

In Chamber

Case :- CRIMINAL MISC. WRIT PETITION No. - 12630 of 2023

Petitioner :- Smt. Gunja And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sujeet Nath Pandey

Counsel for Respondent :- G.A.,Indradeo

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard learned counsel for the petitioners, learned counsel for the first informant and learned A.G.A. for the State.
2. The instant writ petition seeks quashing of the FIR dated 14.11.2022 giving rise to Case Crime No.0486 of 2023, under Section 363 I.P.C., Police Station- Phoolpur, District- Varanasi.
3. It transpires from the record that this petition came up for admission on 10.08.2023, when an order was passed for production of the alleged victim before the CMO, Varanasi for determination of her age on the basis of ossification test. The statements under section 161 and 164 Cr.P.C. were also directed to be recorded.

This was so ordered as it was submitted that the victim is illiterate and never received education from any institution and therefore there is no documentary proof regarding her age.

The ossification test report as also the statements recorded under section 161 and 164 Cr.P.C. are available on record in sealed condition.

A counter affidavit has been filed on behalf of the first informant annexing thereto, a certificate of the Headmaster of Primary School, Katrao, Block Badagaon, District Varanasi, which states that the victim obtained education from Class 1 to Class 5th in the said Institution and in the records maintained her date of birth is recorded as 15.11.2006.

Her Class 8th Mark-sheet issued from Shri Suraj Prasad Intermediate College, Varanasi has also been annexed. In this mark-sheet also her Date of Birth is recorded as 15.11.2006.

The issue involved in this writ petition is primarily as to whether the victim is minor or not.

With regard to the above, the Juvenile Justice (Care and Protection of Children) Act, 2015 comes into play and Section 94 of the said Act is being extracted below:-

"(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."

A perusal of Sub-section 2 of Section 94 quoted above is relevant and its perusal will show that age to be determined, on the basis of date of birth certificate from the school, or matriculation or equivalent certificate. In the absence of the above, it is to be determined on the basis of a birth certificate issued by a corporation or municipal authority or panchayat,. It is only when the documents noted above are not in existence can an ossification test is to be resorted to, for determining the age of a person.

Since, in the case at hand, there exists and has been brought on record, the birth certificate from the school where the victim obtained education, it is clear that an ossification test, even if

ordered by the court is not liable to be taken into account. The ossification test itself was ordered by this court on the submission no date of birth certificate or educational certificate existed since the victim was illiterate and had obtained no education, at all, whatsoever. This assertion which is recorded in the order dated 10.08.2023 is manifestly false. The allegations in the counter affidavit have not been controverted by the petitioners.

Even learned AGA has seconded the submissions that have been made by learned counsel for the first informant and the assertions made in the counter affidavit on record.

Under the circumstances, this court is constrained to hold that prima facie, the allegation in the first information report that the victim is minor, is correct.

Since there exists the educational record of the victim regarding her age, this court does not consider it necessary to open the sealed ossification test report as also the statement of the victim under section 161 and 164 Cr.P.C. because the same is not required to be looked into in view of section 94 of the Act of 2015.

In any case, these documents have been brought on record on the basis of a prima facie false statement made on behalf of the victim.

Since it has been held herein-above that the allegation in the first information report that the victim is minor, stands established from the material on record, the allegations in the first information report contain the ingredients of a cognizable offence. The FIR under the circumstances cannot be quashed.

As the issue involved in the petition is whether the victim is minor or her statement under section 161 and 164 Cr.P.C. is also of no consequence because no person can depose, on the basis of the personal knowledge about his or her own age or date of birth.

The writ petition is accordingly dismissed with costs of Rs. 5000/- upon the petitioners for having made a false assertion both in the petition and before the Court.

Order Date :- 18.10.2023

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