

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.754 of 2013

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Prem Kumar Baitha Son of Late Pyarchand Baitha, Resident of Village -
Rahampur, Police Station - Garkha, District - Saran

.... Petitioner/s

Versus

1. The State Of Bihar

2. Babban Baitha Son Of Late Kapoor Chand Baitha Resident of Village –
Rahampur, Police Station - Garkha, District - Saran

.... Opp. Party/s

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Appearance :

For the Petitioner/s : Mr. Krishna Chandra

For the Opp. Party No.1 : Mr. Umanath Mishra, APP

For the Opp. Party No.2 : Mr. Rajshekhar

Mr. Anuj Kumar Shrivastva

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

6 28-01-2015

Heard the parties.

This is, in fact, second round of litigation in the same subject matter with respect to juvenility of the petitioner in connection with a criminal prosecution giving rise to Garkha P.S. Case No. 79 of 2010 dated 9.4.2010 registered for the offences under Sections 307, 302 and some other allied offences under the Indian Penal Code.

In earlier round of litigation in Cr. Rev. No. 1118 of 2011, this Court had examined the entire matter at great length and after considering the scheme, scope and mandate of the Juvenile Justice (Care and Protection of Children) Act, 2000 (In short “the Act”) and the Rules made thereunder, the matter was remitted back to the learned Juvenile Justice Board, Saran at Chapra by order dated 27.07.2012 (Annexure-3) passed in the aforesaid Cr. Rev. No. 1118 of 2011 with a direction to pass a fresh order in accordance with law. Paragraph-7, 8 and 9 of the aforesaid order would be relevant and are reproduced herein below:

“7. From the reading of Rule 12 (2) of the Rules,



it is apparent that for the purpose of remanding an accused either to an Observation Home or to a jail, the court or the Juvenile Justice Board, as the case may be, prima facie will come to a conclusion about the juvenility or otherwise of an accused either on the basis of physical appearances of accused or by looking into the documents, if available at that time. However, for determining the age of an accused for deciding the claim of his juvenility, the procedures prescribed under Rule 12(3) of the Rules are required to be necessarily followed. At the first instance, a court or the Juvenile Justice Board or a Child Welfare Committee is obliged to examine the matriculation or equivalent certificate and if that is available, then determination of age is required to be made as per the entry made in that certificate, but in absence of matriculation or equivalent certificate, the age can be determined by looking into the date of birth certificate issued by the school (excluding the play school), which was first attended by the accused; and in absence thereof, the birth certificate issued either by a Corporation or a Municipal authority or a Gram Panchayat is required to be looked into. If any of the above three types of documents are not available, only in that case the medical opinion is required to be obtained by getting a Medical Board constituted. The procedure prescribed under Rule 12 of the Rules is required to be strictly followed for the purpose of determination of age of an accused claiming to be child or juvenile or juvenile in conflict with law. Rule 12 (5) of the Rules, save and except in the case of Section 7A or Section 64 of the Act and these Rules, prohibits any further inquiry either by the court or the Board for deciding the age of a child or juvenile. The certificates or any documentary proof referred to in Rule 12(3) of the Rules are required to be taken as conclusive proof of age. Any other documents, except the documents referred to in rule 12(3) of the Rules cannot be taken into consideration for determination of age either of juvenile or child or juvenile in conflict

with law.

8. Coming to the present case, this Court finds that none of the documents, which could have been used for the purpose of determining the age of opposite party nos. 2 and 3 was available before the learned Juvenile Justice Board. This Court also finds that the Juvenile Justice Board, Saran at Chapra did not issue any direction for constitution of a Medical Board and had not obtained any medical opinion before passing the impugned final order declaring opposite party nos.2 and 3 as juvenile under the meaning of Section 2 (k) of the Act. The learned lower Appellate court has failed to consider the mandate of law and has mechanically affirmed the order passed by the learned Juvenile Justice Board. Therefore, the orders impugned suffer from patent illegalities and procedural irregularities, as the learned courts below have not followed the mandate of the law.

9. For the reasons recorded above, the impugned original order dated 12.7.2010 and the impugned appellate order dated 11th May, 2011 are hereby set aside and the matter is remitted to the learned Juvenile Justice Board, Saran at Chapra for passing a fresh order in accordance with law, particular by following the procedure prescribed under Rule 12 of the Rules. The entire exercise must be completed by the learned Juvenile Justice Board within a period of one month from the date of receipt/production of a copy of this order.”

In view of the aforesaid remand order, the matter was re-considered by the learned Juvenile Justice Board. By the impugned order dated 10.01.2013 (Annexure-4) passed in Juvenile Enquiry No. 326 of 2013, the learned Juvenile Justice Board, by a reasoned order, has directed for constitution of a Medical Board for assessing the age of the present petitioner. Apparently the age of the petitioner has not been finally determined till date and the learned Juvenile Justice Board is yet to come to its conclusion

regarding juvenility of the petitioner. The petitioner, being aggrieved by the aforesaid order dated 10.01.2013 (Annexure-4) preferred Criminal (Juvenile) Appeal No.7 of 2013, which has been dismissed by the impugned appellate order dated 10.06.2013 (Annexure-5) by the learned Sessions Judge, Saran at Chapra.

The impugned order passed by the learned Juvenile Justice Board is completely in consonance with the orders and directions issued by this Court earlier vide order dated 27.07.2012 passed in Cr. Rev. No. 1118 of 2011 (Annexure-3) in which the petitioner was a party. The aforesaid order dated 27.7.2012 passed by this Court has attained its finality as none of the parties decided to challenge that order before the Hon'ble Apex Court. The aforesaid order dated 27.07.2012 is binding to the petitioner also, which has rightly been affirmed by the learned Sessions Judge, Saran at Chapra. Therefore, this Court is not inclined to interfere with the impugned orders passed by the Courts' below. The present application seems to be completely misconceived and unwarranted.

In the result, this application has to fail and is, accordingly, dismissed.

(Birendra Prasad Verma, J)

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