

Case :- CRIMINAL REVISION No. - 2182 of 2022

Revisionist :- Chhaibaj @ Sehwaq

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

Counsel for Revisionist :- Araf Khan, Lihazur Rahman Khan

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

Heard Sri Araf Khan, learned counsel for the revisionist; learned A.G.A. for the State and perused the material on record.

The present criminal revision has been filed for setting aside the orders dated 31.3.2022 and 20.10.2021 passed by Additional District and Sessions Judge, POCSO Act, Court no.1 Aligarh, respectively, in **Case Crime No. 238 of 2021, under Sections 147, 148, 149, 302 I.P.C, Police Station Kwarsi, District Aligarh.**

Learned counsel for the revisionist submits that courts below have committed patent illegal error in determination of the age of the revisionist. He has further submitted that the age of the revisionist was determined in ossification test report as about 19 years at the time of occurrence and given margin of two years on lower side, the age of the revisionist could have been considered as about 17 years. He has relied upon the judgments of Apex Court in the case of ***Darga Ram @ Gunga vs State Of Rajasthan, 2015(2) SCC 775 and Vinod Katara Vs. State of U.P., 2022 LiveLaw (SC) 757.***

Learned AGA appearing on behalf of State, respondent no.1, has submitted that courts below have passed the correct orders and they do not require any interference.

After hearing rival contentions this Court finds that before further proceeding a look at Section 94 (2) of the Juvenile Justice (Care and Protection of Children) Rules, 2015, is required:-

(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.

The facts of the present case are that initially a transfer certificate of revisionist from school was produced before the board, which was got verified and it was found from the report of District Probation Officer that no school of the name of Siyaram Singh Purva Madhyamik Vidhyalay Nagla Bihari, Hathras, was found, wherefrom the transfer certificate was obtained and filed before the Board.

Thereafter mother of the revisionist gave her statement before the board that she is aged about 50 years and has six children. Revisionist is aged about 15 years and is her 5th child. He was born on 1st January, 2006 and passed Class VIIIth examination from the school aforesaid.

Finally an application was given for conducting ossification test of the revisionist before the board, which was got conducted and the age of the revisionist was found to be 19 years by the Medical Board.

Learned counsel for the revisionist has submitted that revisionist is entitled to benefit of margin of two years on lower side, which settles his age as 17 years.

This Court finds that in the present case, there was no reliable educational document produced before the court as per Section 94(2) (i) from the school. The transfer certificate produced was found to be forged and therefore it would be deemed that there was no certificate issued by school in favour of the revisionist. No birth certificate given by corporation or Municipal Corporation or Panchayat as per Sub Clause (ii) was filed before Board and therefore ossification test was rightly conducted as per sub clause (iii), wherein age of revisionist was found to be 19 years. The Hon'ble Apex Court in the case of **Darga Ram @ Gunga vs State Of Rajasthan, 2015(2) SCC 775** has held in paragraph no.17 that general rule about age determination is that the age as determined can vary plus minus two years. Therefore if the view in favour of the accused is taken, the age of the revisionist can be considered to be around 17 years of age. In the judgement of **Vinod Katara Vs. State of U.P., 2022 LiveLaw (SC) 757** also, the Apex Court has held accordingly in paragraph no. 45 thereof. The apex in the case of Vinod Katara (supra) has also considered the expression "absence" used in Rule 12(3)(b) of Rules, 2007, which is akin to Section 94 (2) of the Juvenile Justice (Care and Protection of Children) Rules, 2015. Part of paragraph no.38 would be relevant in this case.

"38. Justice T.S. Thakur (as His Lordship then was), by his separate but concurring judgment, observed as under:

"43.2. The second factor which must ever remain present in the mind of the Court is that the claim of juvenility may at times be made even in cases where the accused does not have any evidence showing his date of birth by reference to any public document like the Register of Births and Deaths maintained by the municipal authorities, panchayats or hospitals nor any certificate from any school, as the accused was never admitted to any school. Even if admitted to a school no record regarding such admission may at times be available for production in the court. Again, there may be cases in which the accused may not be in a position to provide a birth certificate from the corporation, the municipality or the panchayat, for we know that the registration of births and deaths may not be maintained and if maintained may not be regular and accurate, and at times truthful.

44. Rule 12(3) of the Rules makes only three certificates relevant. These are enumerated in subrules 3(a)(i) to (iii) of the Rule which reads as under:

"(3)(a)(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;

Nonproduction of the above certificates or any one of them is not, however, fatal to the claim of juvenility, for subrule (3)(b) to Rule 12 makes a provision for determination of the question on the basis of the medical examination of the accused in the "absence" of the certificates.

45. Rule 12(3)(b) runs as under:

"12.(3)(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," The expression "absence" appearing in the above provision is not defined under the Act or the Rules. The word shall, therefore, be given its literal dictionary meaning which is provided by Concise Oxford Dictionary as under:

"Absence.—Being away from a place or person; time of being away; nonexistence or lack of; inattention due to thought of other things." Black's Law Dictionary also explains the meaning of "absence" as

under:

"Absence.—(1) The state of being away from one's usual place of residence. (2) A failure to appear, or to be available and reachable, when expected. (3) Louisiana law. The state of being an absent person.— Also termed (in sense 3) absentia."

46. It is axiomatic that the use of the expression and the context in which the same has been used strongly suggests that "absence" of the documents mentioned in Rule 12(3)(a)(i) to (iii) may be either because the same do not exist or the same cannot be produced by the person relying upon them. Mere nonproduction may not, therefore, disentitle the accused of the benefit of the Act nor can it tantamount to deliberate nonproduction, giving rise to an adverse inference unless the court is in the peculiar facts and circumstances of a case of the opinion that the nonproduction is deliberate or intended to either mislead the court or suppress the truth. It is in this class of cases that the court may have to exercise its powers and discretion with a certain amount of insight into the realities of life.

47. One of such realities is that illiteracy and crime have a close nexus though one may not be directly proportional to the other. Juvenile delinquency in this country as elsewhere in the world, springs from poverty and unemployment, more than it does out of other causes. A large number of those engaged in criminal activities, may never have had the opportunity to go to school. Studies conducted by the National Crime Records Bureau (NCRB), Ministry of Home Affairs, reveal that poor education and poor economic set up are generally the main attributes of juvenile delinquents. Result of the 2011 study further show that out of 33,887 juveniles arrested in 2011, 55.8% were either illiterate (6122) or educated only till the primary level (12,803). Further, 56.7% of the total juveniles arrested fell into the lowest income category. A similar study is conducted and published by B.N. Mishra in his book Juvenile Delinquency and Justice System, in which the author states as follows:

"One of the prominent features of a delinquent is poor educational attainment. More than 63 per cent of delinquents are illiterate. Poverty is the main cause of their illiteracy. Due to poor economic condition they were compelled to enter into the labour market to supplement their family income. It is also felt that poor educational attainment is not due to the lack of intelligence but may be due to lack of opportunity. Although free education is provided to Scheduled Castes and Scheduled Tribes, even then, the delinquents had a very low level of expectations and aspirations regarding their future which in turn is due to lack of encouragement and unawareness of their parents that they play truant." (emphasis supplied) What should then be the approach in such cases, is the question. Can the advantage of a beneficial legislation be denied to such unfortunate and wayward delinquents? Can the misfortune of the accused never going to a school be followed or compounded by denial of the benefit that the legislation provides in such emphatic terms, as to permit an enquiry even after the last Court has disposed of the appeal and upheld his

conviction? The answer has to be in the negative.

48. If one were to adopt a wooden approach, one could say nothing short of a certificate, whether from the school or a municipal authority would satisfy the court's conscience, before directing an enquiry. But, then directing an enquiry is not the same thing as declaring the accused to be a juvenile. The standard of proof required is different for both. In the former, the court simply records a prima facie conclusion. In the latter, the court makes a declaration on evidence, that it scrutinises and accepts only if it is worthy of such acceptance. The approach at the stage of directing the enquiry has of necessity to be more liberal, lest, there is avoidable miscarriage of justice. Suffice it to say that while affidavits may not be generally accepted as a good enough basis for directing an enquiry, that they are not so accepted is not a rule of law but a rule of prudence. The Court would, therefore, in each case weigh the relevant factors, insist upon filing of better affidavits if the need so arises, and even direct, any additional information considered relevant including the information regarding the age of the parents, the age of siblings and the like, to be furnished before it decides on a case to case basis whether or not an enquiry under [Section 7A](#) ought to be conducted. It will eventually depend on how the court evaluates such material for a prima facie conclusion that the court may or may not direct an enquiry."

In view of the above judgements of Apex Court, it is clear that there was no reliable evidence of age of the revisionist produced before the Board. Therefore, ossification test report of the revisionist was rightly got conducted in the absence of document as per Section 94(2)(i) & (ii), as sub clause (iii), wherein his age was determined as 19 years by the Medical Board. Given margin of two years on lower side revisionist is aged about 17 years and ought to have tried as juvenile.

Accordingly, impugned orders are hereby set aside. The revisionist is directed to be tried as juvenile only after preliminary assessment by Board as per Section 15 of J.J. Act.

The above noted criminal revision is **allowed**.

Registrar (compliance) is directed to communicate the order to the Juvenile Justice board concerned within a week.

Order Date :- 16.7.2025

Ruchi Agrahari