

Court No. - 80

Case :- CRIMINAL REVISION No. - 3797 of 2023

Revisionist :- Ram Kishor Gupta

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

Counsel for Revisionist :- Rupesh Kumar Singh, Gulab Chandra

Counsel for Opposite Party :- G.A., Sarvajeet Singh

Hon'ble Subhash Chandra Sharma, J.

1. Heard learned counsel for the revisionist, learned counsel for opposite party as well as learned AGA for the State.
2. The present criminal revision has been preferred by the revisionist to allow the present revision and set aside the judgment and orders dated 26.06.2023 passed by learned Additional Sessions Judge/ Special Judge (POCSO Act), District Bareilly in Criminal Appeal No. 116 of 2022 under Section 52 of J.J. (Care and Protection of Children Act 2000 and order dated 30.03.2022 passed by the learned Principal Magistrate of Juvenile Justice Court, Bareilly in Criminal Case No. 154 of 2021 arising out of Case Crime No. 808 of 2021 under Sections 364, 302, 201, 34 I.P.C., Police Station Baradari, District Bareilly.
3. Brief facts of the case are that in this case the revisionist is informant and opposite party no. 2 was declared juvenile by the J.J. Board against which an appeal was filed before the learned counsel of Sessions which was also dismissed by order dated 26.06.2023. Being aggrieved with the order passed by learned courts below, present criminal revision has been preferred.
4. It is submitted that the learned J.J. Board as well as learned appellate Court did not consider the material on record regarding determination of age of the juvenile/opposite party but decided it by relying upon the School Leaving Certificate in which his date of birth was recorded as 12.01.2004. On the basis of that date of birth, his age was decided to be 17 years 7 months and 28 days which cannot be said to be authentic.
5. It is further submitted that opposite party took admission in class-II in the school and studied there up to class IV as per School Leaving Certificate which cannot be said to be authentic regarding date of birth of the opposite party because his admission was not taken in the school in class-I which shows that this document

was managed one by the revisionist for taking undue benefit of juvenility in relation to heinous crime committed by him.

6. It is also submitted that recourse to determination of age on the basis of ossification test must have been taken by the learned Board, but it was not done and the age was determined in casual manner which is not permissible under the law. Learned appellate court also did not consider all these facts but dismissed the appeal summarily which cannot be said to be lawful. In this way, the orders passed by the learned J.J. Board as well as learned appellate Court are illegal and inappropriate and are liable to be set aside and revision is liable to be allowed.

7. Learned counsel for opposite party as well as learned AGA opposed the prayer as aforesaid and contended that in this case proper inquiry was conducted by the learned J.J. Board while determining the claim of juvenility of the opposite party. Learned counsel for opposite party also relied on a judgment passed in the case of ***Parag Bhati (Juvenile) vs. state of U.P. and another.***

8. The statements of father of the opposite party, the headmaster of the school where he got education and transfer certificate which has been produced before the learned Board got verified through Basic Siksha Adhikari and the same was not opposed by the revisionist and no any other evidence contrary to the aforesaid document and evidence was produced. As a result, his date of birth was held to be 12.01.2004 as mentioned in school Leaving Certificate and the record kept by the school where he studied. The voter list which was relied on by the revisionist before the learned Board was not accepted as authentic proof of date of birth of the opposite party and also nowhere it is mentioned in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 for determining the age of child.

9. In this way, learned J.J. Board did not commit any illegality or irregularity in deciding the claim of juvenility, likewise, learned appellate court also considered all the facts, material available on record while deciding the appeal and rejected it. It can also not be said to be against the law but present revision being devoid of merit is liable to be dismissed.

10. Section 94 of the Act 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 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 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.

8. From the language used in Section 94 (2) (iii), it is clear that in absence of (i) and (ii), the age shall be determined by an ossification test or any other medical age determination test conducted on the orders of the Committee or Board. Thus where birth certificates are available as indicated in sub-section (i) and (ii), the medical age determination test cannot be preferred.

11. Considering the facts and circumstances of the case as well as submissions made by learned counsel for both the parties and learned AGA for the State and perusing the material on record, the orders passed by learned J.J. Board as well as learned appellate court, it appears that the claim of juvenility was made before the learned J.J. Board by the opposite party no. 2 claiming his date of birth as 12.01.2004 and relying the transfer certificate relating to his contention during the course of inquiry, learned J.J. Board examined the father of the child as C.W.-1, who stated that the child got education in Sun City Public School, Mehrauli, Badaun from Class II to IV and he got education of Class I at home. The headmaster of Sun City Public School, Mehrauli was examined as C.W.-2 who proved the transfer certificate as Exhibit-ka(i) and also stated that the aforesaid school was recognized by the government. Admission of the child was taken in the school on 05.07.2012 in Class II and his date of birth was recorded as 12.01.2004. On the basis of home education in Class I, he continued his studies up to Class IV regularly and passed Class IV, but his attendance was discontinued in class V on account of absence. This transfer certificate was got verified through Basic Siksha Adhikari, Badaun by Letter No. 11556-57/2021-22 dated 07.12.2021 in which after conducting an inquiry through Khand Siksha Adhikari, Samrer, Badaun, it was reported that the entry relating to the child as made in the records of Suncity Public School, Mehrauli was found the same at serial no. 825 and the School Leaving Certificate was found to be proved. This certificate was relied on by the learned J.J. Board because there was no any other document or material on record to create a doubt or contrary view regarding date of birth entered in the academic records. The voter list showing the age of the child to be 24 was not supported by any document

showing the age of the child and also voter list cannot be accepted as guideline for deciding the age of the child in conflict with law as held in the case of **Annu vs. State of U.P.**, reported in **2013 (81) ACC 595**.

12. In this way, not taking reports of ossification test by the learned Board and the learned appellate Court cannot be said to be illegal and against the provisions of law.

13. In considered opinion of this Court, there was no any doubt or ambiguity regarding date of birth of the child as examined before the learned Board during the course of inquiry hence it cannot be said to be unlawful or against the provisions of law. As a result, the orders dated 30.03.2023 and 26.06.2023 passed by learned J.J. Board as well as by the learned appellate court, respectively, cannot be said to be not in conformity with law and inappropriate, the criminal revision being devoid of merit is liable to be dismissed.

14. Accordingly, the present revision being devoid of merit is hereby ***dismissed***.

Order Date :- 6.11.2023

Anjali