

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.724 of 2014

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1. Rajesh Singh Son of Late Mangal Singh Resident of village- Manikpur,
P.O. + P.S.- Gopalganj, District- Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar
2. Birendra Singh Son of Late Bhagavat Singh Resident of village-
Manikpur, P.S. and District- Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mohammad Sufyan

For the Respondent/s : Mr. Zainul Abedin (App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

6 23-12-2016 Heard learned Counsel for the parties.

2. Delay of 250 days in filing of the application is
condoned for the reasons stated in I. A. No. 1761 of 2014. I.A.
No. 1761 of 2014 is accordingly allowed.

3. Present criminal revision application has been
filed against the order, dated 27.08.2013, passed by Additional
Sessions Judge II, Gopalganj, in Criminal Appeal No. 34 of
2013, whereby he has dismissed an appeal filed by the petitioner
against the order dated 28.05.2013, passed by the learned
Juvenile Justice Board, Gopalganj, in J.E. Case No. 81 of 2010,
refusing to declare the petitioner a juvenile on the alleged date of
occurrence.



4. The date of occurrence of the concerned Gopalganj Police Station Case No. 343 of 1992 is 26.09.1992. The petitioner claimed his juvenility on the basis of a certificate issued by a School in which his date of birth has been entered as on 10.05.1978. The said certificate being not a certificate issued by the School first attended by the petitioner, the Juvenile Justice Board, Gopalganj, subjected the petitioner to undergo medical examination for the purpose of age assessment. The Medical Board has assessed the age of the petitioner to be 35-40 years as on 26.09.2012. On that basis, it is the claim of the petitioner that his age on the date of occurrence was nearly 15 years.

5. The Juvenile Justice Board, Gopalganj, has rejected the claim on the ground that neither the age as assessed by the Medical Board nor the date of birth as mentioned in the School Register is acceptable. So far as admissibility of School Register for the purpose of age determination enquiry within the meaning of Section 11 of the Bihar J.J. Act read with Section 11 of the Bihar J.J. Rules is concerned, the Juvenile Justice Board has rightly recorded that the same could not have been taken for the purpose of deciding the age of the petitioner. Admittedly, no certificate issued by the School first attended by the petitioner was produced before the Juvenile Justice Board. Dealing with



the Medical report, which assessed the age of the petitioner between 35 to 40 years as on 26.09.2012, there being huge gap of five years between the age on the lower side and upper side, the Juvenile Justice Board refused to proceed with the said assessment for determination of the petitioner's age. It, thereafter, proceeded to determine the age of the petitioner on the basis of age assessed by a Judicial Officer as on 26.09.1992 in a case registered under the Arms Act instituted prior to the present case in which the petitioner was an accused, which according to the Board appeared to be realistic and acceptable, wherein his age had been assessed as 27 years.

6. The Board, accordingly, assessed the age of the petitioner between 24 to 27 years as on the date of the occurrence and accordingly, he was declared as major. The order of the Juvenile Justice Board has been upheld by the learned Second Additional Sessions Judge, Gopalganj by the impugned order dated 27.08.2013, as has been noted above.

7. Rule 11 of the Bihar J.J. Rules lays down the procedure to be followed in determination of the age. The said Rules were applicable at the time of the determination of the age of the petitioner. Sub Rule (3) of Rule 11 of the Bihar J.J. Rules lays down the procedure for age determination enquiry which



reads thus:-

"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."

8. Admittedly, no document as mentioned in Clause (a) of Sub Rule (3) of Rule was produced before the



Juvenile Justice Board at the time of age determination enquiry. As has already been noted, the Board thereafter, proceeded to assess the age of the petitioner by seeking medical opinion as required under Clause (b) of Sub Rule (3) of Rule 11 as noted above, whereupon the age of the petitioner has been assessed as 35 to 40 years as on 26.09.2012. If the lower side of the age as assessed by the Medical Board is taken, as on 26.09.2012, the petitioner's age would be assessed as exactly 15 years on the date of occurrence i.e., 26.09.1992. If higher side is taken, the age of the petitioner can be assessed as 20 years.

9. Taking a mean, if the age of the petitioner is treated to be 32 and half years, the petitioner's age would be assessed as 17 and half years as on the date of the occurrence.

10. I must indicate that the procedure adopted by the Board by relying on age assessed by a Judicial Officer for determination of the petitioner's juvenility cannot be said to be in conformity with the requirements of Rule 11 of the Bihar J.J. Rules.

11. In the background as noted above, the question which has arisen is, where a gap of five years between lower side and upper side of the age as assessed by the Medical Board is reported, what method should be adopted for the purpose of



determination of juvenility of a person. Somewhat similar situation had arisen, which had come up for consideration by the Supreme Court in case of *Darga Ram @ Gunga Vs. State of Rajasthan* reported in (2015) 2 SCC 775. In the said case the Medical Board had evaluated the age of the appellant the range of 30 to 36 years. The Supreme Court observed in the said case that even if the age of the appellant was determined by extremity, i.e. 36 years, the same would have been subject to variation of plus minus two years meaning thereby that it could as well be 34 years on the date of examination. Taking this age as 34 years on the date of examination, appellant in that case would have been 18 years two months and seven days on the date of occurrence but such an estimate would be only an estimate and the appellant might be entitled to additional benefit of one year in terms of lowering his age by one year in terms of Rule 12(3) (b) of Juvenile Justice Rules, 2007.

12. For better appreciation of the reasoning given by the Supreme Court in case of *Darga Ram Vs. State of Rajasthan* (supra), it would be apt to extract paragraph 17 of the said decision which reads thus:-

"17. The general rule about age determination is that the age as determined can vary plus minus two years but the Board has in the case at hand spread over a period



of six years and taken a mean to fix the age of the appellant at 33 years. We are not sure whether that is the correct way of estimating the age of the appellant. What reassures us about the estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart, even if the age of the appellant was determined by the upper extremity limit i.e. 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination. Taking his age as 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the appellant may be entitled to additional benefit of one year in terms of lowering his age by one year in terms of Rule 12(3)(b) (supra) which would then bring him to be 17 years and 2 months old, therefore, a juvenile."

13. Rule 11(3) (b) of Bihar J.J. Rules, 2012 is *pari materia* with Rule 12(3) (b) of the J.J. Rules, 2007 framed by the Central Government under the J.J. Act, 2000, except, *inter alia*, that where as J.J. Rules, 2007 provide for giving benefit to child or juvenile by considering his/her age on lower side within margin of one year, the Bihar J.J. Rules, 2012 extends such benefit within margin of six months. Rule 11(3) (b) of the Bihar J.J. Rules, 2012 is being reproduced hereinbelow:-

"11(3) x x x x
 (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."

14. Taking a cue from the said decision of the Supreme court and applying the same reasoning in the facts and circumstances of the present case if higher side of the age as assessed by the Medical Board of the petitioner is accepted for assessment of his age, i.e., 40 years, the same being subject to variation of plus minus two years, it can be considered to be 38 years as on the date of the examination by the Medical Board, i.e. 26.09.2012. The date of occurrence being 26.09.1992, his age as on the date of occurrence can be treated as 20 years minus the age determined as on the date of examination by the Medical Board. In such circumstance, his age as on the date of occurrence will come to 18 years (38-20). Taking this age on the date of examination in terms of Rule 11(3) (b) of the Rules, benefit of six months in terms of lowering his age in



accordance with the Rule 11(3) (b), his age can be assessed to be seventeen and half years (17 ½) as on the date of occurrence.

15. Considering the Supreme Court's decision in case of ***Darga Ram Vs. State of Rajasthan*** (supra), I am of the view that rejection of claim of juvenility by the Board and the appellant Court below cannot be said to be valid.

16. Accordingly, the orders dated 27.08.2013 and 28.05.2013 are set aside. The matter is remanded back to the Juvenile Justice Board to determine the age of the petitioner afresh in terms of the observation aforementioned and the Supreme Court's decision in case of *Darga Ram Vs. State of Rajasthan* (supra). The necessary order must be passed by the Juvenile Justice Board within a period of one month from the date of communication of the present order.

17. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

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