

Court No. - 80

Case :- CRIMINAL REVISION No. - 699 of 2023

Revisionist :- X- Juvenile And Another

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Mohd Imran Khan

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Chandra Sharma,J.

List revised. None appeared on behalf of the opposite party even after service of notice.

Heard learned counsel for the revisionists as well as learned A.G.A. for the State and perused the material on record.

The present criminal revision has been preferred by the revisionist through their mother under Section 102 of the Juvenile Justice (Care and Protection) Act-2015 (hereinafter referred to as "J.J. Act, 2015) to allow the present revision and set aside the impugned judgment and order dated 06.12.2022 passed by Special Judge (POCSO Act), Court No.3/Additional District & Sessions Judge, Meerut in Criminal Appeal No.07 of 2020 arising out of Case Crime No.250 of 2019, under Sections 498A, 307, 313, 504, 506, 323 I.P.C. & Section 3/4 D.P. Act, 1961 related to Police Station Kankar Khera, District Meerut (Neetu @ Nitesh through his mother Sushma Devi vs. State) and judgment and order dated 05.01.2021 passed by Juvenile Justice Board, Kannauj regarding bail in Case Crime No.202/2020 under Sections 302/34, 147, 148, 506 I.P.C., Police Station Chhibramau, District Kannauj and also prays to release the revisionist/delinquent on bail in the aforesaid case.

Facts in brief are that claim of juvenility was made before the Board on the basis of date of birth as recorded in academic record from Class-I school and subsequent. This order was challenged before the learned trial court by the opposite party in appeal which was allowed and order passed by learned J.J. Board was set aside on the ground that there was cutting on the name and date of birth of the revisionist in the academic record which was summoned by the Board and also verified by the concerned clerk of the school. It was also found that the revisionists were twins but the admission of one was taken in Class-I and other in Class-III. These

circumstances raised doubt regarding genuineness of date of birth of the child before the learned appellate court which rejected the claim by setting aside the order passed by the learned J.J. Board and matter was sent back to the learned Board to decide the matter afresh on the basis of provisions as contained u/s 94 of the Act after giving opportunity of hearing to both the parties and conducting proper enquiry. The aforesaid order is under challenge in this revision.

It is submitted by learned counsel for the revisionist that learned J.J. Board passed the order on the basis of material on record and there was no any illegality in it. The learned appellate court committed error by allowing the appeal by setting aside the order illegally without considering the material on record. There was cutting on the date of birth and name of one of the revisionists but it was on account of correction moved by father of the revisionist and it was done at the time of entry in the school register at the time of admission. It is also submitted that on the basis of cutting and over writing on entry regarding date of birth, it cannot be said to be doubtful. It is also submitted that taking admission of revisionist in Class-I and of another revisionist in Class-III is also not material for determination of age. In this way, the order passed by learned appellate court cannot be said to be based on the facts of the case and in accordance with law, therefore, requested to set aside the aforesaid order and to allow the present revision.

Learned A.G.A. opposed the prayer as aforesaid and contended that there was over writing and cutting in the name and date of birth of one of the revisionists. Both of them were said to be twins but their admissions were taken in Class-I & Class-IV respectively in the year 2007 and 2010 in Takshshila Public School whereas recognition was given to the said school in the year 2016. The over writing and cutting was not signed by any person making entry. The surname of the revisionists were also changed after five years of admission at the instance of affidavit given by father of the revisionists. All these facts created doubt in the mind of the learned appellate court, therefore, the order passed by learned J.J. Board was set aside and the matter was remanded back to the learned Board to make an enquiry regarding this fact and to decide the claim of juvenility in accordance with law as provided u/s 94 of the Act after giving an opportunity of hearing to both the parties. There is no any illegality in the order passed by the learned appellate court but this criminal revision being devoid of merit is liable to be dismissed.

Considering the facts and circumstances of the case, submissions

made by learned counsel for the revisionists alongwith learned A.G.A., perusal of original record of the learned courts below and the facts as mentioned above, in considered opinion of this Court, there appears no any illegality and impropriety in the order passed by the learned appellate court while setting aside the order passed by learned J.J. Board and sending the matter back to it in order to decide the matter afresh, in accordance with law after giving opportunity of hearing to both the parties. Since there appears no error in the aforesaid order, therefore, it does not warrant any interference by this Court, therefore, this criminal revision is liable to be dismissed.

Accordingly, this criminal revision is, hereby, ***dismissed.***

Copy of this judgment alongwith original record of the court below be transmitted to the learned court concerned.

Order Date :- 16.10.2023

Ashok Gupta