

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRR No.60/2015

IA No.1/2015

Reserved on: 14.11.2022

Pronounced on: 17.11.2022

Sanjay Raina

...Petitioner(s)/Applicant(s)

Through: Mr. Ankush Manhas, Advocate.

v/s

State of J&K & Anr.

.... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy.AG.

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

01. Petitioner, through the medium of this revision petition, has assailed the order dated 23.11.2015 passed by the Court of learned 2nd Additional Sessions Judge, Jammu (hereinafter called '**Appellate Court**', for short) whereby order dated 23.09.2015 passed by learned Chief Judicial Magistrate, Jammu, whereby the appellant was not found to be a juvenile and the charge sheet was committed to the Court of learned Principal Sessions Judge, Jammu for trial, as a sessions trial case.

02. The impugned order dated 23.11.2015 passed by the Appellate Court has been assailed on the grounds that the learned Appellate Court while upholding the order passed by learned Chief Judicial Magistrate, Jammu whereby the petitioner had been declared as not a juvenile, in a case arising out of FIR No.05/2014 registered at Police Station Gangyal for the commission of offences punishable under sections 302/380/449

RPC is against the basic tenants of the J&K Juvenile Justice (Care and Protection of Children) Act, 2013 (herein after called '**Juvenile Justice Act**', for short). It has been asserted that the prosecution has laid the charge sheet showing the petitioner/accused in the case as juvenile, however, the learned Chief Judicial Magistrate, Jammu vide order dated 23.09.2015 has held that the petitioner/accused was not a juvenile within the meaning of Juvenile Justice Act and instead of trial of the case by a Juvenile Justice Board, committed the case for sessions trial to the Court of learned Principal Sessions Judge, Jammu. It has been further asserted that both the Courts below concurrently held that the petitioner/accused was not a juvenile on the date of the commission of the offence on a wrong premise that the petitioner was born on 08.01.1994 as against 20.08.1996 as was claimed by the petitioner based on school record.

03. Heard and considered.

04. Learned counsel for the petitioner has, vehemently, argued that both the Courts below have decided the juvenility of the petitioner as an accused, based on the record of the Chowkidar of the village and did not rely upon the school certificate issued in favour of the petitioner/accused which has a primacy as had been repeatedly held not only by the Hon'ble High Courts but by Hon'ble Supreme Court as well. He has further submitted that the petition filed by the petitioner be allowed by setting aside both the orders passed by the Courts below and the petitioner be directed to be tried by the Juvenile Justice Board in accordance with the Juvenile Justice Regime of law.

05. Learned counsel for the respondents, on the other hand, argued that the Courts below have passed the orders declaring the

petitioner/accused as not a juvenile based on the record produced during inquiry with regard to the birth of the petitioner/accused in his village, as such, no fault can be found with the impugned order. He has further submitted that a hypertechnical approach is not required to be adopted while appreciating the evidence adduced on behalf of the accused in support of his plea that he was a juvenile and if two views may be possible on the said evidence, the Court should lean in favour of the accused to be a juvenile in borderline cases. He further argued that date of birth record in the school has a primacy over all other evidence and the Courts below have overlooked the same while holding that the petitioner/accused was above the age of 18 as on the date of commission of the offence.

06. On a perusal of the order dated 23.09.2015 passed by learned Chief Judicial Magistrate, Jammu, it is found that the Court had ignored the birth certificate issued by Headmaster, Government (Boys) High School, Bari Brahmana, where the petitioner had been a student and the certificate had been duly proved by Ms. Poonam Chib Teacher, examined as a witness showing that the date of birth of the petitioner/accused had been recorded as 20.08.1996 in the admission register on 05.04.2007. The father of the petitioner/accused namely Basi Ram had also stated that the date of birth of his son is 20.08.1996 and that the petitioner/accused had been admitted in Government (Boys) High School, Bari Brahmana as his family has shifted to Bari Brahmana from Doda after his birth.

07. The Court of learned Chief Judicial Magistrate, Jammu accepted the date of birth of the petitioner/accused as 08.01.1994, based

on the Chowkidar certificate proved by the SHO Police Station Doda wherefrom the family of the petitioner/accused hailed initially and ignored the School Certificate issued by a Govt. School and duly proved. Learned Appellate Court while deciding the appeal against the order passed by learned Chief Judicial Magistrate upheld the order passed by the learned Chief Judicial Magistrate, Jammu.

08. Section 8 of the Juvenile Justice Act provides that, whenever, a claim of juvenility is raised before any Court or a Court is of the opinion that the 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 on affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or not, stating his age as nearly as may be, with a further proviso 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 the Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of the Act and if the Court finds, a person to be a juvenile, on the date of commission of the offence, it shall forward the juvenile to the Board for passing appropriate order and sentence, if any, passed by a Court shall be deemed to have no effect.

09. Rule 74 of the Rules framed under the Act provide as to how the age is to be determined. Sub-rule 3 of Rule 74 of the Rules provides that the Board or the Committee, as the case may be, shall, as far as possible decide the juvenility or otherwise, on the basis of physical appearance or documents available, if any. It further provides that when

an inquiry is contemplated, the same shall be conducted on the basis of the birth certificate issued by a Corporation or a Municipal Committee or any other notified Authority or the Matriculation or equivalent certificate or, in absence of these certificates in case of any contradiction arising therefrom, the authority deciding the age issue may refer to a duly constituted Medical Board which shall record its findings and submit to the Juvenile Justice Board.

10. The Appellate Court has also relied upon the record produced from the village Chowkidar and the concerned Police Station which were notified authorities holding there were no record with regard to the date of birth of the accused from matriculation or equivalent certificate. It was also held that the date of birth certificate issued by Government (Boys) High School Bari Brahmana, was not a certificate of matriculation or equivalent certificate and that the learned Chief Judicial Magistrate, Jammu has, therefore, rightly relied upon the certificate issued by the Village Chowkidar and the Police Station concerned.

11. Hon'ble Supreme Court of India in a case reported as **AIR 2012 SC 3437** titled Vijay Singh V/s State of Delhi held that in the claim of juvenility, first priority is given to the matriculation certificate or equivalent certificate, second priority is to be given to the date of birth certificate issued from school (other than play School) first attended and in absence of other certificates, the certificate issued by Municipality or Panchayat. The Court has thus, given priority to the certificate issued by the educational institution other than play school which was firstly attended by the accused to ascertain the claim of juvenility.

12. Hon'ble Apex Court in a case titled Ashwani Kumar Saxena V/s State of M.P. reported as **(2012) 9 SCC 750** held in para 32 which is extracted as under:

“32. Age determination inquiry contemplated under Section 7A 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 above mentioned 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.”

Again Hon'ble Apex Court in a case titled Jodhbir Singh V/s State of Punjab reported as **(2012) 0 Supreme (SC) 854** relying upon the law laid down in Ashwani Kumar Saxena case (supra) held that when the law gives prime importance to the date of birth certificate issued by the school first attended, the genuineness of which is not disputed, there is no question of placing reliance on the certificate issued by the village Chowkidar.

13. It had been proved during the inquiry conducted by learned Chief Judicial Magistrate that as on the date of commission of the offence on 09.01.2014 and having regard to the date of birth of the accused as on 08.01.1994 based on Village Chowkidar record and Police Station record, the age of the accused was 20 years, as such, the accused

was not found to be a juvenile. Since Hon'ble Apex Court in the aforestated judgments, had consistently held that the first priority is to be given to a matriculation certificate and if that is not available, the second priority is to be given to the date of birth issued from the school, that the accused first attended, before placing reliance on this birth certificate issued by Municipality or Panchayat. In the instant case, the accused was shown, to have his date of birth as 20.08.1996, as recorded in the Government (Boys) High School Bari Brahmana Jammu, which he had attended first. The date of birth issued by the said school in view of the law laid down by the Apex Court in the citations (supra) should have been relied upon and date of birth of the petitioner/accused should have been accepted as 20.08.1996.

14. Having regard to this proposition and in the considered opinion of this Court, both the Courts below have committed error by not accepting the date of birth as shown in the school record which had also been proved during the inquiry. The age of the petitioner should have been accepted as 20.08.1996 based on the school record, having primacy over other documents as against the record of village Chowkidar. In this backdrop, date of birth based on school record, the petitioner/accused on the date of occurrence on 09.01.2014 was of the age of 17 years 04 months and 20 days. Therefore, the petitioner/accused as on the date of commission of the offence was below the age of 18 years and was a juvenile within the definition of Juvenile Justice Act and his trial, in any case, could have been conducted only by Juvenile Justice Board and not by a regular Sessions Court.

15. For the aforesaid reasons and observations made, herein above, both the orders passed by learned Chief Judicial Magistrate Jammu and learned 2nd Additional Sessions Judge Jammu, impugned in this petition are hereby set aside holding that the petitioner/accused as on the date of commission of the offence was a juvenile and is required to be dealt with as a juvenile/child in conflict with law, before the Juvenile Justice Board. The petition is, accordingly, allowed.

16. As a sequel to the above, case titled **State of J&K V/S Sanjay Raina** arising out of FIR No. 05/2014 registered at Police Station Gangyal for the commission of offences punishable under sections 302/380/449 RPC and pending on the files of the trial Court, is ordered to be transferred to the Juvenile Justice Board Jammu, for further proceedings. Copy of the order be certified to the Court below for compliance.

17. Criminal Revision Petition along with interim application(s) is disposed of as granted.

(MA CHOWDHARY)
JUDGE

Jammu
17.11.2022
Eva

Whether the order is reportable?	Yes/No.
Whether the order is speaking?	Yes/No.