

Brijesh Kumar Vs. the State

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Court : Delhi

Decided On : May-08-2002

Reported in : 2002VAD(Delhi)137; 2002CriLJ3873; 98(2002)DLT63; 2002(64)DRJ77

Judge : S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 439 and 482; Indian Penal Code (IPC) - Sections 32, 34, 341, 363 and 376; [Juvenile Justice Act, 1986](#)

Appeal No. : Crl. M. (M) No. 240/2001

Appellant : Brijesh Kumar

Respondent : The State

Advocate for Def. : O.P. Saxena, Adv.

Advocate for Pet/Ap. : I.C. Mishra, Adv

Judgement :

S.K. Agarwal, J.

1. By this petition, under Section 439 and 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') read with Section 18 of Juvenile Justice Act, 1986 (hereinafter 'the Act'), petitioner is seeking quashing of the order dated 9th August,

2000 passed by the Juvenile Justice Court, Delhi or in the alternative bail in the case FIR No. 15/2000 under Sections 376/363/341/34 IPC P.S. Malviya Nagar.

2. Brief facts are that on 12th January, 2000 petitioner was arrested in the above noted case and was sent to judicial custody. He moved an application that he was less than 16 years of age and was juvenile. In support of his submission he produced a school leaving certificate showing his date of birth as 14th August, 1986. Prosecution contested the same. The Juvenile Court acting under Section 32 of the Act decided to hold an enquiry to find out whether the petitioner was juvenile or not. Prosecution in support of its case examined CW-1 Dr. Rajneesh Juneja, Radiologist, HRH Hospital who deposed that he had examined the X-ray plates of the petitioner which were taken for the purpose of determining his bone age and opined that his age is between 18 to 21 years. The petitioner examined CW-2 Kallan, Asstt. Teacher, from Prathmik Vidhlaya, Fatehpur, U.P. who produced the school record and stated that on 31st July, 1991 the petitioner was admitted in the school and his date of birth was recorded as 14th August, 1986. His name was removed from the school on 9th May, 1996 and he produced the school leaving certificate. Petitioner has also examined CW-3, his father, who stated that his age was around 50-60 years; that he has 7 children (5 daughters and 2 sons), and that petitioner is his youngest child. However, he was not able to tell the date of birth of any of his children. He only stated that petitioner was born before a day of Independence Day. He did not remember the date of birth or the age of the petitioner and stated that the school teacher had written the date of birth of the petitioner on admission form himself and he had only put his signatures on the admission form. On the basis of the above material, the learned court, rejected the contention of the petitioner that he was less than 16 years of age and held:

'However, in the present case, there is enough material throwing doubt on the entries in the school record. The admission form is signed by the father of the delinquent but he has stated that he does not know the age or the date of birth of the delinquent. When asked, he stated that year was mentioned by the school teacher himself while filling up the admission form of the delinquent. He further stated that he only signed on the admission form and rest of the form was filled by the school teacher. He has clearly stated in the court that he did not tell the date of

birth in the school and it was written by the school teacher himself. As the school teacher himself has written the date of birth as per the father of the delinquent, therefore, the same can not be believed as it is also not the defense of the delinquent that the school teacher was related to him. It seems that the father of the delinquent knew only to sign and is not aware of the date of birth or the age of any of his children. therefore, he only signed the admission form and rest of the details were filled up by the teacher. In these circumstances, the date of birth as mentioned in the school register cannot be believed as the same was not filled up by the parents himself neither the same has been stated to the teacher by the father. The teacher has stated the year himself.'

Revision petition filed by the petitioner against the said order was dismissed by the Addl. Session Judge. This order has been challenged before this court.

3. Learned counsel for the petitioner argued that while determining the age of a child the liberal approach should be adopted and that the evidence of CW-1 Dr. Rajneesh Juneja is only an opinion evidence and it could not be preferred over the date of birth recorded in the School showing his date of birth. He argued that petitioner's father Mr. Matroo is an illiterate person and merely because he was not able to give the date of birth of the petitioner or of his other children could be the ground for preferring the opinion/evidence of doctor over the school leaving certificate. In support of his submission reliance was placed on the Supreme Court's decision in Bhoop Singh v. State of U.P., 1989 SCC 486 and Full Bench decision of the Patna High Court in Krishna Bhagwan v. State of Bihar 0043/1989 : AIR1989 Pat217 . Learned APP for the State argued to the contrary.

4. I have considered the rival contentions. There can be no dispute about the principles of law laid down by the Supreme Court. In this case, entries in the school leaving certificate were not rejected merely on the ground that parents understate the age of the children at the time of admission to School, but on different grounds. The Juvenile court on the basis of the material on record appreciated the evidence and declined to accept the evidence of the father of the petitioner. The reasoning adopted by the Court while rejecting entries in the School Leaving Certificate is in accordance with the well established principles of

law. I find no illegality or impropriety in the impugned order so as to warrant interference at this stage. Facts of the judgments relied upon by learned counsel for the petitioner were entirely different which are not applicable to the facts of case at hand. The contention of the petitioner that he was a juvenile is therefore rejected.

5. Learned counsel for the petitioner also argued that assuming the petitioner is not a juvenile; he is a young boy of impressionable age; after completion of investigations, challan has already been filed; that petitioner has a good case on merits and there is every likelihood of his being acquitted; if he remains in the company of hard-core criminals in Jail, his entire life may be spoiled, therefore, he be released on bail. He is in custody for more than two years. The Learned APP for the State does not contest these facts.

6. In the facts and the circumstances of this case, petitioner is ordered to be released on bail on his furnishing personal bond in the sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of the trial court.

7. Petition stands disposed of.

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