

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:17224

Court No. - 27

Case :- CRIMINAL REVISION No. - 192 of 2011

Revisionist :- Bipin Bihar Chaurasiya

Opposite Party :- State of U.P.

Counsel for Revisionist :- Rajesh Kumar Tiwari,Indrajeet
Shukla,Manoj Kumar Nishad,Skand Bajpai

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Subhash Vidyarthi J.

Order on Crl. Misc. Application No.6 of 2023 & 7 of 2023:

1. Heard Sri Skand Bajpai, the learned counsel for the revisionist, Smt. Parul Kant, the learned A.G.A. appearing on behalf of the State and perused the records.

2. These are applications seeking condonation of delay in filing application for recall and the application for recall of ex-parte order dated 15.11.2022, passed by a coordinate Bench of this court on the ground that the revisionist had engaged Sri Indrajeet Shukla, Advocate as his counsel, who was subsequently appointed as an Additional Chief Standing Counsel for the State of U.P. and for this reason he could not appear any further on behalf of the revisionist. The revisionist did not have any knowledge about his counsel having been appointed as Additional Chief Standing Counsel and therefore he did not engage another counsel. In these circumstances the

revision was dismissed in absence of the learned counsel for the revisionist on 15.11.2022.

3. Although, the order dated 15.11.2022 has been passed in absence of the revisionist or his learned counsel, it records the submission of the learned State Counsel that there is not illegality or infirmity in the impugned order. The court has recorded in the order dated 15.11.2022 as follows:

“The court below has given cogent, convincing and satisfactory reasons while passing the impugned order. Reasons mentioned therein are good enough to satisfy the passing of impugned order and no fault could be found with the approach adopted by the court below. Even otherwise also, none has appeared on behalf of the revisionists to press this revision though the revision is pending since 2011.

In view of the above, I do not find any illegality, infirmity or perversity in the impugned order which may warrant any interference.

The revision is, accordingly, dismissed.”

4. Submission of the learned counsel for the revisionist is that the aforesaid order was passed in absence of the learned counsel for the revisionist and therefore it is an ex-parte order, which deserves to be recalled. He has submitted that the observations made regarding the revision being merit have been made in a cursory manner without advertng to the contents of the order or the contentions raised in the memo of revision.

5. In the case of **Paul George Vs. State: (2002) 2 SCC 406**, the Delhi High Court dismissed a Criminal Revision by the following order: -

“I have heard the learned counsel for the petitioner. I find no illegality, impropriety or jurisdictional error in the judgment under challenge.

Dismissed.”

The Hon’ble Supreme Court set aside the aforesaid order after making the following observations: -

“6. ...We feel that whatever be the outcome of the pleas raised by the appellant on merits, the order disposing of the matter must indicate application of mind to the case and some reasons be assigned for negating or accepting such pleas....

7....The order impugned however does not indicate any trace of application of mind on the facts or the pleas raised before the Court. We would like to point out that we come across with such orders quite frequently as of now. There is no need to emphasize that the reasons, howsoever brief they may be, are to be indicated in an order disposing of any matter, more so when such orders are subject to appeal or review before the higher forum.”

6. In view of the aforesaid law laid down by the Hon’ble Supreme Court in the case of **Paul George** (supra), it is clear that the order dated 15.11.2022 passed in the absence of learned counsel for the revisionist without recording any reasons engaging adjudication of the revision by this court is an ex-parte order, which does not discuss the merits of the case and it deserves to be recalled.

7. Accordingly, the applications are allowed. The delay in filing recall application is hereby condoned. The order dated 15.11.2022 is hereby recalled and the revision stands restored to its original number.

Order on memo of revision:

8. The instant revision has been filed challenging the validity of the impugned order dated 27.04.2011 passed by the learned Additional Sessions Judge, Court No.11, Pratapgarh, in Sessions Trial No. 369 of 1998, under Sections 148, 302, 307, 504, 506 I.P.C., Sessions Trial No.372 of 1998, under Section 25 of Arms Act and Sessions Trial No.373 of 1998, under Section 4/5 Explosives Substance Act, Police Station Kandhai, District Pratapgarh, whereby three different applications filed in the aforesaid three cases for declaring the revisionist to be a juvenile-delinquent on the ground that the high school certificate in the year 1997 mentions his date of birth as 09.07.1981 was recorded. The learned trial court has disbelieved the date of birth of the revisionist mentioned in the high school certificate on the ground that from the statement of PW-1 recorded by the learned trial court, the date of birth of the revisionist mentioned in the high school certificate appears to be incorrect. The learned trial court has relied upon the judgment of Hon'ble Supreme Court in the case of **Brij Mohan Singh Vs. Priya Brat Narain Sinha and others**: AIR 1965 SC 282, which was a case arising out Representation of People Act, 1951, wherein the court disbelieved the age of a person mentioned in the high school record, keeping in view the peculiar facts and circumstances of the case.

9. Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 provides that: -

“7-A. Procedure to be followed when claim of juvenility is raised before any court.—(1) Whenever a claim of juvenility is raised before any court or a court is of the

opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the Rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders, and the sentence if any, passed by a court shall be deemed to have no effect.”

10. Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 provides as follows: -

“12. Procedure to be followed in determination of age.

(1) In every case concerning a child or a juvenile in conflict with law, the Court or the Board, as the case may be, the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or, as the case may be, the Committee shall decide the juvenility or otherwise of the juvenile or the child or, as the case may be, the juvenile in conflict with law, prima facie on the basis of physical appearances or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or, as the case may be, the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7-A, section 64 of the Act and these rules, no further inquiry shall be conducted by the Court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the

sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

11. In Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750, it was held that: -

32. “Age determination inquiry” contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the abovementioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. Further, Section 49 of the JJ Act also draws a presumption of the age of the juvenility on its determination.

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35. We have come across several cases in which the trial courts have examined a large number of witnesses on

either side including the conduct of ossification test and calling for odontology report, even in cases, where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal authority or a panchayat are made available. We have also come across cases where even the courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted.”

12. In Abuzar Hossain v. State of W.B., (2012) 10 SCC 489, the Hon’ble Supreme Court summarized the legal principles in this regard as follows: -

“39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.

39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a) (i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to

justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh (2009) 7 SCC 415 and Pawan (2009) 15 SCC 259 these documents were not found prima facie credible while in Jitendra Singh (2010) 13 SCC 523 the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.

***39.4.** An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.*

39.5.** The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of the 2000 Act get such benefits. **The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

***39.6.** Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently*

improbable claim of juvenility must be rejected by the court at the threshold whenever raised.”

(Emphasis supplied)

13. In Rishipal Singh Solanki v. State of U.P., (2022) 8 SCC 602, the Hon’ble Supreme Court referred to numerous precedents on the point and summarized the principles of law as follows: -

“33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the court or the JJ Board.

33.2.1. When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

33.2.2. If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

33.2.3. When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before

the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).

33.3. *That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, **the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.***

33.4. *The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.*

33.5. *That the procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.*

33.6. *That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.*

33.7. *This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.*

33.8. *If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to*

the juvenile in conflict with law. At the same time, the court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and authentic as per the provisions of the Evidence Act viz. Section 35 and other provisions.

33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.

14. When this court examines the facts of the present case in the light of the law laid down by the Hon'ble Supreme Court in the aforesaid case, it appears that the revisionist claims himself to be a juvenile on the ground that the high school certificate issued in the year 1997 mentions his date of birth to be 09.07.1981. When the high school certificate was available, as per the provisions contained in Rule 12 (3) (i), no further enquiry is permissible to ascertain the date of birth of the juvenile. The learned trial court has stated that as per the statement of AW1 Ram Pal Chaurasiya, witness is aged about 73 years, his younger sister i.e. mother of the accused is about 7-8 years younger to him, from which it can be assumed that presently the mother of the accused would be aged about 65 years; the witness has stated that his sister got married when she was aged about 16-17 years

and her first daughter was born two years after her marriage, in the year 1975. In case his sister is presently aged about 65 years and she got married in the age of 16-17 years or at the most 20 years, the contention of the birth of the daughter in the year 1975 is not believable. In case the mother of the accused got married in the year 16-17 years, it cannot be believed that she delivered her first child in the year 1975 and from the aforesaid facts the age of the revisionist cannot be below 18 years on the date of the incident i.e. 11.04.1998.

15. This assessment made by learned trial court for disbelieving the high school certificate is not permissible in law.

16. Accordingly, the order dated 27.04.2011 passed by the learned Additional Sessions Judge, Court No.11, Pratapgarh is not sustainable. The revision is **allowed**. The learned trial court is directed to decide the issue of juvenility of the revisionist by treating his date of birth mentioned in the high school certificate to be correct and to proceed with the trial accordingly.

(Subhash Vidyarthi, J.)

Order Date :- 26.2.2024
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