

IN THE FEDERAL SHARIAT COURT.  
(Appellate Jurisdiction )

PRESENT.

MR.JUSTICE ZAFAR PAHSH CHAUDHRY, JUDGE.

Cri. REVISION NO. 10/L OF 2003.

Javed Iqbal son of  
Abdul Majeed R/O  
Khankay More,  
District Kasoor. .... Petitioner.

VERSUS

The State ... Respondent.

Counsel for the  
Petitioner ... Mr.Asghar Ali Gill,  
Advocate.

Counsel for the  
Respondent ... Mian Abdul Qayum Anjum,  
Advocate.

Counsel for the  
Complainant ... Mr.Ghulam Nabi Bhatti,  
Advocate.

Case FIR No, date  
& Police Station ... No.134, 24.4.2000,  
P.S. Changa Manga.

Date of Order  
of TrialCourt. ... 24.2.2003.

Date of Institution ... 4.3.2003

Date of Hearing. ... 24.7.2003.

Date of Decision ... 24.7.2003.

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JUDGMENT

ZAFAR PASHA CHAUDHRY, J : - Javed Iqbal, petitioner, was on trial before Asghar Ali Faheem Bhatti, Additional Sessions Judge, Chunian in case F.I.R No.134 dated 24.4.2000 of Police Station, Changa Manga under Section 302 PPC and under section 10 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

2. The petitioner challenged the jurisdiction of the court as he was minor within the meaning of Juvenile Justice System Ordinance, 2000 and his trial could be held only by Juvenile Justice Court established under section 4 of the Ordinance.

3. The learned trial Judge in order to resolve the controversy regarding age and to determine whether the petitioner was minor took up this question before commencement of trial as envisaged by section 7 of the Ordinance. The section is reproduced as under:-

"If a question arises as to whether a person before it is a child for the purposes of this Ordinance, the Juvenile Court shall record a finding after such inquiry which shall include a medical report for determination of the age of the child."

Although the section contains mandatory provision that a finding to this effect has to be recorded but the manner

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of inquiry to be undertaken has not been prescribed.

Obviously it has been left to the best judgment of the Court, but the inquiry among other factors again contains the mandatory provision that a medical report shall be obtained and will be included in the relevant documents to determine the age.

4. In the instant case after the question arose regarding minority of the accused, a probe was made. The petitioner submitted his birth certificate according to which his age was below 18 years. The complainant however pointed out that there was erasing on the relevant entry and it appeared that the record had been tampered with. On this objection Special Judicial Magistrate was deputed to hold inquiry into the matter. He was also called upon to submit his report after determining the correct age of the accused.

5. The learned Magistrate Syed Awais Ashraf Gillani, <sup>the enquiry</sup> was entrusted/ vide his detailed report dated 17.6.2002, he was of the view that as per entry in register of births ~~indicated that~~ Javed Iqbal was born on 5.10.1983. He observed that mere allegation of forgery did not make the birth certificate doubtful as according to him the document carried presumption of regularity and in absence of clear

to contrary  
proof/the authenticity of the entry could not be shaken.

6. The learned trial Judge did not accept the report and obviously being not satisfied with the genuineness of the certificate following the dictate containing in section 7 of the Ordinance referred the petitioner for medical examination by the Medical Board.

7. It appears that initially the examination was carried out by Senior Medical Officer District Jail, Kasoor and after performing the required examination the petitioner's age was declared as 23 years approximately. As examination had been carried out by the Senior Medical Officer District Jail alone, the petitioner was again subjected to medical examination by the Medical Board. The board vide its report found the age to be 20/25 years. The learned trial Judge accepted the age as assessed by the Board and holding him as major proceeded to continue the trial which was already pending before him.

8. The main contention raised by the learned counsel for the petitioner is that the birth certificate is the most authentic document to determine the age, therefore, reference to the Medical Board was un-called for. In support of his contention he has referred to the case of Muhammad Ishaq..Vs..Muhammad Nadeem 2002 S.C.M.R 440, wherein the



court  
trial/relied upon the Birth Certificate, School Leaving Certificate and Domicile Certificate of the accused. The complainant did not challenge the genuineness and validity of the documents before the trial Court. Therefore mere assertion before the Supreme Court that entry in the Certificate was not correct had no force and was repelled. He has further cited the case of Muhammad Akram..Vs.. Muhammad Haleem 2002 P.Cr.L.J 633, a judgment from Lahore High Court, wherein the trial Court had relied upon the Certificate under National Registration Act 1973 and the Result Card of the Secondary School Certificate Examination. It was observed that in presence of those certificates there was no need to proceed further by referring the accused for medical report.

9. There can be no cavil with <sup>the</sup> law laid down by the Hon'ble Supreme Court and also observation made by the learned High Court. In Muhammad Ishaq's case the Birth Certificate, School Leaving Certificate and Domicile Certificate when relied upon by the trial Court had not been challenged, therefore, the petitioner was not permitted to challenge their validity before the Supreme Court. Similarly in Muhammad Akram's case the learned Judge approved the trial court's finding by relying on the



National Registration Act and the Result Card of Secondary School Certificate Examination.

10. Since the proof of age on the basis of two documents was treated as sufficient and trustworthy, the matter was not referred to the Medical Board. As the learned trial Court had been satisfied with the entry regarding age in the two documents, referring the accused for medical examination was considered as unnecessary.

11. The facts of the present case are quite different from the above cited cases because the learned trial Court was not satisfied with the genuineness of the entries in the Birth Certificate. Section 7 has unambiguously left to the judgment of the trial Court to determine the age of a child under section 7 of the Ordinance but it has been made compulsory that in <sup>the</sup> event of inquiry regarding the age, ~~the~~ medical report shall be obtained. The phraseology as employed in this section has treated the medical report as of extreme importance to determine the age. The learned trial Judge following the guide-line provided in this section referred the petitioner for medical examination and obtained a report from Medical Board. The petitioner's assertion that the birth certificate by itself is sufficient to determine the age and in its presence no enquiry to

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the  
determine/age was even called for. The plea is not free  
from fallacy, the genuineness of the Birth Certificate  
had been seriously disputed by the complainant. In that  
event reference to the Medical Board was fully in accordance  
with the provision of section 7 of the Ordinance.

11. The learned counsel for the complainant has  
vigorously disputed the genuineness of the Birth Certificate  
and maintains that the petitioner is not at all minor.  
Although determination of age is purely the question of  
fact which has to be determined by the learned trial Court  
yet the learned counsel has referred to a number of documents  
from the file to demonstrate that from the beginning of  
the investigation upto to commencement of trial the  
petitioner's age has been mentioned as more than 18 years.  
To start with the petitioner's age at the time of his  
arrest was entered as 23/24 years in the police record,  
he was examined by the doctor to test his potency, his  
age was mentioned as 22 years. The Secondary School  
Examination Certificate also showed him as major. Last of  
all when he was examined by Medical Board comprising  
of Specialists he again was found to be a major as he  
was aged 20/25 years.

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12. The learned counsel for the complainant has challenged the genuineness of the entries in the Birth Certificate. According to him as per Certificate marked "A" the petitioner has been shown having born on 5.10.1983, and also the birth entry has been shown of the same day, i.e 5.10.1983 ~~xxx~~ the name of the petitioner has also been recorded. According to him a judicial notice may be taken that in our society and especially in the rural areas it is not possible that the child is born on 5.10.1983, immediately the birth entry would be recorded on the same day. It is not even known whether the child was born in the evening, afternoon or may be at night. Further it is commonly known that child has not given the name immediately at the birth. It usually takes number of days and sometime may be months that a newly born child is given a name. The learned counsel expressed the view that the birth certificate apart from the fact that the relevant entries had been erased and some interpolation were noticed on the face of it appears to be a fabricated document. The learned trial Judge has rightly not accepted its authenticity. He was not fully satisfied even with the report of Senior Medical Officer ~~xxx~~ therefore obtained the report from Medical Board which establishes that the petitioner was major and was

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not child within the meaning of Juvenile Justice System Ordinance. The learned counsel in support of his case has cited the case of Hassan Zafar..Vs..The State 2002 Cr.L.J 135 whereby the trial Judge relied on the report of Medical Board and the learned High Court approved the same. It was also laid down that the onus of proving the age and to exclude the jurisdiction of the ordinary Court lie on the accused. He also referred to the case of Muhammad Yousaf..Vs..The State 1975 P.Cr.L,J 936.

13. As already noted above, to determine the age of an accused whether he is child or major is a question of fact which has to be determined by the trial Court. In the event <sup>of</sup> any dispute or controversy regarding which inquiry is to be made to determine the age, the learned trial Judge has to follow the provision of section 7 of the Ordinance. The finding is therefore neither arbitrary nor against the record. The petitioner in order to take his case out of xxx pale of jurisdiction of ordinary Court was legally bound to discharge the onus which has not been done, on the contrary apart from the Medical Board there are number of ~~xxx~~ documents as referred above which indicate that the petitioner was not child at the time



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of occurrence. This Revision Petition thus has no force,  
the same is accordingly dismissed.



( Zafar Pasha Chaudhry )  
Judge

Lahore the  
July, 24, 2003.

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Approved for reporting.