

Court No. - 53

Case :- CRIMINAL REVISION No. - 3898 of 2023

Revisionist :- Subhash Chandra

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

Counsel for Revisionist :- Brijesh Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Syed Aftab Husain Rizvi,J.

1. Heard learned counsel for the revisionist and learned A.G.A. for the State. None has appeared on behalf of opposite party no. 2, despite service of notice.
2. This criminal revision has been filed against the order dated 27.04.2023 passed by the Additional Children Court, Court No. 2, Allahabad in Criminal Appeal No. 159 of 2022 (Subhash Chandra Vs. A.R.S.), Case Crime No. 260 of 2022, under Sections 363, 366-A, 323, 341, 354-B, 506 I.P.C. and 7/8 POCSO Act, Police Station Dhoomanganj, District Prayagraj/Allahabad.
3. By the impugned order, learned appellate court has dismissed the criminal revision filed against the order dated 18.08.2022 passed by Juvenile Justice Board, Prayagraj holding opposite party no. 2 as juvenile.
4. Learned counsel for the revisionist mainly contended that both the Courts below had failed to appreciate that the school certificate produced by opposite party no. 2 to prove his age is not legally admissible in view of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "J.J. Act, 2015). It is further contended that no date of birth certificate issued from Municipality has been produced. In absence of it, what was required was the ossification test of the opposite party no. 2 for determination of his age. Both the Courts below have ignored this and erred in law in relying on school certificate. It is further contended that three different certificates regarding date of birth have been produced by opposite party no. 3 and in all of at different dates of births are mentioned. Further, it is contended that the appellate court in Para-10 of the

impugned order has quoted the case law of the Apex Court but has misinterpreted it and has not followed it in letter and spirit. Lastly, it is contended that even the school certificate has not been proved by the Principal or any other competent authority. Only the Clerk has appeared. His statement cannot be relied.

5. It is undisputed that the date of incident is 29.04.2022. Opposite party no. 2 claimed himself to be juvenile on the ground that his date of birth is recorded in the school records as 05.05.2007, so on the date of the incident, he was below the age of 16 years of age. The scholar register has been produced by the Clerk of the school, who has proved it. According to the evidence on record, the opposite party no. 2 was admitted in the school in Class-1st on 01.08.2014 and he received education in the institution till Class-4th. In the scholar register, his date of birth is mentioned as 05.05.2007. It is the first school in which the opposite party no. 2 has got admitted, so in view of the provisions of Section 94 of J.J. Act, 2015 and Rule 12(3)(b) of 2007 Rules, the evidence produced by opposite party no. 2 is legally admissible.

6. The argument on behalf of revisionist is misconceived. In absence of matriculation certification or the first school admission document, the date of birth certification of the Municipality would be relevant and in absence of both these documents, the ossification test will be required. So there is no illegality in the impugned order.

7. The revision is devoid of merits and is hereby dismissed.

Order Date :- 26.10.2023

P.Sri.