in the school from which she had done her matriculation.

4. Further, it is contended that JJB by its order dated 05.05.2015 had directed conduct of the ossification test on respondent No.2 for age determination and the medical record had shown the age of the respondent No.2 to be 20 - 22 years.

5. JJB in its order dated 20.02.2016 had noticed the contention of the counsel for respondent No.2 that she had obtained admission in 5th Class in Apex Public School wherein her date of birth recorded is 17.12.1998, where after it was never changed. JJB also noticed that matriculation certificate of respondent No.2 was produced which also showed the date of birth as 17.12.1998.

6. For the purposes of satisfying itself, JJB directed the school authorities to produce the complete admission record of respondent No.2 along with her CBSE enrolment record in 10th Class and her result. CRL.REV.P.311/2017 Page 2 of 9

7. On 16.03.2016 record from the school was produced. JJB has examined the record and noticed that in the Admission Register and the Pasting File, date of birth of the respondent was mentioned as 17.12.1998 which corresponded with the

matriculation certificate produced by the guardians of respondent No.2.

8. The date of commission of the offence is 25.06.2015. Accordingly, the Board returned the finding that respondent No.2 was a minor on the date of commission of offence.

9. In the appeal filed by the petitioner, the appellate court noticed Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 as also the judgment of the Supreme Court in Prag Bhati (Supra) and rejected the appeal of the petitioner.

10. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 reads as under:

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 CRL.REV.P.311/2017 Page 3 of 9 conflict with of physical appearance or documents, if available, and send him to the observation home or in jail. facie on the basis law, prima (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 maybe, 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. CRL.REV.P.311/2017 Page 4 of 9 (4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18years 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. further Save and except where, (5) inquiry or otherwise is required, inter alia, in terms of section7A, 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 off 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.

11. In terms of the sub-Rule 12 (3), in every case concerning a child/ juvenile in conflict with law, age determination inquiry is to be conducted by the Board by seeking evidence, documents /record enumerated therein.

12. Rule 12 (3) (a) lists out in order of preference the documents. First of the same being matriculation or equivalent certificate. Only in CRL.REV.P.311/2017 Page 5 of 9 the absence of matriculation or equivalent certificate, the date of birth certificate from the school (other than a play school) first attended and in absence thereof, the birth certificate given by a corporation or a municipal authority or a panchayat is to be looked at.

13. Only in the absence of any of the documents as mentioned above is medical opinion or an ossification test for determination of age is permissible.

14. Supreme Court in Parag Bhati (Supra) has held as under: - 32. Age determination inquiry contemplated under Section 7-A 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 the abovementioned 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. if 33. Once the court, following the above mentioned CRL.REV.P.311/2017 Page 6 of 9 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. Age determination inquiry contemplated under the 34. JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. There may be situations where the entry 22 made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the

court, the Juvenile Justice Board or the committee need to go for medical report for age determination. the correctness of to examine (underlining supplied) 15. It is held by the Supreme Court that only in the absence of any matriculation or equivalent certificates, the court is to obtain the date of birth certificate from the school first attended other than a play school. In the absence of both matriculation or equivalent certificate CRL.REV.P.311/2017 Page 7 of 9 and the date of birth certificate from the school first attended, the court can obtain the birth certificate given by a corporation or a municipal authority or a panchayat. Medical opinion from a duly constituted Medical Board can only be obtained if none of the documents referred to above are unavailable. Under sub-rule (5) of Rule 12 no further inquiry is to 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. Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct a roving enquiry or to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination.

16. As noticed by the appellate court there is no evidence or material on record to doubt the correctness of the matriculation certificate. The mere fact that a school leaving certificate of Class 5th of some other school was not found to be genuine would not raise any doubt or contradict the matriculation certificate. The Board to satisfy itself had sought for the record from the school. Record was produced and on perusal of the same, the Board found that the date of birth recorded in the school records as also the matriculation certificate was the same. Accordingly, the Board returned the finding in favour of CRL.REV.P.311/2017 Page 8 of 9 respondent No.2 with regard to her juvenility claimed.

17. Before this Court also, learned counsel for the petitioner has not been able to produce any documents or evidence to cast a doubt on the correctness of the matriculation certificate.

18. Accordingly, I find no infirmity in the view taken by the Juvenile Justice Board as also by the appellate court in the impugned order.

19. In view of the above, I find no merit in the petition. The petition is accordingly dismissed with no order as to cost. OCTOBER26 2018 rs SANJEEV SACHDEVA, J CRL.REV.P.311/2017 Page 9 of 9

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