

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.899 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

1. Sunil Prasad @ Ram Prakash Verma Son of Suresh Prasad FATHER (under the guardianship of the father) Resident of Village-Sarilachak (Surajpur ka Tola), P.O.-Nalanda, P.S.-Nalanda, District-Nalanda.

.... Petitioner

Versus

1. The State of Bihar
2. Maya Devie Wife of Late Mahendra Prasad Resident of Village-Sarila Chak, P.O.-Nalanda, P.S.-Nalanda, District-Nalanda.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Vikramdeo Singh, Advocate
Mr. Bipin Kumar, Advocate

For the State : Mr. Damodar Prasad Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date: 19-11-2016

The present petition, under Section 53 of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2015, has been filed by the petitioner, assailing the order, dated 18.07.2014, passed, by learned Ad hoc Additional Sessions Judge, Nalanda, at Biharsharif, in Sessions Trial No. 186 of 2005, whereby the Court below has dismissed the petition, filed, on 25.02.2014, by the petitioner to declare him a juvenile on the alleged date of occurrence.

2. It is the claim of the petitioner that he was 15

years of age on the alleged date of occurrence, i.e., on 06.05.2004.

3. The petitioner is facing trial on the charge of commission of offence under Section 302 read with Section 34 of the Indian Penal Code.

4. It is the case of the petitioner that the date of birth, as recorded in the certificate showing passing of matriculation examination by the Bihar School Examination Board, Patna, is 05.10.1989, which has been issued in the name of Ram Prakash Verma. It is the further case of the petitioner that Ram Prakash Verma is his alias name.

5. The learned Court below has rejected the application on various grounds including its filing at a belated stage of trial when the prosecution had already examined 11 witnesses. The learned Court below had observed that there was nothing on record including the case diary to show that Ram Prakash Verma is the alias name of the petitioner.

6. Learned Counsel appearing on behalf of the petitioner has submitted that once the claim of juvenility was raised, the learned Court below ought to have referred the matter to the Juvenile Justice Board for determination of age instead of recording a finding that Ram Prakash Verma was not the alias name of the petitioner. He has submitted that before the learned Court below, materials were produced to show that

Ram Prakash Verma is the alias name of the petitioner.

7. The Court is confronted with two situations. One, when the petitioner, for the first time, raised his plea of juvenility on the basis of certificate, showing to have passed matriculation examination, issued by Bihar School Examination Board, on 10.10.2006, having his date of birth as 05.10.1989. The offence was committed in the year 2004. It is for the first time that the petitioner raised a claim of juvenility on the basis of his alias name in the year 2014. The trial is at an advance stage. Several prosecution's witnesses have been examined. An attempt to thwart the trial process by making an application raising claim of juvenility cannot be ruled out.

8. At the same time, the law requires that once the claim of juvenility is raised, the same must be decided in accordance with the procedure laid down under the Juvenile Justice (Care and Protection of Children) Act, 2012, and the rules framed thereunder.

9. The Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012, have been framed in exercise of power under Section 68 of the Juvenile Justice Act, Rule 11 of which lays down the procedure for determination of age.

10. Rule 11 (3) (a) of the Rules is relevant for the present purpose and is being extracted hereinbelow:

"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) xx xx xx

(iii) xx xx xx "

11. Learned Counsel for the petitioner appears to be right in his submission that for determination of age of the petitioner, the procedure, as prescribed under Rule 11 of the Rules, has not been followed by the learned Court below, while passing the impugned order, dated 18.07.2014.

12. This application is accordingly allowed and the order, dated 18.07.2014, passed, by learned Ad hoc Additional Sessions Judge, Nalanda, at Biharsharif, in Sessions Trial No. 186 of 2005, is set aside. The matter is remanded back to the learned Ad hoc Additional Sessions Judge, Nalanda, at Biharsharif, to reconsider the petitioner's claim of juvenility and decide the same in accordance with the procedure prescribed under Rule 11 of the said Rules, as indicated above.

13. Because of delayed claim of juvenility of the petitioner, expeditious disposal of trial, which is pending since

more than a decade, is being adversely affected and trial is getting delayed, it is indicated that if the petitioner’s claim is found to be incorrect, he will have to pay a cost of Rs. 5,00,000/-, to be deposited in the account of the District Legal Services Authority, Biharsharif, Nalanda.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
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