

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRM-M-44156-2016 (O&M).

Date of Decision: 16.01.2023.



....Petitioner.

VERSUS

State of Haryana

....Respondent.

**CORAM : HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Manish Soni, Advocate for petitioner.

Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana.

LALIT BATRA, J.

This petition under Section 482 Cr.P.C. has been moved by petitioner  seeking order for inquiry to determine his age as contemplated under Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter to be referred as 'Act, 2000'), for declaring him “juvenile in conflict with the law”, in case FIR No.277 dated 30.10.1995 under Sections 148, 302, 307, 323 and 364 IPC read with Section 149 IPC, registered at Police Station Punhana, District Mewat (Nuh).

2. Learned counsel for the petitioner has *inter alia* contended that in case FIR No.277 dated 30.10.1995, as detailed above, petitioner was held guilty, convicted and sentenced for the commission of aforesaid offences, vide judgment of conviction dated 08.09.2012 and order on quantum of sentence dated 10.09.2012 passed by learned Additional Sessions Judge, Nuh. He further contended that appeal (CRA-D-443-DB-2013) preferred by petitioner against his conviction and sentence, was dismissed by this Court,

vide judgment dated 01.10.2013. He further contended that no appeal was preferred by the petitioner against judgment dated 01.10.2013.

Learned counsel for the petitioner contended that incident had occurred during the intervening night of 30/31.10.1995, whereas date of birth of petitioner is 06.07.1979, therefore, on the date of commission of offence, he was aged 16 years, 03 months and 25 days. He further contended that to show the date of birth (06.07.1979) of petitioner, 'School Leaving Certificate' (Annexure P-1) issued on 19.05.1989, Certificate dated 11.03.2016 (Annexure P-2) issued by Gram Panchayat, Bisambera and photocopy of School Register (Annexure P-3) have been placed on record. He further urged that apart from above, a Certificate dated 15.10.2014 (Annexure P-4) has been issued to the petitioner by National Institute of Open Schooling under Directorate of Adult Education, wherein his age has been recorded '35 years'.

Learned counsel for the petitioner further contended that on 30/31.10.1995 (date of incident) Juvenile Justice Act, 1986 (hereinafter to be referred as 'Act, 1986'), was in force and in terms of said Act, the age of juvenility in respect of a boy was upto the sixteenth year, whereas age of juvenility in respect of a girl was upto the eighteenth year. He further urged that the petitioner aged 16 years, 03 months and 25 days was not a juvenile in terms of Act, 1986. He further contended that Act, 2000, came into force on 01.04.2001, and in terms of said Act, age of juvenility was raised upto 18 years. He further contended that petitioner was arrested on 21.10.2011 and thereafter his trial commenced and culminated in his conviction and sentence, vide judgment and order dated 08.09.2012 and 10.09.2012 respectively. He further contended that as proceedings qua the petitioner

were pending before Trial Court after 01.04.2001, thus, by virtue of provisions of Section 20 of Act, 2000, by reason of legal fiction, a person although not a juvenile, has to be treated to be one (juvenile) for the purpose of sentencing, which takes care of a situation that the person although not a juvenile in terms of Act, 1986, but still would be treated as such under the Act, 2000.

Learned counsel further contended that petitioner was not having any knowledge that plea of juvenility can be raised nor he was so advised by anyone at any point of time, therefore, the said fact was not disclosed by the petitioner to his counsel either before the Trial Court or before this Court during appeal. He further urged that plea of juvenility could not be raised by the petitioner before the Court due to ignorance of law. He further contended that claim of juvenility can be raised before any Court, at any stage, even after final disposal of the case and to this effect reliance has been placed upon rulings **Ashok vs. State of Madhya Pradesh, Special Leave to Appeal (Criminal) No.643 of 2020** decided on 29.11.2021 and **Vinod Katara vs. State of Uttar Pradesh, Writ Petition (Criminal) No.121 of 2022** decided on 12.09.2022 by Hon'ble Supreme Court.

Learned counsel for petitioner further contended that Section 7-A of the Act, 2000 read with Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter to be referred as 'Rules, 2007'), contemplates inquiry, therefore, petitioner is seeking age determination inquiry as he is raising issue of juvenility before this Court after dismissal of his appeal by this Court, vide judgment dated 01.10.2013. He further contended that documents (Annexures P-1 to P-4) *prima facie*

show that petitioner is to be treated as 'juvenile in conflict with law' under the provisions of Act, 2000 and, therefore, by virtue of provisions of Section 7-A of Act, 2000 read with Rule 12 of Rules, 2007, age determination inquiry should be ordered to be conducted to find out age of petitioner on the date of commission of offence.

3. On the other hand, learned State counsel has vehemently argued that since the plea of juvenility was never raised by the petitioner at any point of time either before the Trial Court or this Court during appeal, he was rightly dealt with as an accused and was convicted and sentenced by the Trial Court and the said judgment and order on quantum of sentence were upheld by this Court.

4. We have heard learned counsel for the parties and have carefully gone through the record of the case.

5. The first and the foremost issue that arises for our consideration in this petition is in regard to the applicability of the relevant Act.

6. In the aforesaid context, we must look into the relevant dates as follows:-

(a) The date of the incident is 30/31.10.1995. Thus, on the date of incident, Act, 1986, was in force. However, petitioner was arrested in this case on 21.10.2011 and his trial commenced on 04.11.2011 and eventually he was convicted and sentenced for the commission of above said offences on 08.09.2012 and 10.09.2012 respectively.

(b) The appeal preferred by the petitioner against his conviction and sentence passed by the Trial Court, was dismissed by this Court, vide judgment dated 01.10.2013.

(c) No further appeal was preferred by the petitioner against judgment dated 01.10.2013.

Thus, during the course of trial and consequent conviction and sentence of petitioner and further during the pendency of appeal, Act, 2000, was in force.

7. On and with effect from 01.04.2001, Act, 2000, came into force which repealed the Act, 1986. As mentioned above, trial of petitioner commenced on 04.11.2011 and eventually he was convicted and sentenced by the Trial Court on 08.09.2012/10.09.2012 and further appeal preferred by the petitioner was dismissed by this Court on 01.10.2013, thus, at all material times, Act, 2000 was in force. Act, 2000, *inter alia* raised the age of juvenility from 16 to 18 years and in terms of Section 20 of Act, 2000, the determination of juvenility was required to be done in all pending matters in accordance with Section 2(l) of Act, 2000.

8. Section 20 of the Act, 2000, deals with the special provision in respect of pending cases and begins with a non obstante clause which is reproduced as under:-

“20. Special provision in respect of pending cases.-
Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.
Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation. – *In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”*

The proviso and the Explanation to Section 20 of Act, 2000, were added by Amendment Act 33 of 2006 to set at rest any doubts that may have arisen with regard to the applicability of Act, 2000, to cases pending on 01.04.2001, where a juvenile, who was below 18 years at the time of commission of offence, was involved.

9. The effect of Section 20 of the Act, 2000, was considered in **Pratap Singh vs. State of Jharkhand, (2005)3 SCC 551** and it was held as under:-

“31. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with a non obstante clause. The sentence “notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act came into force” has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act, are relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term “any court” would include even ordinary criminal courts. If the person was a “juvenile” under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or the girl had crossed 18 years. This

shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that court as if the 2000 Act has not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile.”

10. In **Bijender Singh vs. State of Haryana, (2005)3 SCC 685**, the legal position as regards **Section 20** of the Act, 2000, was stated in the following words:-

“8. One of the basic distinctions between the 1986 Act and the 2000 Act relates to the age of males and females. Under the 1986 Act, a juvenile means a male juvenile who has not attained the age of 16 years, and a female juvenile who has not attained the age of 18 years. In the 2000 Act, the distinction between male and female juveniles on the basis of age has not been maintained. The age-limit is 18 years for both males and females.

9. A person above 16 years in terms of the 1986 Act was not a juvenile. In that view of the matter the question whether a person above 16 years becomes “juvenile” within the purview of the 2000 Act must be answered having regard to the object and purport thereof.

10. In terms of the 1986 Act, a person who was not juvenile could be tried in any court. Section 20 of the 2000 Act takes care of such a situation stating that despite the same the trial shall continue in that court as if that Act has not been passed and in the event, he is found to be guilty of commission of an offence, a finding to that effect shall be recorded in the judgment of conviction, if any, but instead of passing any sentence in relation to the juvenile, he would be forwarded to

the Juvenile Justice Board (in short “the Board”) which shall pass orders in accordance with the provisions of the Act as if it has been satisfied on inquiry that a juvenile has committed the offence. A legal fiction has, thus, been created in the said provision. A legal fiction as is well known must be given its full effect although it has its limitations.

11. x x x x

12. *Thus, by reason of legal fiction, a person, although not a juvenile, has to be treated to be one by the Board for the purpose of sentencing, which takes care of a situation that the person although not a juvenile in terms of the 1986 Act but still would be treated as such under the 2000 Act for the said limited purpose.”*

11. In **Dharambir v. State (NCT of Delhi), (2010)5 SCC 344**, the determination of juvenility even after conviction was one of the issues and it was stated:-

“11. It is plain from the language of the Explanation of Section 20 that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in terms of clause (l) of Section 2, even if the juvenile ceases to be a juvenile on or before 01.04.2001, when the Act of 2000 came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed.

12. *Clause (l) of Section 2 of the Act of 2000 provides that “juvenile in conflict with law” means a “juvenile” who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Section 20 also enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining*

the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Act of 2000”.

12. In **Kalu vs. State of Haryana, (2012)8 SCC 34**, Hon'ble Supreme Court while dealing with Section 20 of Act, 2000, has summed up as under:-

“21. Section 20 makes a special provision in respect of pending cases. It states that notwithstanding anything contained in the Juvenile Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which the Juvenile Act comes into force in that area shall be continued in that court as if the Juvenile Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of the Juvenile Act as if it had been satisfied on inquiry under the Juvenile Act that the juvenile has committed the offence. The Explanation to Section 20 makes it clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (1) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Act came into force, and the provisions of the Juvenile Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed.”

13. It is, thus, well settled that in terms of Section 20 of the Act, 2000, in all cases where the accused was above 16 years but below 18 years of age on the date of occurrence, the proceedings pending in the Court

would continue and be taken to the logical end subject to an exception that upon finding the juvenile to be guilty, the Court would not pass an order of sentence against him but the juvenile would be referred to the Board for appropriate orders under the Act, 2000.

14. In view of above, we now proceed to consider the matter further in terms of provisions of Act, 2000.

15. Section 7-A of the Act, 2000 as inserted by Act 33 of 2006 with effect from 22.08.2006 provided as follows:-

“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 inquiry, 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 recognized 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 orders and the sentence, if any, passed by a court shall be deemed to have no effect.”

16. Section 7-A of Act, 2000, provides that claim of juvenility can thus be raised before any Court, at any stage, even after final disposal of the

case and if the Court finds a person to be a juvenile on the date of commission of the offence, it is to forward the juvenile to the Board for passing appropriate orders, and the sentence, if any, passed by a Court, shall be deemed to have no effect. Even though the offence in this case may have been committed before the enactment of the Act, 2000, the petitioner is entitled to the benefit of juvenility under Section 7-A of the Act, 2000, if on inquiry, it is found that he was less than 18 years of age on the date of the alleged offence.

17. Section 16 of Act, 2000, provides as hereunder:-

“16. Order that may not be passed against juvenile.

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life, or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature and that his conduct and behavior have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

(2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and

on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed in any case the maximum period provided under Section 15 of this Act.”

18. The maximum period of detention in respect of a juvenile is three years as provided in Section 15(1)(g) of Act, 2000. The said Section provides that where the Juvenile Justice Board is satisfied on inquiry that the juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Juvenile Justice Board may, if it so thinks fit, make an order directing the juvenile to be sent to a special home for a period of three years.

19. The Act, 2000, has been repealed and replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred as 'the Act, 2015').

20. Section 21 of the Act, 2015, provides as follows:-

“21. Order that may not be passed against a child in conflict with law. – *No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.”*

21. Section 25 of the Act, 2015, deals with the special provision in respect of pending cases and begins with a non obstante clause and reads as under:-

“25. Special provision in respect of pending cases.- *Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law*

pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted.”

22. In view of Section 7-A of Act, 2000, applicable to petitioner, the plea of juvenility could be raised in any Court, at any stage, even after the final disposal of the case. In the case of petitioner, his appeal had also been dismissed by this Court on 01.10.2013. However, this Court is still obliged to consider the plea of juvenility taken by the petitioner and grant him appropriate relief. The fact that Act, 2000 has later been replaced by the Act, 2015, would make no difference.

23. In regard to the nature of the inquiry to be conducted by the Court in determining the age under Section 7-A of Act, 2000, the procedure to be followed for the determination of age is provided under Rule 12(3) of the Rules, 2007, which reads as under:-

“12. Procedure to be followed in determination of age.—

(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.”

Sub-clause (3) of the aforesaid Rules clearly mandates that while conducting an inquiry about the juvenility of an accused, the Juvenile Justice Board would seek evidence by obtaining the matriculation or equivalent certificates and in the absence whereof the date of birth certificate from the school first attended and in absence whereof the birth certificate given by a Corporation or a Municipal Authority or Panchayat. It is made clear by sub-clause(b) that only in the absence of the aforesaid three documents, medical information would be sought from a duly constituted Medical Board which will declare the age of the juvenile or child. Thus, it is only in the absence of the aforesaid documents that the Juvenile Justice Board could have asked for medical information/ossification test.

24. The Act, 2000 stands repealed by the Act, 2015. The procedure for determining the age is now part of Section 94 of Act, 2015, which was earlier provided under the above-mentioned Rule 12 of the Rules, 2007.

25. We find that the procedure prescribed in Rule 12 of Rules, 2007, is not materially different than the provisions of Section 94 of Act, 2015, to determine the age of the person. There are minor variations as the Rule 12(3)(a)(i) and (ii) of the Rules, 2007, have been clubbed together with slight change in the language.

26. Petitioner has placed on record 'School Leaving Certificate' (Annexure P-1) issued on 19.05.1989, Certificate dated 11.03.2016 (Annexure P-2) issued by Gram Panchayat, Bisambera and photocopy of School Register (Annexure P-3), wherein date of birth of petitioner has been recorded '06.07.1979'. Apart from above, petitioner has placed on record Grade Sheet-cum-Certificate dated 15.10.2014 (Annexure P-4) issued to him by National Institute of Open Schooling under Directorate of Adult Education, wherein his age has been recorded '35 years' as stated by the learner. The incident which led to the conviction of petitioner took place in the intervening night of 30/31.10.1995. The petitioner claims that he was born on 06.07.1979 and as such on the date of incident, he was aged 16 years, 03 months and 25 days. Therefore, the material placed before this Court by the petitioner, *prima facie*, suggests that he was a 'juvenile' as defined in the Act, 2000, on the date of incident.

27. In view of above, instant petition is disposed of with the direction to Sessions Court, Mewat at Nuh to examine the claim of petitioner to juvenility in regard with law and submit a report to this Court within one month from the date of communication of this order. The Sessions Court shall be entitled to examine the authenticity and genuineness of the documents sought to be relied upon by the petitioner, considering that the

documents do not appear to be contemporaneous. In the event the documents are found to be questionable/unreliable, it will be open to the Sessions Court to have the petitioner medically examined by taking an ossification test or any other modern recognized method of age determination.

28. Sessions Court is directed to issue notice to complainant before proceeding further in the matter.

29. The Sessions Court shall submit its report as regards the aforesaid to this Court within specified time from the date of communication of this order.

30. The Registry is directed to forward one copy of this order to the Sessions Court, Mewat at Nuh.

31. Learned State counsel is requested to take appropriate steps to facilitate the Sessions Court to complete the inquiry.

32. Notify this matter after a period of one month alongwith the report that may be received from the Sessions Court, Mewat at Nuh. The final order shall be passed after perusal of the report as received from the Sessions Court, Mewat at Nuh.

(Harinder Singh Sidhu)
Judge

(Lalit Batra)
Judge

16.01.2023.

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| Whether speaking/ reasoned | : | Yes/ No |
| Whether Reportable | : | Yes/ No |