

Court No. - 80

Case :- CRIMINAL REVISION No. - 3159 of 2021

Revisionist :- Shailendra Singh Rathore

Opposite Party :- State Of U.P. And Another

Counsel for Revisionist :- Virendra Singh Parmar, Sudhir Kumar Singh Parmar

Counsel for Opposite Party :- G.A, Mata Prasad Pal, Ram Chandra Yadav

Hon'ble Subhash Chandra Sharma, J.

1. Supplementary affidavit filed by learned counsel for the revisionist is taken on record.

2. Heard learned counsel for revisionist, learned counsel for opposite party as well learned A.G.A. for State and perused the record.

3. The present criminal revision has been preferred by the revisionist 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 judgment and orders dated 07.09.2021 passed by learned Additional Sessions Judge/ Special Judge (POCSO Act), District Farrukhabad in Criminal Appeal No. 15 of 2018 and 14 of 2018 as well as to restore the order dated 20.09.2018 passed by Juvenile Justice Board, Farrukhabad in case crime No. 540 of 2015 under Sections 302, 363, 201 I.P.C. and case crime No. 356 of 2015 under Sections 364, 302, 201, 120B I.P.C. & 25/27 Arms Act, Police Station Kotwali Farrukhabad, District Farrukhabad.

4. It is submitted by learned counsel for the revisionist that in this case the claim of juvenility was rejected by the learned J.J. Board against which an appeal was filed which was also dismissed. Being aggrieved with the order passed by learned appellate court, criminal revision No. 1594 of 2016 was preferred before this Court which was allowed and matter was remanded back to the learned J.J. Board for completing the inquiry within six weeks, in pursuance to which learned J.J. Board after conducting fresh inquiry passed the order dated 20.09.2018 and held the revisionist to be major aged about 18 years 1 month and 11 days on the basis of education record in which his date of birth was recorded as 01.04.1997. Against the order passed by learned J.J. Board an appeal was again preferred before the learned court of Session which was decided by order dated 07.09.2021 by the learned Sessions Judge while upholding the order passed by learned J.J. Board and dismissed the appeal. Against this order present criminal revision has been preferred before this Court.

5. It is further submitted that the papers regarding educational record of the revisionist were filed by him before the learned J.J. Board but those papers were not relied on but the learned Board placed the reliance on the first attending school record which could not be proved before the learned Board in accordance

with the provisions of law and on the other hand, the academic record which was proved by the revisionist were not relied on. In this way the order passed by the learned J.J. Board cannot be said to be based on material on record and in conformity with law. Likewise, learned appellate court also did not consider the aforesaid material but confirmed the order passed by the learned J.J. Board without going through the record. In this way, the orders passed by learned J.J. Board as well as learned appellate court cannot be said to be lawful and are not sustainable in the eyes of law, as a result are liable to be set aside and present revision to be allowed.

6. Learned counsel for opposite party as well as learned A.G.A. opposed the prayer as aforesaid and contended that in this case learned Board conducted inquiry in proper way. During the course of inquiry the statement of CW-1 Mahendra Singh Rathore (father of the revisionist) was recorded. CW-2 Ajeet Kumar (Head Master of Ram Shyam Shiksha Niketan Inter College). CW-3 Ram Prakash Dohare (Head Master of Purva Madhemic Vidyalaya, Darapur, Rajepur). CW-4 Pavan Shukla (Head Master of Sada Shiva Vidya Devi Public School, Ghatiyaghat). CW-5 Girendra Singh (Village Panchayat Officer, Vikas Khand, Rajepur). CW-6 Virendra Kumar Shukla (Shyama Bai Shiksha Sadan Yoga Ashram School, Chandpur, Farrukhabad) were examined. All the witnesses proved documents filed on record. The revisionist got primary education in Asha Ram Prathamik Pathshala, Labhera Madiya Patti, Darapur, Rajepur from class First to class Fifth where his date of birth was entered as 01.04.1997 and transfer certificate from that school was issued, thereafter the revisionist was admitted in class Sixth and studied till class Eighth from 18.02.2007 to 01.07.2009 where his date of birth was also entered as 01.04.1997 and the previous school where he obtained primary education was entered as Asha Ram Prathamik Pathshala, Labhera Madiya Patti, Darapur, Rajepur. After getting his date of birth entered as 27.03.1998, he continued his studies and appeared in high school examination. In this way, the first attending school of the revisionist was Asha Ram Prathamik Pathshala, Labhera Gariya Patti, Darapur. CW-3 Ram Prakash Dohare (Head Master of Purva Madhyamik Vidyalaya, Darapur, Rajepur) made clear statement that the revisionist took admission in class Sixth in his school on 18.09.2007 and his admission was taken on the basis of transfer certificate issued from Asha Ram Prathamik Pathshala, Labhera Madiya Patti, Darapur in which his date of birth was entered as 01.04.1997 and he also filed copy of school register after verifying it from the original S.R. register brought by him. In this way, the real date of birth of the revisionist was proved as 01.04.1997 on the basis of which he was not juvenile on the date of occurrence which took place on 12.05.2015. All these facts were taken into consideration by the learned J.J. Board as well as learned appellate court and the orders in question were passed. In this way, both the orders cannot be said to be not based on material on record and in conformity with law but this criminal revision being devoid of merit is liable to be dismissed. As per the provisions as contained in Section 94 of the Act, the birth certificate from the school or the matriculation or equivalent certificate from the concerned examination board if available, can be relied on for determination of age of juvenile. He relied his argument on the case decided by Hon'ble the Supreme Court in **Sanjeev Kumar**

Gupta Vs. State of U.P and others AIR 2019 Supreme Court 4364 in which, it was held that in case of, dispute in relation to the date of birth as mentioned in the matriculation certificate and other school record, the date of birth mentioned in the first school record was relied on where matriculation certificate was not supported with other documents relating to the date of birth.

7. 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.

10. Para 14 and 15 of the aforesaid judgment in the case of Sanjeev Kumar Gupta (Supra) are as under:-

14. Now it is in this background that it becomes necessary for the Court to determine whether the High Court, in the exercise of its revisional jurisdiction, was justified in reversing the view of the learned Sessions Judge that the second respondent was not a juvenile on the date of the incident. In seeking to place reliance on the date of birth (17 December 1998) recorded in the CBSE matriculation certificate, learned counsel appearing on behalf of the second respondent has submitted that under the provisions of Rule 12(3)(a) the said certificate has precedence over any other evidentiary document. In the course of

the hearing of the appeal, we directed the CBSE to produce its records and to file an affidavit indicating the basis on which the date of birth was recorded in the matriculation certificate. The affidavit filed by the CBSE indicates that the date of birth in the records maintained by the CBSE was recorded purely on the basis of the final list of students forwarded by Maa Anjani Senior Secondary School, Etah Road, Shikohabad. The affidavit of the Assistant Secretary, CBSE states:

"... Maa Anjani Senior Secondary School, Etah Road, Shikohabad, sent Final list of Students registered for Class IX (2011-12) as (Eligible for Class X Examination Year 2013) of the School to the Central Board of Secondary Education, Regional office, Allahabad. In the said Final List of Students registered for Class IX (2011-12) (Eligible for Class X Examination for year – 2013) at Serial No 00068 shows the name of Puneet Yadav son of Shri Rameshwar Singh and Smt Vishesh Devi and his date of birth has been shown as 17.12.1998 which contain the Signature and Photograph of Puneet Yadav. The date of Entry has been shown as 08.09.2011."

"... the Principal, Maa Anjani Senior Secondary School, Shikohabad, vide letter dated 04.02.2013 sent Roll Number – wise List of 248 candidates for class X-2013 to the Assistant Secretary (Examination), C.B.S.E., Allahabad. Name of Puneet Yadav son of Rameshwar Singh and Mrs Vishesh Devi, Roll No 5156848 has been shown with date of birth as 17.12.1998 at page No 896 of the List, with the signature of Puneet Yadav."

"... the Certificate for Secondary School Examination (Session 2011-13) (true copy of which was been appended as Annexure CA-1 received by the Central Board of Secondary Education with the Order dated 16.04.2019 of this Hon'ble Court) showing the Date of Birth of Puneet Yadav as 17.12.1998 was issued on the basis of aforementioned records of the Central Board of Secondary Education."

CBSE has stated before this Court that the date recorded in the matriculation certificate was purely on the basis of the final list of students forwarded by the Headmaster of Maa Anjani Senior Secondary School, Shikohabad. The Headmaster of the Maa Anjani Senior Secondary School, Shikohabad deposed during the enquiry before the JJB, Firozabad. In the course of her examination, Headmaster Dipti Solanki stated:

"...We note down the date of birth of the student at the time of admission as per the information given by the parents and at the same time we obtain an affidavit but we could not procure an affidavit from this student. I have committed a mistake by not procuring an Affidavit from this student. The date of birth was entered on the basis of the information given by the parent/father."

The Headmaster further stated:

"...The father did not produce any record at the time of admission in respect of the date of birth of the student. They would have been asked to produce the record of class 4 at the time of admission but they did not. I cannot tell the reason thereof. The students are admitted without any document upto class 5."

The above deposition indicates that the second respondent was admitted to Maa Anjani Senior Secondary School, Shikohabad in the fifth standard and was a student of the school until he completed his matriculation. The second respondent attended the Saket Vidyasthali, Jedajhal, Firozabad until the fourth standard. The school register and transfer certificate form of that school specifically contains an

entry in regard to the date of birth of the second respondent as 17 December 1995. Mr Ravindra Singh, learned senior counsel appearing on behalf of the second respondent has urged that the discrepancies which have been brought out in the course of the cross-examination of the former Manager of the school would indicate that there is a doubt in regard to the authenticity of that certificate. However, in our view, what must weigh against the second respondent's submission is that the date of birth which has been recorded in the certificate of the Saket Vidya Sthali completely matches the date of birth which was voluntarily disclosed by the second respondent both while obtaining his driving licence as well as the Aadhaar card. In both those documents, the originals of which were seized during the course of the investigation and have been produced before this Court, the date of birth is reflected as 17 December 1995. The driving license and the Aadhaar card are not standalone documents. The submission of the learned senior counsel that the date of birth in those documents may have been furnished by the accused to obtain an undue advantage cannot simply be accepted since it tallies with the date of birth indicated in the school records of Saket Vidya Sthali school. It is evident from the above analysis that the date of birth which was forwarded in the roll of students of Maa Anjani Senior Secondary School, Shikohabad was the sole basis of the date of birth which was recorded in the matriculation certificate. The date of birth in the records of Maa Anjani Senior Secondary School where the second respondent was a student from Class V to Class X is without any underlying document, as stated by the Principal in the course of the enquiry before the JJB. On the other hand, there is a clear and unimpeachable evidence in the form of the date of birth which has been recorded in the records of Saket Vidya Sthali school which is supported by the voluntary disclosure made by the second respondent while obtaining both the Aadhaar card and the driving licence. The High Court reversed the findings of the Sessions Judge purely on the basis of the matriculation certificate. For the reasons which we have indicated, the date of birth as reflected therein cannot be accepted as authentic or credible. Once we come to the conclusion, as we have, that the date of birth of the second respondent is 17 December 1995, he was not entitled to the claim of juvenility as of the date of the alleged incident which took place on 18 August 2015.

15. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 14 November 2018. Criminal Revision 2952 of 2017 shall in consequence stand dismissed. The order passed by the Sessions Judge, confirming the decision of the JJB rejecting the claim of juvenility is accordingly maintained. The second respondent shall accordingly be dealt with in accordance with law on the basis of the finding recorded in the present judgment, rejecting the claim of juvenility.

9. Considering the facts and circumstances of the case, submissions made by learned counsel for both the parties, perusal of record and the orders passed by learned courts below, it appears that the revisionist first attended Asha Ram Prathmik Pathsala, Labhera Madiya Patti, Darapur where his date of birth was recorded as 01.04.1997 then he took admission in Purva Madhyamik Vidyalaya, Darapur, Rajepur in class Sixth on 18.09.2007 and studied till class Eighth (01.07.2009) and then left the school without appearing in examination of class Eighth. The copy of school register was proved by CW-3 Ram Prakash Dohare (Head Master of Purva Madhyamik Vidyalaya, Darapur, Rajepur). He also stated categorically before the learned Board that on the basis of transfer certificate from Asha Ram Prathmik Pathsala, Labhera Madiya Patti, Darapur, his admission was taken in the school and T.C. was in his record. Self-attested copy

of which has also been filed by the witness which is on record showing the date of birth of the revisionist as 01.04.1997 which was issued from Asha Ram Prathmik Pathsala, Labhera Madiya Patti, Darapur. It also shows that the school leaving certificate issued from the Asha Ram Prathmik Pathsala, Labhera Madiya Patti, Darapur was kept in custody of Purva Madhyamik Vidyalaya, Darapur, Rajepur where the revisionist obtained education from class Sixth to class Eighth. It can also not be said that this school leaving certificate and the copy of scholar register was brought by the Opposite Party from his possession after manipulating the date of birth. On the other hand, the date of birth as mentioned in the documents produced on the part of revisionist in which his date of birth was mentioned as 27.03.1998 cannot be said to be based on the date of birth as mentioned in the first attending school. Learned J.J. Board relied the aforesaid documents and the statements of the witnesses relating to the date of birth of the revisionist and holding him major it rejected the claim of juvenility. Likewise, the learned appellate court after perusal and going through the record considered all the material present on record and upheld the order passed by the learned J.J. Board. There appears no any illegality or impropriety in the orders passed by learned J.J. Board as well as learned appellate court, therefore, it does not warrant interference by this Court but this revision being devoid of merit is liable to be ***dismissed***.

10. This criminal revision is ***dismissed***.

11. Office is directed to transmit the Lower Court Record to the Session Judge concerned.

Order Date :- 1.11.2023

Suraj Srivastav