

GAHC040007682023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.Rev.P. 12/2023

1: Pitam Lamnio
S/O Shri Dapung Lamnio and brother of Shri Thomas Lamnio, r/o viollage-
Lamnio, PO-Khenewa, PS-Seppa

VERSUS

1: THE STATE OF AP
Through Public Prosecutor

Advocate for the Petitioner : Sunil Mow

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 16-06-2023

Heard Mr. Ebo Mili, learned counsel for the applicant namely Shri. Pitam Lamnio, representing the accused namely Shri. Thomas Lamnio and also heard Mr. T. Ete, learned Additional PP for the State of Arunachal Pradesh.

2. This is an application challenging the order dated 08.05.2023 passed by the Special Judge (POCSO), Bomdila whereby the application filed on behalf of the accused for determination of the age of the victim in connection with

POCSO case no. 11/2022 arising out of Seppa Women PS case no. 12/2022 under section 376(3) IPC, 1860 read with section 6 of POCSO Act.

3. The accused filed an application for determination of age of the victim before the Special Judge on the ground that the certificate relied on by the prosecution regarding the age of the victim is not correct. The school certificate obtained through the RTI from where the victim had pursued her schooling shows that at the time of occurrence of the offence, the victim was major. However, the learned Special Judge, Bomdila has rejected the application by the order dated 08.05.2023 without following the relevant provisions under the POCSO Act, 2012 and the Juvenile Justice (Care and Protection of Children) Act, 2015.

4. Mr. Ebo Mili, learned counsel for the applicant submits that as per section 34(2) of POCSO Act, 2012 read with section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, it is incumbent upon the Special Judge to determine on the question of the age of the victim as and when it is brought before the court. However, the learned Special Judge has refused to determine the age of the victim and rejected the prayer for such determination.

5. Mr. T. Ete, learned Additional PP while referring on the judgment of the Manipur High Court as well as the Division Bench of the Madras High Court and also referring to the provisions of section 34(2) POCSO Act, 2012, section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Juvenile Justice (Care and Protection of Children) Rule, 2016 particularly Rule 54 18 (iv), submits that it is not only the age of the accused but also the age of the victim to be determined when the question of age is disputed and brought

before the Court. Therefore, the learned Additional PP fairly submits that the learned Special Judge could not have rejected the application without determining the age of the victim in terms of the provisions of law referred to above.

6. I have heard the submissions made by the learned counsel for the parties and also perused the provisions referred to herein above.

7. On bare reading of section 34(2) of POCSO Act, 2012, it provides that if any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

8. Section 42A of POCSO Act, 2012 provides that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of the Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

9. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides that :

"(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act(other than for the purpose of giving evidence) that the said person is a child, the Committee of the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

10. Rule 54 (18)(iv) of the Juvenile Justice (Care and Protection of Children) Rule, 2016 provides that for the determination of the victim, in relation to offences against children under the Act, the same procedures mandated for the Board and the Committee under Section 94 of the Act to be followed.

11. On combined reading of the provisions referred to above, this Court is of the considered view that the Special Court is duty bound to determine the age of either the accused or the victim, if the dispute is brought before the court. In

the present case, the learned Special Judge (POCSO), Bomdila appears to have taken a view which is contrary to the provisions of law referred to herein above.

12. Since the age of the victim is relevant for the purpose of jurisdiction, it is incumbent on the part of the learned Special Judge (POCSO), Bomdila to determine it first as same will have bearing on the trial of the offence touching the root of the jurisdiction.

13. In view of the above, the impugned order dated 08.05.2020 is interfered with.

14. Consequently, the order dated 08.05.2023 passed by the Special Judge, (POCSO), Bomdila is set aside. The learned Special Judge (POCSO) is directed to determine the age of the victim by following the due procedure and proceed with the matter as may be permissible under the law.

JUDGE

Comparing Assistant