

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.
Mr. Justice Shahbaz Khan, Judge.**

Cr. Appeal No. 07/2016

in

Cr.PLA. No. 10/2015.

1. Rehmat Azeem son of Khoja Khan R/o Gullapur District
Ghizer. **Petitioner.**

Versus

1. Nasir Iqbal son of Muhammad Zaman R/o Damote Juglote
District Gilgit.
2. The State. **Respondents.**

PRESENT:-

1. Mr. Amjad Hussain Advocate alongwith Mr. Johar Ali Khan Advocate-on-Record for the petitioner.
2. The Advocate General Gilgit-Baltistan alongwith Mr. Jahanzaib Advocate and Mr. Ali Nazar Khan Advocate-on-Record on behalf of the respondents.

DATE OF HEARING: - 06.06.2016.

DATE OF DETAIL JUDGMENT:- 11.08.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition for leave to appeal has been directed against the impugned order dated 21.04.2015 in Criminal Revision No. 04/2015 passed by the learned Gilgit-Baltistan Chief Court, whereby the said Criminal Revision filed by the petitioner was dismissed in limine being meritless while maintaining the order dated 28.03.2015 in Session case No. 41/2014 passed by the learned Sessions Judge Gilgit.

2. The brief facts of the case are that the FIRs No. 23/2014 and 33/2014 were registered against the respondent accused at Police Station City Gilgit under Section 302 PPC and 13 Arm Ordinance. During the pendency of the case the respondent accused filed application before the learned Trial Court claiming

juvenility and upon hearing the learned Trial Court declared the respondent as juvenile on the basis of academic certificates of the accused and on the basis of the assessment certificate issued by the Doctors vide order dated 28.03.2015. The petitioner being aggrieved filed Criminal Revision No. 04/2015 in the learned Gilgit-Baltistan Chief Court which was dismissed while upholding the impugned order passed by the learned Sessions Court Gilgit.

3. The learned counsel for the petitioner submits that the order passed by the learned Trial Court in Session case No. 41/2014 dated 28.03.2015 , which was upheld by the learned Chief Court in Criminal Revision No. 04/2015 dated 21.04. 2015 are not sustainable as both the learned Courts fell in error by declaring the accused Nasir Iqball as juvenile based on his school leaving certificate and subsequent report of Medical Board wherein he was determined the age of around 18 years. He further submits that the school leaving certificate can be maneoured, however, according to the NIC issued by NADRA, the Date of Birth of the accused is 1st January 1995. From calculation of the age of the accused through the record of NADRA is 19 years, 02 months and 27 days. He further submits that the respondent has concealed the facts from the learned Trial Court terming himself as juvenile inspite of the fact that the accused is having CNIC No. 71501-9945084-9. According to the said CNIC the age of the respondent accused was above 20 years at the time of commission of the offence. On the contrary learned Trial Court as well as the learned Gilgit-Baltistan

Chief Court declared the respondent accused as juvenile which is against the law. He further submits that the respondent accused has also violated the fundamental principle of law “who seeks equity must come with clean hands”. The respondent/accused does not deserve leniency and the learned courts below did not consider this aspect of the case. He further submits that the Medical Board constituted by the learned Trial Court assessed the age of the accused round/about 18 years. The learned Trial Court as well as the learned Gilgit-Baltistan Chief Court misconceived the version of the Medical Board while extending juvenile facility to the accused. He further submits that the School certificate showing date of birth furnished by the accused has not been sent to NADRA for verification by the learned Trial Court. He prayed that the judgments of both the Courts below are not tenable, hence, the same are to be set aside.

4. On the other hand, the learned advocate General alongwith Mr. Jahanzaib Khan Advocate support the impugned order dated 21.04.2015 in Criminal Revision No. 04/2015 passed by the learned Gilgit-Baltistan Chief Court. They contend that during the hearing of the case, the accused/respondent preferred an application to the learned Trial Court seeking order of the court to the affect that the respondent accused was juvenile in terms of the Section 7 of The Juvenile Justice System Order 2000. They further contend that the learned Trial Court on the basis of the School certificate and on the basis of the assessment report

submitted by the Medical Board he was declared as juvenile. They also contend that it is evident from the report furnished by the Medical Board that the age of accused was round about 18 years, the word “round about” indicates near to 18 years not above 18 years. The Medical Certificate and School leaving certificate of the respondent corroborates each other. They finally contend that the impugned order dated 21.04.2015 in Criminal Revision No. 04/2015 passed by the learned Gilgit-Baltistan Chief Court as well as the order dated 28.03.2015 passed by the learned Trial Court may graciously be maintained being well reasoned and well founded. In support of their arguments they relied upon the case laws reported as 2007 MLD 148, 2001 P Cr. LJ 1939, 2002 SCMR 629, 2009 PLD 535, 2007 MLD 153, 2002 P Cr. LJ 2034, 2002 P Cr. LJ 2036, 2002 P Cr. LJ 633 and 2002 P Cr. LJ 636.

5. This court by consent of the parties vide order dated 05.04.2016 sent the CNIC in question to NADRA authorities for its verification and report thereto. The NADRA authorities submitted report on 02.05.2016 through the learned Deputy Attorney General for Pakistan at Gilgit verifying the date of birth of accused Nasir Iqbal as 01.01.1995. As per reports of NADRA accused Nasir Iqbal was major the time of committing the alleged offence.

6. We have heard both the learned counsels for the respective parties at length, perused the record of the case file, gone through the orders passed by the courts below, the reports of the Medical Board dated 02.05.2016 and report of NADRA as well as

gone through the case laws. We observed that CNIC No. 71501-9945084-9 duly issued by the National Data Base and Registration Authority (NADRA) has been deliberately concealed by the respondent/accused. According to the said CNIC the age of the respondent accused is above 18 years at the time of commission of the alleged offence which has been verified by the NADRA on the direction of this court vide order dated 05.04.2016.

7. In view of the above discussions, we converted this petition into an appeal and the same was allowed vide our short order dated 06.06.2016. Consequent thereto, the impugned order dated 21.04.2015 in Criminal Revision No. 04/2015 passed by the learned Gilgit-Baltistan Chief Court as well as the order dated 28.03.2015 passed by the learned Sessions Judge Gilgit in Session Case No. 41/2014 were set aside. These were the reasons for our short order dated 06.06.2016.

7. The petition is allowed in above terms.

Chief Judge.

Judge.

Judge.

Whether the case is fit to be reported or not?