

Case :- CRIMINAL REVISION No. - 242 of 2023

Revisionist :- X Juvenile

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

Counsel for Revisionist :- Mukesh Kumar,Prakash Chandra
Srivastava,Rishabh Srivastava

Counsel for Opposite Party :- G.A.,Syed Mohammad Abbas
Abdy

Hon'ble Siddharth,J.

1. Heard Sri P. C. Srivastava, learned counsel for the revisionist, Sri Abhishek Gupta, Advocate, holding brief of Sri S.M.A.Abdy, learned counsel for opposite party no.2 and the learned AGA for the State.

2. This revision is directed against the judgment and order dated 16.12.2022 passed by Special Judge (POCSO Act), Azamgarh in Criminal Appeal No. 36/2022 (Virendra Kumar Saroj Yadav Vs. Dhananjay Pathak and another), arising out of judgment and order dated 15.04.2022 passed by learned Juvenile Justice Board, Azamgarh, declaring the opposite party no.2 as Juvenile in Case Crime No. 149/2021, under sections- 147, 148, 149, 323, 325, 504, 506, 308, 302 of IPC and section 3(1)(Da), 3(1)(dha) and 3(2)5 of SC/ST Act (P.A) Act, Police Station- Sidhari, Districti- Azamgarh, allowing Criminal Appeal and set aside the order dated 15.04.2022 passed by Juvenile Justice Board, Azamgarh.

3. The brief facts of the case are that the Criminal Appeal No.36 of 2022, preferred by opposite party no.2 under section 101 of Juvenile Justice (Care and Protection of Children) Act, 2015, was heard by Special Judge, POCSO Act, Azamgarh and he has set-aside the order dated 15.04.2022 of Juvenile Justice Board and declared the revisionist as adult vide order dated 16.12.2022.

4. Learned counsel for the revisionist has submitted that the appellate court has not considered the statement of witnesses who specifically stated that the date of birth of revisionist is 14.07.2005 and relying on the Kutumb Register opined that the date of birth was mentioned as 14.102003 which was duly corrected as 14.10.2005 in the Kutumb Register while Rajiv Kumar Tripathi, Village Development Officer, specifically mentioned that in the

Kutumb Register, date of birth of revisionist is not mentioned as 14.10.2003 but appellate court without considering documents on record set-aside the judgment and order passed by Juvenile Justice Board, Azamgarh dated 15.04.2022 and declared the revisionist as adult which is illegal. Learned appellate court misinterpreted the provisions of section 94 (2)(i) of Juvenile Justice (Care and Protection of Children) Act, 2015 and passed impugned order relying upon the documents which were not relevant as per Act.

5. From perusal of section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 it appears that the appellate court misinterpreted the provision of Act and relied upon Kutumb register as well as school admission form of class 9th in which correction was made at the time of admission. The date of birth of Sneha Pathak, the elder sister of revisionist is 08.07.2001. Present incident has been occurred on 29.06.2021 and revisionist passed his Secondary School Examination (class 10th) in the year 2020 from C.B.S.C. Board i.e., one year prior of the alleged incident. The order passed by court below is totally illegal, arbitrary and against the evidence on record.

6. Learned counsel for the revisionist further submitted that from the side of revisionist, Smt.Renu Pathak, mother of applicant (guardian) was examined as C.W.1 and she specifically stated that she has two kids; first is daughter Sneha Pathak and second is revisionist and at the time of incident revisionist was minor aged about 15 years, 11 months and 15 days and she specifically stated that the revisionist was born at her, house. He completed his education from Class 1 to 8 at A.N.Memorial Children School, Arazibagh, Azamgarh and in class IX revisionist got his admission in Children Senior Secondary School, Belaisa, Azamgarh and at present he is student of Class 12th and his date of birth is 14.07.2005. Sri Vaibhav Mishra, head clerk of Children Secondary School, Belaisa, Azamgarh, was examined as C.W.2 and he also specifically stated that the revisionist passed 9th, 10th and 11th class from aforesaid School and at present he is student of Class 12th. He further stated that at the time of admission in class 9th, second copy of transfer certificate no.233 of class 8th issued by A.N. Memorial Children School, Arazibagh, Azamgarh was submitted in which date of birth of revisionist is mentioned as 14.07.2005 and he further stated that on the scholar register and Transfer Certificate form register no.42 of 2018, the date of birth is mentioned as 14.07.2005. Sri Hari Prasad Chaurasia, clerk of A.N.Memorial Children School, Arazibagh, Azamgarh, was examined as C.W.3 and he also stated that in second copy of

Transfer certificate and scholar register no.1856, date of birth of revisionist is mentioned as 14.07.2005 and in the scholar register of class 6 to 8 at serial no.1962, date of birth of revisionist mentioned as 14.07.2005. Rajiv Kumar Tripathi, Village Development Officer was also examined and he stated that in compliance of order of Assistant Development Officer (Panchayat) he corrected the date of birth of revisionist as 14.10.2005.

7. After examination of witnesses, Smt. Anjali, wife of deceased, filed an application in the court of Juvenile Justice Court, Azamgarh and in the application she contended that on the dictation of deceased, his brother, Virendra, had written First Information Report and the said F.I.R., has been registered in the Police Station, hence F.I.R. will come in the purview of Dying Declaration and she further stated that papers of Class 8th and High School were countersigned by Inspector of Schools. In the Kutumb Register; date of birth of revisionist has been mentioned as 14.10.2003 which was later on corrected without any order of competent authority. Hence date of birth of revisionist is contradictory in the High School mark sheet as well as in the Kutumb register, in these circumstances she requested to get medical examination of revisionist by medical Board and she further mentioned in the application that in the Kutumb Register correction has been made by Secretary on 15.09.2021 i.e. after the murder.

8. The Juvenile Justice Board, Azamgarh, vide order dated 27.01.2022 came to the conclusion that when enquiry has been conducted by Juvenile Justice Board under section 94(2)(1) of Juvenile Justice (Care and Protection of Children) Act, it was found that on the basis of admission form of Class 9th, in which date of birth of revisionist was mentioned as 14.10.2003, was later on corrected on 14.10.2005 and in the High School mark sheet, date of birth of revisionist is mentioned as 14.07.2005. Juvenile Justice Board further mentioned in the order that from perusal of Transfer Certificate and admission form it is clear that revisionist studied in the said School from 04.04.2015 to 31.03.2018 i.e., Class 6th to 8th, but no record of the document/papers of Class 1 to 5th was produced and during enquiry Kutumb Register was filed by revisionist in which it was found that after the incident correction was made in the date of birth which is apparent from perusal of copy supplied to opposite party no.2 and during enquiry, Village Development Officer also stated in his cross examination that on the basis of High School mark sheet he corrected the Kutumb register after getting permission from Assistant

Development Officer (Panchayat). In view of the above, Juvenile Justice Board, Azamgarh directed to get medical examination of revisionist conducted by Chief Medical Officer, Mau.

9. Sri Hari Prasad Chaurasia, clerk of A.N. Memorial Children School, specifically mentioned in his statement that the revisionist completed his education from class 1 to 8th from above mentioned School but the Juvenile Justice Board did not consider the same and directed to get medical examination of revisionist conducted by Chief Medical Officer, Mau.

10. According to prosecution case, revisionist was medically examined by Chief Medical Officer, Mau, and it opined by the report dated 10.02.2022 that age of revisionist is 23-24 years.

11. When the said ossification report dated 10.02.2022 was issued by Chief Medical Officer, Mau, application was filed on behalf of revisionist that he is minor even though the Chief Medical Officer, Mau opined that the revisionist is major, hence in the interest of justice re-ossification test may kindly be ordered from Chief Medical Officer, Azamgarh and said application was allowed by Principal Magistrate, Juvenile Justice Board, Azamgarh vide order dated 21.02.2022. On 22.02.2022 Principal Judge, Juvenile Justice Board, Azamgarh again passed an order and directed Chief Medical Officer, Azamgarh to get ossification report by medical Board. X-ray and other test were conducted and ossification report was not issued by Chief Medical Officer, Azamgarh, on 31.03.2022. According to aforesaid report that age of revisionist was found to be between 16-18 years.

12. Learned counsel for the opposite party no.2 has submitted that there is no illegality in the judgment and order passed by the Appellate Court dated 16.12.2022 since the said judgment relying upon the report dated 10.02.2022, whereby the medical examination for age determination of revisionist was conducted by 3 Members Board headed by Chief Medical Officer, Azamgarh, and the Medical report with regard to the age determination of revisionist dated 31.03.2022 has been declined on the ground that it was conducted subsequent to the report of 3 Members Medical Board dated 10.02.2022. The report dated 31.03.2022 has been prepared by only one doctor i.e., C.M.O., Azamgarh. The revisionist has not challenged the finding recorded by the Juvenile Justice, Board, Azamgarh, against the educational certificate having cutting and over writing in the high school as such it is not open to the revisionist to get the benefit of the educational certificate in the present revision. There is no illegality in the

judgment and order passed by Special Judge (POCSO Act), Azamgarh, in Criminal Appeal No. 36 of 2022 (Virendra Kumar Saroj Vs. Dhananjay Pathak and another) since the judgment and order dated 16.12.2022 is based upon the report of the 3 members committed head by Chief Medical Officer, Mau, dated 10.02.2022 in the light and guidance of the judgments rendered by the Hon'ble Apex Court. On the basis of the facts and circumstances mentioned above, the aforementioned criminal revision is devoid of merits as such is liable to be dismissed with costs with the direction to the trial court to decide the trial within a short stipulated time as the proceedings against the revisionist was stayed since more than 2 years.

13. After hearing the rival contentions, this Court finds that once the school certificate and matriculation certificate were found to be contrary regarding the date of birth of the revisionist and also the entry in Kutumb register was found to be based on the no reliable document, there was no justification for the Juvenile Justice Board to order for ossification test report of the revisionist.

14. A perusal of the section 94 (2) of the Juvenile Justice Board would be relevant which is quoted hereinbelow:-

"94. Presumption and determination of age- (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 may be and proceed with the inquiry under section 14 or 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."

15. It is clear from the aforesaid provision that date of birth of certificate from the school or the matriculation or equivalent certificate are the first requirement for consideration of the question of juvenility of an accused. The second consideration is the birth certificate provided by corporation or municipal authority or a panchayat. In this case, the documents as per sub-clause (i) and (ii) were produced on behalf of the revisionist and were found to be unreliable, but the Board on the basis of second ossification test report, wherein age of revisionist was found between 16 to 18 years for declared him to be juvenile when as per the law the ossification test in this case was not required to be conducted.

16. Keeping in view sub-clause (iii) of section 94 (2) into account, it is clear that the order of the Juvenile Justice Board was illegal and has rightly been set aside by the Special Judge.

17. There is no infirmity in the order passed by the Revisional Court, which is hereby affirmed.

18. The revision is **dismissed**.

Order Date :-25.07.2025

Abhishek