

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.174 of 2016

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1. Anjani Devi, W/o Sahadeo Paswan, Resident of Ghorghat, P.S.-
Bariyarpur, District- Munger.

2. null null null

.... Petitioner/s

Versus

1. The State of Bihar
2. Pochan Yadav @ Nilesh Yadav, Son of Surendra Yadav, Resident of
Ghorghat, P.S.- Bariyarpur, District- Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Digvijay Narayan Singh
With Mr. Raj Kamal

For the Respondent/s : Mr. Sadanand Paswan (Spl.Pp)

For Opposite party No.2 : Mr. Ajit Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

- 4 22-11-2016 1. This criminal revision application filed under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 has been preferred by the informant of Bariyarpur P.S. Case No. 94 of 2014, registered for the offences punishable under Sections 147,148,149,457,302 of the Indian Penal Code, Section 27 of the Arms Act and Section 3(i) (viii) (x) (xi) (xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
2. She is aggrieved by an order, dated 08.12.2015 passed in Criminal Appeal No. 33 of 2015 by learned Additional Sessions Judge Ist, Munger, whereby he has set aside the order of the Juvenile Justice Board, Munger,

dated 09.10.2015 and has declared the Opposite party No.2 to be a juvenile. The Juvenile Justice Board had, by the said order, dated 09.10.2015, upon considering the claim of the Opposite party No.2, rejected the claim of Opposite party No.2 of juvenility.

3. I have heard learned counsel for the petitioner, learned counsel representing the Opposite party No.2 and learned Additional Public Prosecutor appearing on behalf of the State of Bihar.

4. This is not in dispute that Rule 11 of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012 (Hereinafter referred to as the **Bihar J.J. Act**) prescribes the procedure for age determination enquiry. Rule 11 (3) of the Said Rules is relevant and is being extracted hereinbelow:-

"11(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 the Committee, as the case may be, by seeking evidence by obtaining:

(a) (i) the matriculation or equivalent certificate, if available; and/or,

(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 municipal Corporation or a municipal authority or a Panchayat; and

(b) only in absence of either (i)

and/or(ii) of clause (a) above, or in case the Court or the Board or the Committee finds it necessary, 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 recorded by them, may, if to be considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of 6 months 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) (iii) or in the absence whereof, clause (b) shall be proof of the age as regards such child or the juvenile in conflict with law.”

5. It is evident from Rule 11 that in a case, the age determination inquiry is to be conducted by the Court or the Board or the Committee by seeking evidence by obtaining (i) matriculation certificate or equivalent certificate if available (ii) if matriculation certificate is not available, date of birth certificate from the School first attended and (iii) in the absence whereof, birth certificate given by the Municipal Corporation or Municipal authority or a Panchayat.

I find from the order passed by the Juvenile Justice Board that neither of these three certificates were

produced before the Board or made available in support of claim of juvenility.

6. Rule 11 (3)(b) lays down that in the absence of certificates as mentioned in Rule 11(3)(a) (i), (ii) and (iii), if the Board or Committee finds it necessary, medical opinion will be sought for from a duly constituted Medical Board, which will declare the age of the juvenile child.

Accordingly, in the absence of either of the certificates as noted above, the Juvenile Justice Board decided to refer the claim of the juvenility before the Medical Board. It appears from the order passed by the Juvenile Justice Board that in course of inquiry, an admission register was produced by Headmaster of Middle School to show that the Opposite party No.2 was admitted in Class III on 01.09.2003 and his date of birth was recorded in the admission register as 05.06.1997. On the basis of the said entry, it was claimed on behalf of the Opposite party No.2 before the Board that he should be declared a juvenile in conflict with law.

7. This is to be noted that the School Admission Register is not one of the documents referred to in Rule 11(3) (a) of the Rules, which could have been the basis for determining the age of Opposite party No.2.



In such circumstance, the Juvenile Justice Board had rightly adopted correct procedure of constituting a medical Board for determination of age of Opposite party No.2. It further transpires that the age of Opposite party No.2 was ascertained twice by two Medical Boards and by both the Boards; he was found to be a major as on the date of occurrence. In the meeting of the Medical Board held on 15.09.2015 the age of Opposite party No.2 was determined to be between 25 to 27 years and in the medical Board on 13.03.2015, his age was assessed as more than 20 years. Apparently, he was much above the age of 18 years as on the date of the occurrence, the date of occurrence being 05.08.2014, in the opinion of the Medical Board.

8. On an appeal preferred by Opposite party No.2, the learned Additional Sessions Judge, Ist, Munger reversed the order of the Juvenile Justice Board, mainly on the ground that when the Admission Register was produced before the Board showing the date of birth of Opposite party No.2 as 05.06.1997, the Board was not required to go for determination of his age by a Medical Board. Based on the said entry in the Admission Register, the learned Additional Sessions Judge held the Opposite party No.2 to be a child in conflict with the law as on the

date of occurrence after setting aside the order of Juvenile Justice Board.

9. The said order passed by the learned Additional Sessions Judge, Munger is being assailed in the present revision application on the ground that learned Additional Sessions Judge has not appreciated the provisions as contained in Section 11 of the rules.

10. The challenge to the impugned order, dated 08.12.2015, passed by the learned First Additional Sessions Judge, Munger has merit. The age determination enquiry in every case in relation to a child or juvenile in conflict with law has to be carried out in the manner prescribed in Rule 11(3) of the Bihar J.J. Rules by relying on the following documents in the order of priority:-

(i) the matriculation or equivalent certificates, if available;

(ii) in case of non-availability of matriculation or equivalent certificate then a certificate from the school first attended, certifying the date of birth recorded by the School;

(iii) if the above two documents cannot be obtained, birth certificate given by the Municipal authority or a Panchayat;

(iv) if none of the documents as above are

available, only then the medical opinion is to be sought from a duly constituted Medical Board for determining the age of a juvenile.

11. Learned First Additional Sessions Judge, Munger passed the impugned order, dated 08.12.2015 on the basis of admission register produced by the Headmaster of the Middle School. Admission register is certainly not one of the documents incorporated in Rule 11(3) of the Rules. The Juvenile Justice Board had thus, adopted a correct procedure, by seeking medical opinion from a Medical Board for the purpose of assessment of the age of Opposite party No.2.

12. In this regard, it would be apt to refer to Supreme Court's decision in case of **Ashwani Kumar Saxena Vs. State of M.P.** reported in **(2012) 9 SCC 750**, wherein the Supreme Court explained how age determination enquiry has to be conducted. A plain reading of Rule 11 of Bihar J.J. Rules and the Supreme Court's decision in case of **Ashwani Kumar Saxena** (supra), (para 32) leaves no scope of doubt that in the age determination enquiry, the Rules enable the Court to seek evidence and in that process, the Court can obtain matriculation or equivalent certificate, if available. In the absence of any matriculation or equivalent certificates



only, the Court is required to obtain date of birth certificate from the school first attended. Further, only when the matriculation certificate or equivalent certificates or date of birth certificate from school first attended is not available, the Court can be required to obtain the birth certificate issued by the Corporation or Municipal authority or a Panchayat. Medical opinion will be required to be obtained from a duly constituted Medical Board only, if none of the above mentioned documents can be obtained.

13. It is noticeable that in case of ***Ranjit Goswami Vs. State of Jharkhand*** reported in **(2014) 1 SCC 588**, on the basis of School leaving certificate, a person was sought to be declared juvenile. Referring to the ratio laid down in ***Ashwani Kumar Saxena*** (supra), the Supreme Court in case of ***Ranjit Goswami Vs. State of Jharkhand*** (supra), held that there was no reason why School Leaving Certificate could be discarded. However, in a subsequent matter, in case of ***Nagendra Vs. State of U.P. (Criminal Appeal No. 13 of 2015)*** decided on 05.01.2015), the Supreme Court had the occasion to refer to and deal with the said Supreme Court's decision in case of ***Ranjit Goswami*** (supra). The Supreme Court observed that a School Leaving Certificate is not a relevant consideration to determine the juvenility of an

accused/convict under the Rules and the statutory provisions in that regard was not considered by the Supreme Court while deciding **Ranjit Goswami's case** (supra). The Supreme Court in case of **Nagendra Vs. State of U.P.** (supra), clearly held that earlier decision in **Ranjit Goswami's** case had no precedential value in terms of the statutory provisions.

14. The apparent logic behind not treating a School Leaving Certificate to be a relevant consideration for age determination enquiry is that it is not mentioned in the statutory rules. *A fortiori*, admission register cannot be a relevant consideration for determining the juvenility of an accused/convict under Rule 11 of the Bihar J.J. Rules.

15. In view of the discussions as above, the impugned order, dated 08.12.2015, passed in Criminal Appeal No. 33 of 2015 by learned First Additional Sessions Judge, Munger, requires interference having been passed in breach of Rule 11(3) of the Bihar J.J. Rules. The said order is, accordingly, set aside. Consequently, the order, dated 09.10.2015, passed by the Juvenile Justice Board, Munger, stands restored.

16. This revision application is allowed.

ArunKumar/-

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(Chakradhari Sharan Singh, J)