

**Ruby Vs. State (Nct of Delhi**

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**SooperKanoon Citation :** [sooperkanoon.com/955557](http://sooperkanoon.com/955557)

**Court :** Delhi

**Decided On :** Jan-14-2013

**Judge :** G.P. Mittal

**Appellant :** Ruby

**Respondent :** State (Nct of Delhi

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

14. h January, 2013 + CRL. REV. P. 587/2012 RUBY Through: ..... Petitioner Mr. Joginder Tuli, Adv. versus STATE (NCT OF DELHI) Through: ..... Respondent Ms. Rajdipa Behura, APP for the State. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

(ORAL) 1. This Revision Petition under Section 53 of the Juvenile Justice (Care and Protection of Children) Act 2000 (the Act of 2000) has been filed by the Petitioner Ruby impugning the order dated 25.08.2012 whereby the Petitioners prayer for setting aside the order dated 14.05.2012 passed by the Juvenile Justice Board (JJB) was dismissed.

2. The Petitioner is facing charges for offence punishable under Section 302 read with Section 34 of IPC in case FIR No.180/2010. As per the prosecution allegations, the Petitioner was involved in the offence which took place on 18.09.2010. The Petitioner claimed herself to be a juvenile and the matter was

inquired into by the JJB.

3. By an order dated 14.05.2012, the JJB-I opined that the Petitioners date of birth as per the certificate issued by the School was 04.08.1992, thus, she was more than 18 years on the date of alleged commission of the offence, that is, on 18.09.2010. Thus, she was held to be not a juvenile. The ground raised by the Petitioner is that in the school record, the age was given by the father only by approximation, whereas in the ration card, which was placed on record of the JJB, the year of birth was mentioned as 1993. Thus, the Petitioner was less than 18 years on the date of alleged commission of offence and was thus a juvenile within the meaning of Section 2 (k) of the Act of 2000. It is urged that, even if, the JJB did not believe the ration card produced by the Petitioner she could have been medically examined and ossification test could have been done to determine her age.

4. Section 43 of the Act of 2000 enjoins the competent authority to hold an inquiry to determine the age of any person whenever it appears to such authority that the person produced is a juvenile. Section 7A of the Act of 2000 lays down the procedure as to how inquiry is to be conducted whereas Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 gives the order of precedence to various certificates for determining the age of the person who claims or who appears to be a juvenile.

5. In *Ashwani Kumar Saxena v. State of M.P.* (2012) 9 SCC 750, the Honble Supreme Court deprecated the practice of converting an inquiry as envisaged under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (Act of 2000) to a full-fledged trial under the Code of Criminal Procedure. The Supreme Court also explained the scope of 7A of the Act of 2000 and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (Rules of 2007). Paras 24 to 43 of the report is extracted hereunder:- 24. We may, however, point out that none of the abovementioned judgments referred to earlier had examined the scope, meaning and content of Section 7-A of the Act, Rule 12 of the 2007 Rules and the nature of the inquiry contemplated in those provisions. For easy reference, let us extract Section 7-A of the Act and Rule 12 of the 2007

## Rules:

7. A. Procedure to be followed when claim of juvenility is raised before any court.(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be: Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the Rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act. (2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect. (emphasis supplied)

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 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) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, 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 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. (emphasis added) 25 Section 7-A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the JJ Act. The criminal courts, Juvenile Justice Board, committees, etc. we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. The statute requires the court or the Board only to make an inquiry and in what manner that inquiry has to be conducted is provided in the JJ Rules. Few of the expressions used in Section 7A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7-A has used the expressions court shall make an inquiry, take such evidence as may be necessary and but not an affidavit. The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or

the Board can accept documents, certificates, etc. as evidence, need not be oral evidence.

26. Rule 12 which has to be read along with Section 7-A has also used certain expressions which are also to be borne in mind. Rule 12(2) uses the expression prima facie and on the basis of physical appearance or documents, if available. Rule 12(3) uses the expression by seeking evidence by obtaining. These expressions in our view re-emphasise the fact that what is contemplated in Section 7-A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word inquiry has not been defined under the JJ Act, but Section 2(y) of the JJ Act says that all words and expressions used and not defined in the JJ Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

27. Let us now examine the meaning of the words inquiry, enquiry, investigation and trial as we see in the Code of Criminal Procedure and their several meanings attributed to those expressions. Inquiry as defined in Section 2(g) Cr PC reads as follows:

2. (g) inquiry means every inquiry, other than a trial, conducted under this Code by a Magistrate or court; The word enquiry is not defined under the Code of Criminal Procedure which is an act of asking for information and also consideration of some evidence, may be documentary. Investigation as defined in Section 2(h) Cr PC reads as follows:

2. (h) investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf; The expression trial has not been defined in the Code of Criminal Procedure but must be understood in the light of the expressions inquiry or investigation as contained in Sections 2(g) and 2(h) of the Code of Criminal Procedure.

28. The expression trial has been generally understood as the examination by court of issues of fact and law in a case for the purpose of rendering the judgment relating to some offences committed. We find in very many cases that the court/the Juvenile Justice Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry under Section 2(g) of the Code of Criminal Procedure, but an inquiry under the JJ Act, following the procedure laid down under Rule 12 and not following the procedure laid down under the Code.

29. The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the Penal Code or under other penal laws. The Code makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters under the Code naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7-A read with Rule 12 of the 2007 Rules. In other words, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold the inquiry.

30. Consequently, the procedure to be followed under the JJ Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under Section 7-A of the Act. In many of the cases, we have come across, it is seen that the criminal courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the penal laws forgetting the fact that the specific procedure has been laid down in Section 7-A read with Rule 12.

31. We also remind all courts/Juvenile Justice Boards and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate, etc. mentioned in Rules 12(3)(a)(i) to (iii). The courts in such situations act as a *parens patriae* because they have a kind of guardianship over

minors who from their legal disability stand in need of protection.

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 if 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.

33. Once the court, following the abovementioned 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.

34. Age determination inquiry contemplated under the 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 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 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.

35. XXXXXXXXXXXX 36 XXXXXXXXXXXX 37 XXXXXXXXXXXX 38 XXXXXXXXXXXX 39  
XXXXXXXXXXXX 40 XXXXXXXXXXXX 41 This Court in Babloo Pasi v. State of  
Jharkhand [(2008) 13 SCC 13.: (2009) 3 SCC (Cri) 266] held, in a case where the  
accused had failed to produce evidence/certificate in support of his claim, medical  
evidence can be called for. The Court held that:

22. The medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence. This Court set aside the order of the High Court and remitted the matter to the Chief Judicial Magistrate heading the Board to redetermine the age of the accused.

42. In Shah Nawaz v. State of U.P (2011) 13 SCC 75.the Court while examining the scope of Rule 12, has reiterated that medical opinion from the Medical Board should be sought only when matriculation certificate or equivalent certificate or the date of birth certificate from the school first attended or any birth certificate issued by a corporation or a municipal authority or a panchayat or municipality is not available. The Court had held that entry related to date of birth entered in the marksheet is a valid evidence for determining the age of the accused person so also the school leaving certificate for determining the age of the appellant.

43. We are of the view that admission register in the school in which the candidate first attended is a relevant piece of evidence of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility.

6. Thus as per Rule 12 (3)(a) of the Rules 2007 only three certificates are to be taken into consideration for the purpose of determining the juvenility. First of all the Matriculation or equivalent certificate, if the same is not available the date of birth

certificate from the school other than a play school first attended, and if the same is also not available then the birth certificate given by a Corporation or a Municipal Authority or a Panchayat is to be considered.

7. In the instant case, during inquiry about the Petitioners age CW-1 produced the admission record of the Petitioner. CW-1 deposed that one girl Ruby Dabas D/o Chander Bhan was admitted in her school on 24.04.1997 vide serial No.446 in Class Ist and her date of birth was recorded as 04.08.1992. She testified that admission of the girl was given on the basis of admission form filled up by Chander Bhan, the childs father (Petitioners father).

8. Admittedly, the Matriculation certificate was not available as the Petitioner had not studied upto that level. The second document in the order of precedence as given in Rule 12 of the Rules 2007 is the date of birth certificate from the school (other than the play school) first attended. In the instant case, as per the said certificate she was born on 04.08.1992. The JJB or for that matter the learned ASJ rightly did not go into other evidence or for that matter the ration card relied upon by the Petitioner.

9. The ossification test or the expert opinion of Medical Board can be obtained under Rule 12 (3) (b) of the Rules 2007, if the primary evidence in the shape of matriculation certificate, the date of birth certificate issued from the school and the birth certificate given by the Corporation or a Municipal Authority is not available.

10. Thus, neither the ration card can be looked into nor the Petitioner can be subjected to any ossification test to determine her age in view of the availability of a certificate as stated in Rule 12 (3) (a) (ii) of the Rules of 2007.

11. The Revision Petition is devoid of any merit; the same is accordingly dismissed. (G.P. MITTAL) JUDGE JANUARY 14 2013 vk

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