

Harish Yadav Vs. State

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Court : Delhi

Decided On : Dec-10-2010

Judge : Shiv Narayan Dhingra, J.

Acts : Indian Penal Code,(IPC) - Section 302; Juvenile Justice (Care & Protection of Children) Rules, 2007 - Rule 12; Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 7-A

Appeal No. : Crl. Rev. Petition No. 750/2010

Appellant : Harish Yadav

Respondent : State

Advocate for Pet/Ap. : Mr. Y.P.Singh, Adv.

Judgement :

1.By present petition, the petitioner has assailed order dated 16 th September, 2010 passed by the learned Additional Sessions Judge dismissing the appeal filed by the petitioner against order dated 31st July, 2010 of learned ACMM.

2. The petitioner is involved in a case under Section 302 IPC. The investigation of the case is going on. During pendency of the investigation, he made an application that he was a juvenile and instead of being sent to jail he should have been sent to remand home. On this application being made, an inquiry was conducted by the learned ACMM in the juvenility of the petitioner in terms of Section 7-A of The

Juvenile Justice (Care and Protection of Children) Act, 2000. The petitioner had contended that his date of birth was 29th October, 1993 as recorded in his school certificate of Class VIII and IX. During inquiry it was found that the petitioner was born at Village Khuram Khara, District Gurgaon and his grandfather shifted to Delhi at Village Bagdola. This fact was not disputed by the petitioner. The primary education of petitioner had also taken place at District Gurgaon. The IO visited the Chief Medical Officer, Gurgaon where births are registered and found the birth of the petitioner was registered with CMO Gurgaon on 6th December, 1991 showing that he was born on 5th December, 1991. CMO issued a certificate to this effect. It was also found that a different date of birth of the petitioner was recorded in school mark-sheet issued by the District Primary Education Gurgaon and this date of birth was 5th July, 1993. The learned ACMM after conducting inquiry came to the conclusion that the petitioner was born on 5th December, 1991 which was his correct date of birth as recorded in the record of CMO, Gurgaon and the other two dates of birth recorded in School Certificate and mark-sheet had no authenticity since they were recorded on the basis of oral information given by father or grandfather and the authentic date of birth of the petitioner was 5th December, 1991. The counsel for the petitioner, faced with this situation, had contended before the learned ACMM that twins were born to his parents on 5th December, 1991 and died and petitioner was not born on 5th December, 1991. The learned ACMM however, came to the conclusion that the petitioner was not juvenile on the date of commission of offence and his date of birth was 5th December, 1991. Against this order, petitioner preferred an appeal. The learned Additional Sessions Judge again scrutinized the evidence collected during inquiry on the juvenility of the petitioner and came to the conclusion that the correct date of birth of the petitioner was 5th December, 1991 and the trial Court rightly came to this conclusion. The petitioner has now approached this Court.

3. The plea of the petitioner is that under Rule 12 of Juvenile Justice (Care & Protection of Children) Rules, 2007, the court should not have believed the date of birth certificate issued by the CMO and submitted that in terms of Rule 3, the Court should have restricted this inquiry only to matriculate or equivalent certificate or date of birth certificate from school or birth certificate given by Corporation or a

Municipal Authority or a Panchayat. He stated that if the matriculation certificate or equivalent certificate was available then the Court should not have proceeded further and stopped the inquiry at that level. If date of birth was available on school certificate then the Court should not look into the date of birth certificate given by Corporation or Municipal Authority. He also submitted that the Court should also have looked at the appearance of the petitioner and determined juvenility and if there were conflicting date of births on school certificates, then the Court should have gone for determination of age by ossification test. It was submitted that Court of ACMM did not go for ossification test of the petitioner and did not go by appearance of the petitioner but determined age on the basis of birth certificate issued by CMO therefore, the order of ACMM and order of learned Sessions Judge was bad in law.

4. The arguments advanced by the learned Counsel for the petitioner are misconceived. The purpose of Section 7-A and Rule 12 is to ensure that a juvenile is not put to trial before a regular Court and he should be given benefit of The Juvenile Justice (Care and Protection of Children) Act, 2000 and for this purpose it is provided that an inquiry into the age of juvenile CrI. Rev. Petition No. 750/2010 Page 3 of 5 must be conducted by the Court. The mode of inquiry can be decided by the Court/Committee/Juvenile Board according to facts and circumstances. In this case the petitioner initially claimed his date of birth as 29th October, 1993 and later on he claimed his date of birth as 5th July, 1993. That simply shows that the petitioner's date of birth was not recorded correctly in the school or in the mark-sheet issued by the District Primary Education, Gurgaon. It is evident that the certificate produced by the petitioner i.e. mark-sheet of primary education did not meet the criterion as laid down in the Rules. The purpose of inquiry is not to make an adult a juvenile and vice versa. The purpose of inquiry is to come to the correct age of the petitioner and if the exact date of birth of the petitioner can be determined through inquiry there is no bar on the Court taking into account the exact date of birth. In this case the petitioner's place of birth, his parentage is not in dispute. The birth of petitioner was recorded in the record of CMO Gurgaon which is the authorized government office for recording births in Haryana as municipal committees are not there in all districts of Haryana. There is hardly any city where municipal committees are functioning in Haryana and it is the CMO

where births are registered. Therefore the record available with CMO is the authentic record of birth. There was no reason for the trial Court either to go by appearance or to go by school leaving certificate or mark-sheet where different dates of birth were given. Appearance can always be deceptive and appearance has to be resorted to only initially by the Court or by the Board to determine whether the person looks juvenile and should he be sent to remand home or jail. Even if a person has been sent to remand home on the basis of appearance and if on inquiry it is found that he was not juvenile he can be taken out of remand home and sent to jail. I also find no force in the CrI. Rev. Petition No. 750/2010 Page 4 of 5 argument of the petitioner that the Court should have not conducted inquiry into the date of birth from CMO since school leaving certificate of the petitioner was available.

I find no force in this petition. The petition is hereby dismissed.

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