

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.762 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- GOPALGANJ

=====

1. Prem Prakash Son of Chadrika Prasad Resident of Mohalla - Rajendra Nagar,
Ward No. 22, P.S. & District -Gopalganj,

.... Petitioner/s

Versus

1. The State of Bihar
2. Prem Manjhi, son of Grahan Manjhi, resident of mohalla Jangalia, Police
Station and District Gopalganj
3. The Bihar School Examination Board, through its Secretary, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner : Mr. Ranjeet Kumar Pandey, Advocate

For the State : Mr. Tapeswar Sharma, APP

For Respondent No. 2 : Mr. Harendra Prasad, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER
ORAL

Date: 20-12-2016

The petitioner is the informant of Gopalganj Police Station Case No. 121 of 2013 and he is aggrieved by an order, dated 06.05.2014, passed, by learned Additional Sessions Judge IV, Gopalganj, in Criminal Appeal No. 25 of 2014/37 of 2014, whereby he has dismissed the appeal preferred on behalf of the petitioner against an order, dated 31.03.2014, passed, by the Juvenile Justice Board, Gopalganj, in J. E. No. 50 of 2013, and has affirmed the order of the Juvenile Justice Board, holding respondent no. 2 to be a juvenile as on the date of the occurrence, i.e. 24.03.2013.



2. I have heard learned Counsel appearing on behalf of the petitioner and learned Counsel representing respondent nos. 2 and 3. Learned Additional Public Prosecutor appearing on behalf of the State of Bihar has also been heard.

3. Without going into the factual details, certain basic facts essential for adjudication of the present application only needs to be taken into account.

4. A claim of juvenility on behalf of respondent no. 2 was taken before the Juvenile Justice Board, Gopalganj, on the basis of the registration certificate and admit card for appearing at the matriculation examination. The date of birth of the respondent no. 2 is mentioned as 17.08.1997 in the said two documents. Considering the said entries, the Juvenile Justice Board, Gopalganj, declared the respondent no. 2 to be a juvenile. The said decision has been upheld by the learned Additional Sessions Judge IV, Gopalganj, by the impugned order, dated 06.05.2014.

5. When the impugned order, dated 06.05.2014, was passed, the Juvenile Justice (Care and Protection of Children) Act, 2000, and Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012, were in vogue. Rule 11 (3) of Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012, reads thus:

"11. Procedure to be followed in determination of Age:-



(1) xx xx xx

(2) xx xx xx

(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 the absence of either (i) and/or (ii) or (iii) 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 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), (ii), (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.

6. It is evident on reading of Rule 11 (3) that Registration certificate or admit card could not have been accepted as certificates/documents in support of the date of birth for the purpose of age determination enquiry.

7. Considering the above, the order, dated 06.05.2014, passed, by learned Additional Sessions Judge IV, Gopalganj, in Criminal Appeal No. 25 of 2014/37 of 2014, and order, dated 31.03.2014, passed, by the Juvenile Justice Board, Gopalganj, in J. E. No. 50 of 2013, are, therefore, not sustainable, which are accordingly set aside.

8. Learned Counsel for respondent no. 2 has submitted that the respondent no. 2 has been passed matriculation examination and a certificate to this effect has been issued by the Bihar School Examination Board, in which his date of birth has been entered as 17.08.1997 and on that ground, he submits, the respondent no. 2 is a juvenile within the mean of Juvenile Justice (Care and Protection of Children) Act.



9. The respondent no. 2 will be at liberty to apply afresh before the Juvenile Justice Board, Gopalganj, for his declaration as juvenile on the basis of the said matriculation certificate. If he does so, his application shall be considered in accordance with law.

10. This application stands allowed with the observation and direction, as above.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.12.2016
Transmission Date	23.12.2016

