

GAHC010126062021



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

Case No. : Crl.Rev.P./185/2021

BAIJNATH BHAGAT
S/O LATE SITARAM BHAGAT
R/O JHINGA BASTI, P.O. AND P.S. BORDUBI, PIN-786125
DIST. TINSUKIA, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:SRI KRISHNA BHUJEL
S/O LT. PRATAP SINGH BHUJEL
R/O JHINGA BASTI
P.S. AND P.S. BORDUBI
PIN-786125
DIST. TINSUKIA
ASSA

Advocate for the Petitioner : MR F KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 27-03-2023

Heard Mr. F. Khan, learned counsel for the petitioner and also heard Mr. D. Das,

learned Additional Public Prosecutor for State respondent.

This is an application under section 397 read with section 401/482 of Cr.P.C for quashing and setting aside the impugned order dated 28.07.2021 and 06.08.2021, passed by the learned Special Judge, Tinsukia, in Bordubi PS Case No. 120/2021 as well as the ossification test report dated 04.08.2021.

LCR has been received. Perused the same.

It is submitted by the learned counsel for the petitioner that on 16.07.2021 the F.I.R. was lodged by the informant at Bordubi Police Station alleging interalia that on 11.07.2021, at about 2 pm, while his daughter namely Sonu Bhujel was on the way to shop the accused person Motu Bhagat along with one Sri Nitesh Yadav had gagged her forcibly and raped her at tea garden. Accordingly, a case was registered as Bordubi PS Case No. 120/2021, under section 376(2)(i)(j) of the IPC read with section 4 of the POCSO Act. Accordingly, the accused person was arrested and forwarded to the Judicial Custody.

On 20.07.2021, one petition was filed before the learned Special Judge stating that the accused is Juvenile and his date of birth is 08.01.2004 as per school certificate and accordingly, prayed to refer the accused before the Juvenile Court for further proceeding of the case and also prayed to allow the accused to go on bail.

One school certificate dated 24.06.2015 was issued by the Head Master of Charili Hindi L.P School, Monkhoodi, District-Tinsukia was also submitted before the learned Special Judge, Tinsukia and from the certificate, it shows that on the date of incident i.e on 11.07.2021, the accused completed the age of 17 years 6 months and 3 days. The learned Special Judge, Tinsukia vide order dated 27.07.2021, issued notice to the Head Master of the said school and directed him to appear along with relevant documents to prove the age of the

accused to declare him as juvenile. Accordingly, on 28.07.2021 one Satya Narayan Prasad, the Head Master of the said School appeared before the learned Special Judge Tinsukia and accordingly his statement was recorded and he also brought the admission register as well. But vide impugned order dated 28.07.2021, the learned Special Judge, Tinsukia observed that his date of birth was entered into the admission registrar as told by his guardian and thus, the source of information to record the date of birth of the accused is not clear and accordingly, the school certificate of the accused Sunil Bhagat for determination of the age was not accepted by the learned Special Judge, Tinsukia.

Thereafter, the learned Special Judge, Tinsukia directed the Joint Director of Health Service, Tinsukia to constitute a Medical Board to ascertain the correct age of the accused through ossification test. The ossification test was accordingly conducted and vide the medical report dated 04.08.2021, it was opined that the age of the accused is above 18 years and below 19 years and accordingly vide order dated 06.08.2021, the prayer of the petitioner for declaring the accused as Juvenile in conflict with law was rejected.

It is submitted by the learned counsel for the petitioner that the learned Court below did not consider the provision of section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the provision of section 94 of the said Act read as under:

“94. Presumption and determination of age – (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 or 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 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."

Accordingly, it is submitted by the learned counsel for the petitioner that on behalf of the accused the school certificate was produced as per the requirement under section 94(2)(i) and even after the production of the said school certificate the authenticity of the certificate was also determined by the learned Special Judge, Tinsukia and without making any observation the certificate was not accepted by the learned Special Judge. More so, there is no observation made by the learned Special Judge as on what basis, the said school certificate was not accepted or why the genuineness of school certificate was questioned. And accordingly, the present petition is filed for setting aside the impugned order dated 28.07.2021 and 06.08.2021, passed by the learned Special Judge, Tinsukia and also prayed for quashing the report dated 04.08.2021, issued by the medical board and further prayed for a direction to the learned Special Judge, Tinsukia to treat the accused petitioner as Juvenile in conflict with law in connection with aforementioned case.

In this context, the learned Public Prosecutor Mr. D. Das has submitted that

there is no mention regarding the provincialization of the said school from where the certificate was issued as every provincialised school has some norms while admitting students to their school but here one certificate was only issued by the school authority and from the order passed by the learned Special Judge, Tinsukia, it is evident that no supporting documents to proof the age of the accused is produced by the parents/guardian at the time of admission of the accused in the said school.

More so, the learned Special Judge, Tinsukia called the Head Master of the school along with the admission register to ascertain the claim of the juvenility of the accused petitioner but the accused did not produced the of Head Master of the school, who issued the school certificate. Thus, the accused failed to discharge the burden on his part to proof the authenticity of the said certificate as well as to proof the plea of Juvenility.

In this context, learned counsel for the petitioner has submitted that, the accused produced the School certificate before the learned Special Judge and to determine the genuineness of the said certificate, the Head Master of the school along with admission register and other relevant documents was called for and the enquiry was exclusively conducted by the learned Special Judge, Tinsukia and at the enquiry stage, there was no scope for the accused to produce any evidence in that regard.

But without passing any reasoned order, the learned Special Judge hold the said certificate cannot be consider in the eye of law and accordingly directed to constitute a Board for ossification test.

After hearing the submission made by the learned counsel for both sides. I have also perused the case record and the LCR which is received. It appears that a petition was filed before the leaned Special Judge taking the plea that at the

relevant time of occurrence, the accused was Juvenile in conflict with law and in support of the said plea the accused also produced one school certificate issued by Head Master of the relevant school. The learned Special Judge, Tinsukia accordingly passed an order for appearance of Head Master of the aforementioned school along with relevant documents i.e the admission register. Accordingly, the learned Special Judge, Tinsukia also recorded the statement of the Head Master. It is a fact that at the time of issuing the certificate the present Head Master was not the in-charge and that was issued by the then principal of the School. However, the present Head Master exhibited the school certificate and it is stated that the signature of Satya Narayan Prasad, the then principal is known to him. More so, he also brought the school admission register of the school and from the relevant entry in the register, it is seen that the accused was admitted in the school at age of six and half years and as per the school admission register his date of birth was recorded as 08.01.2004. There is no discussion in the order passed by the learned Court below in regards to the genuineness of the said certificate and there is no observation as to whether the statement made by the witnesses i.e the Head Master of the school is believable or not. The only reason brought against the order passed by the learned Special Judge, Tinsukia is that the source of information to record the date of birth of the students is not clear and it was based on verbal instructions.

There may not be any supporting documents to proof the age the accused but it is evident from the admission register that his date of birth was entered at the school admission register which is stated to be 08.01.2004.

The provision of section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is very specific and as per the provision of section 94(2)(i)

of the Act, the date of birth certificate from school for matriculation from the concerned examination board can be considered at the first instance and in absence of any school certificate or birth certificate the Court can take the recourse of ossification test for determination of the age of the juvenile in conflict with law. But, here in the instant case, it is seen that the school certificate was produced and the school Head Master was also duly examined who appeared before the Court along with all relevant documents including the School admission register before the learned Special Judge, Tinsukia. More so, there is no observation made by the learned Special Judge regarding the genuineness of the said school certificate except holding the fact that the date of birth was verbally told by the guardian of the accused and accordingly, the medical board was directed for conducting the ossification test and as per the ossification test report also, it is held that the radiological age of the accused at the time of examination was 18 to 19 years. But, the radiological age cannot be considered as the correct age of the person and the ossification test gives only a radiological age of a person.

More so, it is seen that the school certificate was issued on 24.06.2015, which is much prior to the date of incident and hence, it also cannot be held that the certificate was issued only for the purpose of the present incident as it was not obtained after the incident but seems to be obtained much prior to the incident. So considering all aspects of the matter, I find that the order passed by the learned Special Judge Tinsukia dated 28.07.2021 and 06.08.2021 needs to be interfered with and accordingly the orders dated 28.07.2021 and 06.08.2021 passed in Bordubi PS Case No. 120/2021 are hereby set aside and quashed.

Accordingly, it is held that the accused namely Sunil Bhagat @ Motu can be treat as Juvenile in conflict with law and the learned Special Judge, Tinsukia is

hereby directed to send the case record only for the present juvenile in conflict with law before the Principal Magistrate, Juvenile Justice Board, Tinsukia by preparing supplementary case record and the learned Principal Judge Juvenile Justice Board, Tinsukia is further directed to enquire the matter as to whether the case is fit to be tried before the Juvenile Justice Board, Tinsukia or it should be tried in the Children Court observing all necessary formalities and accordingly, will pass the necessary order in accordance with law.
With the observation made above, the petition stands disposed of.

JUDGE

Comparing Assistant