

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.981 of 2015

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

1. Tausif Ahmad @ Sonu S/o Mukhtar Uzzaman Under Natural Guardianship of his father Mukhtar Uzzaman Son of Late Md Israil. resident of Moh- Alam Ganj Peerwaise, P.S.- Alam Ganj, District- Patna- 800007.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Shakil S/o Md. Noor resident of Moh- Math Laxmanpur Koiri Tola, P.S.- Alam Ganj, District- Patna 800007.

.... Respondent/s

Appearance :

For the Petitioner/s : Md. Rafi Ahmad
With Mr. Lal Bahadur Singh
For the Respondent/s : Mr. Binod Kumar-I, APP
For O.P. No.1 : Mr. Akhileshwar Pd. Singh, Sr Advocate
M/s Guilam Begum

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 23-11-2016

1. Despite clear and unambiguous guidelines laid down in the Rules framed under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the '**Act**'), relating to holding of inquiries and determination of the age of a person, who claims to be a juvenile, this is unfortunate that the dispute with respect to claim of juvenility of the petitioner is still continuing since 2009, though he was declared to be a juvenile by the Juvenile Justice Board on 15.04.2009 on the basis of entry of date of birth in the certificate issued by Bihar School Examination Board of having passed matriculation

examination. Indisputably, in the said matriculation certificate, the petitioner's date of birth is mentioned as 17.02.1992 and accordingly, as on the date of occurrence, i.e., 30.04.2008, his age was determined as 16 years two months and 13 days, by the Juvenile Justice Board.

2. The Informant of the concerned Alamganj P. S. Case No. 113 of 2008 (Opposite party No.2 herein) questioned the legality of determination of juvenility done by the Juvenile Justice Board by filing a criminal revision application in the Court of learned Sessions Judge, Patna. Genuineness of matriculation certificate and the entry of date of birth therein were not disputed. The informant, who is said to be the full brother of the petitioner's mother claimed in criminal revision proceeding that the petitioner's mother had given birth to twins in the year 1988 and subsequently she had given birth to the petitioner on 17.04.1990 and thus, he being above 18 years as on the date of the occurrence, i.e., 30.04.2008, he could not have been declared juvenile. In support of his contention the informant/Opposite party No.2 filed three birth certificates issued by the Doctor of the Tripolia Social Services Hospital, Patna. Learned Sessions Judge, Patna allowed the Criminal Revision No. 661 of 2009 by an order, dated 13.10.2009 merely on the ground that opinion of the Medical Board ought to have been sought for determination of petitioner's age since controversy



had been raised by the informant by producing birth certificate of the petitioner issued by the Hospital. After having set aside the order of the Juvenile Justice Board, dated 15.04.2009, whereby the petitioner was declared as juvenile, learned Sessions Judge, Patna remanded the matter back to the Juvenile Justice Board with a direction to make a fresh enquiry in respect of the age of the petitioner after taking into account the birth certificates filed on behalf of the informant/Opposite party No.2 and "after obtaining report from a Medical Board in respect of the age of the appellant."

3. Curiously, the learned Sessions Judge, Patna recorded in his order that undoubtedly, the matriculation certificate shall prevail over the opinion of the Medical Board. After having recorded so, what made, learned Sessions Judge, Patna remand the matter back to the Juvenile Justice Board again in the absence of any dispute over the genuineness of the matriculation certificate and the entry therein is not visible.

4. In the light of the said order passed by learned Sessions Judge, Patna, dated 13.10.2009, the Juvenile Justice Board ordered to constitute a Medical Board for assessment of the age of the petitioner under the Chairmanship of the Civil Surgeon, Patna. The Medical Board assessed the age of the petitioner between 16 to 18 years as on 11.12.2009. Resultantly, the date of occurrence being 30.04.2008, the age of

the petitioner was assessed as 16 years four months and 19 days as on the alleged date of occurrence, considering the maximum age of the petitioner as suggested by the Medical Board. The Juvenile Justice Board, relying on the rules governing inquiry and determination of juvenility by giving due weightage to the entry in the matriculation certificate held the petitioner to be below 18 years of age as on the date of occurrence.

5. The Informant again questioned the decision of the Juvenile Justice Board by filing an appeal before the learned Sessions Judge, Patna, now questioning the genuineness of the matriculation certificate of the petitioner, giving rise to Criminal Appeal No. 107 of 2010, which was transferred to the Court of learned Additional Sessions Judge III, Patna. Learned Additional Sessions Judge, Patna allowed the criminal appeal and again remanded the matter back to the Juvenile Justice Board to make an inquiry as to whether matriculation certificate of the petitioner was genuine or not.

6. In compliance of the said order passed in Criminal Appeal No. 107 of 2010, the Juvenile Justice Board again held the petitioner to be a juvenile.

7. The informant, thereafter, filed an application on 24.03.2012 seeking review of the decision of the Juvenile Justice Board. The Juvenile Justice Board after hearing both the sides rejected the review application on 17.07.2012, mentioning

therein that the Board was under obligation to follow the mandate of Section 49 of the Act and Rule 12 of the Juvenile Justice (Care of Children & Protection) Rule, 2007.

8. The Informant/Opposite party No.2 preferred a criminal revision application before this Court, giving rise to Criminal Revision No. 136 of 2013, which was disposed of with a liberty to him to file a criminal appeal before the learned Sessions Judge, Patna against order dated 17.07.2012 passed by the Juvenile Justice Board, under Section 52 of the Act.

9. The informant accordingly, filed a criminal appeal before the learned Sessions Judge, Patna, which gave rise to Criminal Appeal No. 2302 of 2014, which came to be finally decided by the impugned judgment and order, dated 27.09.2015, whereby the matter has been remanded back again to the Juvenile Justice Board to pass an order afresh after due verification of the documents.

10. The said order, dated 27.09.2015 passed by the learned Additional Sessions Judge VIIth, Patna City is under challenge in the present criminal revision application filed under Section 53 of the Act.

11. I have heard learned counsel for the petitioner and the learned Senior Counsel appearing on behalf of Opposite party No.2 and learned Additional Public Prosecutor appearing on behalf of the State of Bihar, as well.

12. Despite the fact that the Opposite party No.2 has entered appearance, no reply affidavit has been filed to the effect that the matriculation certificate as produced by the petitioner before the Juvenile Justice Board was *forged* and *fabricated* or otherwise not genuine.

13. Learned Senior Counsel appearing on behalf of the Informant/Opposite party No.2 has submitted that on the basis of materials on record, there would be gap of only three months in the age of the petitioner's sister and the petitioner if the date of birth as suggested in the matriculation certificate of the petitioner is taken into account and, therefore, the petitioner could not have been declared to be a juvenile based on impossible situation relying on matriculation certificate.

14. Learned Counsel appearing on behalf of the petitioner, on the other hand, has submitted that way back in 2009, the Juvenile Justice Board, strictly following the statutory Rules has/had declared the petitioner to be juvenile and by repeatedly raising the issue against the juvenility, the informant is putting the petitioner to undue harassment.

15. How the age determination enquiry has to be conducted under Section 7-A of the Bihar J.J. Act read with the extant Rules (in the present case Rule 11 of Bihar J.J. Rules) has been clearly laid down by Supreme Court in case of **Ashwani Kumar Saxena Vs. State of Madhya Pradesh** reported in

(2012)9 SCC 750. The Supreme Court dealt elaborately the provisions of Section 7-A of the Act and Rule 12 of the J.J. Rules, 2007 framed by the Government of India, which is *pari materia* with the Rule 11 of the Bihar J.J. Rules and held in paragraph 32 as follows:-

"32. "Age determination inquiry" contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the Court to seek evidence and in that process, the Court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the Court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a Panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the Court, reasons to be recorded, may, if considered necessary, given the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year."

(emphasis supplied)



16. The Supreme Court has further held in paragraph 33 that once the Court has passed an order on the question of juvenility of a person, following the procedure prescribed for age determination enquiry, the order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It is evident from the Supreme Court's decision in case of **Ashwanii Kumar Saxena** (supra), as noted above, that the Court/J.J. Board can go for age determination enquiry by seeking medical opinion through a duly constituted Medical Board only when matriculation or equivalent certificate or date of birth certificate from school first attended or birth certificate given by the Corporation or Municipal Authority or a Panchayat are unavailable. The Court made it clear that in case exact assessment of age could not be done, then the Court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

17. In my view, once a person has been able to establish his date of birth on the basis of his matriculation certificate without there being any issue of genuineness of the said certificate, there would be no occasion for the Courts to go for further evidence in an age determination enquiry. Any such exercise would be totally unwarranted and would be against the statutory provisions.



18. The plea raised by the learned Senior Counsel appearing on behalf of Opposite party No.2 that on the basis of difference of age as given in the matriculation certificate of the petitioner and admitted age of his sister, learned Court below rightly disbelieved the said entry of date of birth in the matriculation certificate and rightly rejected the petitioner's claim of juvenility is wholly misconceived and unacceptable.

19. Under the scheme of Rule 11(3) of the Bihar J.J. Rules, the age of a child is ascertained by adopting the *first available basis*, out of number of options postulated therein. Thus, as held in case of **Jarnail Singh Vs. State of Haryana** reported in **(2013) 7 SCC 263**, if in the scheme of the options under Rule 11(3), an option is expressed in a preceding clause, it shall have overriding effect over an option expressed in a subsequent clause. Apparently, thus, matriculation or equivalent certificate being the first option; it has to be treated as *highest rated option*. Once *highest rated option* is available, no other evidence can be relied upon.

20. Though dealing with the case of a prosecutrix in case of **Jarnail Singh** (supra), the Supreme Court held that the Rules relating to age determination enquiry shall equally apply for determination of the age of a victim and that in case an entry of date of birth is available in matriculation certificate, the same shall be final and conclusive and no other material is to be relied

upon.

21. The Supreme Court reiterated that it is only in the absence of any of the certificates as mentioned in first three options, age of the concerned child can be determined on the basis of medical opinion. In the light of the above, it can be unhesitantly held that age determination enquiry under Section 7-A of the Bihar J.J. Act has to be done strictly in accordance with the Rules prescribed under Rule 11(3) of the Bihar J.J. Rules, which lays down definite procedure for age determination enquiry. Under the said provision, the age of a child is to be ascertained by adopting the "*first available basis*" out of a number of options envisaged in Rule 11(3) of the Bihar J.J. Rules, meaning thereby that in the Scheme of options under Rule 11(3), if an option is expressed in a preceding clause, it shall have overriding effect over an option expressed in subsequent clause. Since the first option is essentially the highest rated option, it would conclusively determine the age of a minor. It is manifest thus, that under the scheme of the Rule 11 (3) of the Bihar J.J. Rules, matriculation or equivalent certificate of the concerned person, is the highest rated option and if such certificate is available, no other evidence can be relied on.

22. From the facts as noted above, it is abundantly clear that the petitioner was declared juvenile on 15.04.2009

based on his matriculation certificate issued by the Bihar School Examination Board, wherein his date of birth has been entered as 17.02.1992, the date of occurrence being 30.04.2008.

23. In view of what has been held above, the order, dated 27.09.2015, passed by the learned Sessions Judge, Patna in Criminal Appeal No. 2302 of 2014 cannot be sustained. The said order is, accordingly, set aside.

24. There being no dispute over genuineness of the matriculation certificate of the petitioner, he is declared to be a child in conflict with law within the meaning of Section 2(k) of the Bihar J.J. Act.

25. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

ArunKumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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