

Dharam Singh Vs. State of U.P.

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Court : Allahabad

Decided On : May-18-2011

Judge : Shri Kant Tripathi

Appeal No. : CRIMINAL REVISION NO. 222 OF 2008

Appellant : Dharam Singh

Respondent : State of U.P.

Judgement :

(1) Heard Mr. Rohan Gupta for the revisionist and learned AGA for the respondent no.1 and perused the record. None responded for the respondent no.2.

(2) By this criminal revision, the revisionist Dharam Singh has challenged the order dated 7.12.2007 rendered by the Additional Sessions Judge, Room No.7, Saharanpur in sessions trial no. 189A of 1998, State vs. Dharam Singh and others, whereby the learned Additional Sessions Judge refused to declare the revisionist as juvenile.

(3) The revisionist moved an application for declaring him as a juvenile and contended that according to the High School record his date of birth is 1.7.1981, therefore, he was a juvenile (less than eighteen years) on the date of the occurrence and examined CW-1 Ram Pal Singh and CW-2 Rajendra Kumar Pundir in support of his case. CW-1 Ram Pal Singh, who was Head Clerk in M.P.M. Inter College, Simlana, Saharanpur, made statement in the court on the

basis of the scholar register and produced the same in the court. The name of the revisionist is mentioned at serial no. 8016 in the Scholar Register in which his date of birth was recorded as 1.7.1981. Ram Pal Singh further stated that the revisionist had studied in R.R. Inter College, Pilkhua, district Ghaziabad before taking admission in M.P.M. Inter College, Simlana, Saharanpur. A copy of the scholar register produced by CW-1 Ram Pal Singh has been marked as Exhibit C-1. Ram Pal Singh, CW-1, further produced original admission form submitted by the revisionist for his admission and proved its photo copy as Exhibit C-2. He lastly stated that the revisionist had furnished TC issued by R.R. Inter College, Pilkhua, district Ghaziabad along with the admission form. In that T.C. Too, his date of birth was recorded as 1.7.1981, photo copy of which is on record as Exhibit C-3.

(4) CW-2 Rajendra Kumar Pundir is the resident of revisionist's village Tapari. He stated that the revisionist's father was ill, therefore, he had gone to Maharana Pratap Memorial Inter College, Simlana along with the revisionist for his admission. He had filled in the admission form and showed the revisionist's date of birth as 1.7.1981. That date of birth was given to him by the father of the revisionist. He further stated that T.C. issued by the previous school was annexed with the admission form and in that T.C. The revisionist's date of birth was 1.7.1981.

(5) The respondent no.2 contested the aforesaid application and examined CW-3 Kanwar Pal Singh, a teacher of Primary School, Tapari, police station Badagaon, district Saharanpur, who was serving as Incharge Head Master on the date of his statement in the court. According to this witness, the revisionist had studied in the said Primary School and his date of birth in the record of the school was recorded as 6.1.1978. This witness proved the leaving certificate issued by the School.

(6) The learned Additional Sessions Judge disbelieved the revisionist's evidence on the ground that the revisionist failed to examine his father Dharam Singh for proving his date of birth shown in the record maintained by Maharana Pratap Memorial Inter College, Simlana and the witness Rajendra Kumar Pundir had no personal knowledge of the revisionist's date of birth, therefore, his evidence was not relevant. The learned trial court further held that in the revisionist's marks

sheet (Roll No. 01643435) his date of birth has been shown as 1.1.1981, which was annexed with the application and was taken into consideration while passing the order dated 9.3.2007 and the same date of birth has been disclosed even in the order dated 31.7.2007 passed by this Court in criminal revision no. 806/2007, therefore, in view of this contradictory evidence, it could not be held that the revisionist's date of birth was 1.1.1981. The learned trial court placing reliance on the statement of CW-3 Kanwal Pratap Singh, Incharge Head Master, Primary School, Tapari, held that the revisionist's date of birth was 6.1.1978, therefore, he was not a juvenile on the date of the occurrence. The aforesaid witness Kanwal Pratap Singh proved the date of birth of the revisionist as 6.1.1978 on the basis of the primary school record.

(7) Mr. Rohan Gupta submitted that CW-3 Kanwal Pratap Singh has very clearly stated during the cross examination that in the record produced by him in the court the year of birth was not legible as there was some erasion or interpolation in the primary school record and as such the learned trial court committed gross error of law in placing reliance on the primary school record. More so, it had no precedence over the High School record.

(8) Mr. Rohan Gupta further submitted that neither CW-3 Kanwal Pratap Singh nor any other witness disclosed the source as to how the date of birth 6.1.1978 was recorded in the primary school record. In absence of the relevant source, the primary school record ought not to have been taken into consideration by the learned trial court.

(9) Mr. Rohan Gupta lastly submitted that in fact in the High School record maintained by the aforesaid Intermediate College, as proved by CW-1 Rampal Singh and CW-2 Rajendra Kumar Pundir, 1.7.1981 had been disclosed by the revisionist's father to CW-2 Rajendra Kumar Pundir, therefore, the date of birth 1.7.1981 shown in the High School record has reasonable basis and as such the learned trial court committed error of law in ignoring the same.

(10) The Juvenile Justice (Care and Protection of Children) Rules, 2004 has been framed for carrying out the purposes of the Act. Sub-rules (3) and (4) of rule 12 of the said rules provide as to how the juvenility of a person is to be determined.

They are being reproduced as follows:

"12.(1)..... (2) (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 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)..... (6)....."

(11) The aforesaid sub-rule (3) has specified the documents which are relevant for deciding the question of juvenility arising in any case and those documents are certificates relating to the date of birth shown in the record of High School or equivalent examination and the school first attended (other than a play school) and also in the record maintained by a corporation or municipal authority or a panchayat. The High School or equivalent certificate has been given precedence over other two categories of certificates. If there is High School or equivalent

certificate showing the date of birth of the person claiming juvenility, the other certificates specified in sub-rule (3) of rule 12 of the aforesaid rule, will carry no significance. If no High School or equivalent certificate is filed in the court, in that eventuality, the primary school certificate would prevail over the certificate issued by the corporation, municipal authority or panchayat. If there is also no High School and equivalent certificate or the primary school certificate, the certificate issued by the corporation, municipal authority or panchayat can be taken into account for deciding the question. In absence of all the said three categories of documents, the fourth course to be adopted is to seek opinion of a duly constituted medical board who will declare the age of juvenile and in that eventuality it is open to the court to give one year margin towards lower side. It may not be out of context to mention that three categories of certificates referred to in the aforesaid rule 12(3) are conclusive proof of age with regard to the alleged juvenile. It is thus crystal clear that if there is a conflict between the High School certificate or the certificate issued by the school first attended, the High School certificate would prevail. In that eventuality, the certificate issued by the school first attended will carry no significance. However, it must be kept in mind that the certificate being relied on must be genuine and should not be in any way forged or fictitious. The court holding an inquiry under section 7A of the Act has to see as to whether the certificate referred to in rule 12(3) being relied on is genuine and has some reasonable basis or not. If the entry made in the certificate relating to the date of birth is genuine and has reasonable basis it has to be acted upon keeping in view the provisions of the rule 12(3) quoted herein above.

(12) No doubt in U.P., the Uttar Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2004 have been framed, and rule 22 (5) of the U.P. Rules provides as to how the juvenility is to be determined. In the U.P. Rules all the certificates referred to in the Central rules as well as the medical opinion have been made admissible for deciding the question of juvenility but the U.P. rules are silent with regard to preferences in the event of conflict between two or more certificates. More so the rule 22(5) of the U.P. rules is silent as to how the juvenility is to be determined by the court. It merely provides the procedure to be adopted by the Board for deciding the juvenility. Another important aspect is that the Act has been materially amended after framing of the U.P. Rules. Consequent

thereupon section 7A providing the procedure to be followed for deciding the question of juvenility has been brought on the Statute Book with effect from 22.8.2006, therefore, the U.P. Rules were required to be recasted keeping in view the provisions of section 7A of the Act but it has not been done, therefore, the Central Rules providing the procedure as to how the question of juvenility is to be determined by the court seems to have prevailing effect on the U.P. Rules. Section 68 of the Act empowers the Central Government to frame model rules which will have effect during the period the rules are not framed by the State. In view of the fact that the State of U.P. has not framed any rule keeping in view the provisions of section 7A of the Act, the Central Rules referred to above would apply for the inquiry held under section 7A of the Act, until the rule in respect of that matter is made by the State Government of the Uttar Pradesh.

(13) In view of aforesaid reasons, the controversy involved in the present case is liable to be determined according to the Central Rules referred to above.

(14) The occurrence of the present case took place on 6.4.1997, much before the commencement of the Act, but in view of section 20 of the Act, the provisions of the Act would be attracted in the present case. It is true that in *Pratap Singh Vs. State of Jharkhand*, 2005 (2) Criminal Court Cases 334, the Apex Court applied the provisions of the Act with regard to the occurrences taking place prior to the commencement of the Act, if the person claiming juvenility had not completed the age of eighteen years on the date of the commencement of the Act. But this legal position stood changed on account of addition of an Explanation to section 20 by the Amending Act No. 33 of 2006 with effect from 22.7.2006. According to that amendment, the provision of the Act is applicable with regard to a person who had not completed the age of eighteen years on the date of occurrence, notwithstanding that the occurrence took place prior to commencement of the Act and the accused ceased to be juvenile either before or after such commencement. This legal position has been settled in the case of *Hari Ram Vs. State of Rajasthan*, 2009 (13) SCC 211, which reads as follows:

"The said intention of the legislature was reinforced by the amendment effected by the said amending Act to Section 20 by introduction of the proviso and the

Explanation thereto, wherein also it has been clearly indicated that in any pending case in any court the determination of juvenility of such a juvenile has to be in terms of Section 2 (l) even if the juvenile ceases to be so "on or before the date of commencement of this Act" and it was also indicated that the provisions of the Act would apply as if the said provisions had been in force for all purposes and at all material times when the alleged offence was committed."

(15) In view of the Apex Court's decision in Hari Ram's case (supra), the provisions of the Act are attracted in this case notwithstanding that the occurrence is of the year 1997 and the revisionist had completed the age of eighteen years before the commencement of the Act.

(16) The learned trial court has discarded the High School certificate and placed reliance on the primary school certificate for two reasons, firstly, there was no reasonable source regarding the date of birth shown in the High School certificate because the revisionist's father had not come forward to depose as to how the date of birth was shown in the High School certificate, secondly, there was a conflict in the date of birth shown in the marks sheet of roll No. 01643435 and the record of MPM Inter College, Shimlana. According to the marks sheet it was 1.1.1981 but according to the High School record the date of birth was 1.7.1981.

(17) It may not be out of context to mention that the revisionist has very categorically stated that his father had died, therefore, he could not examine him during the inquiry and as such the statement of PW-2 Rajendra Kumar Pundir ought not to have been discarded only on the ground that the revisionist's father had not appeared in the witness box. PW-2 Rajendra Kumar Pundir has very categorically stated that he had filled up the admission form of the revisionist and mentioned the date of birth 1.7.1981 according to the instructions of the revisionist's father. More so, the admission form had been annexed with the Transfer Certificate issued by the previous college (R.R. Inter College, Pilkhua) which too discloses the revisionist's date of birth as 1.7.1981. In view of this specific evidence, the learned trial court can not be said to be justified in discarding the records of MPM Inter College and R.R. Inter College, Pilkhua. If there was any conflict between the marks sheet of the High School and the record

of MPM Inter College, Shimlana, the learned trial court should have held an inquiry to find as to which of those two documents was genuine. If there was some difference in such entries, the entry first made ought to have been given preference over the subsequent entry. But the learned trial court, without doing so, has passed the impugned order.

(18) In regard to the primary school certificate proved by CW-3 Kanwal Pratap Singh, the learned trial court overlooked the material fact that the original record produced by CW-3 Kanwal Pratap Singh in the court had some erasure/interpolation in the column of the year of the register and the same was not legible. When the original primary school record was not specific and the year had some erasure or interpolation, the trial court can not be said to be justified in placing reliance on such document. The primary school record could be relied on only when it was genuine and the High School record of M.P.M. Inter College was forged. There is no evidence to show that the record of M.P.M. Inter College is forged or has no reasonable basis.

(19) For the reasons discussed above, I am of the view that the learned trial court has not considered the question of juvenility in its correct perspective and ignored the provisions of the Central rules and passed the impugned order on altogether irrelevant grounds, therefore, the same can not be upheld.

(20) The revision is, therefore, allowed. The order dated 7.12.2007 rendered by the Additional Sessions Judge, Room No.7, Saharanpur in sessions trial no. 189A of 1998, State vs. Dharam Singh and others, is quashed. The learned trial court is directed to reconsider the question of juvenility and pass an appropriate order afresh in accordance with law.