

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.850 of 2015

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

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1. Munna Kumar Son of Ram Pravesh Ram Resident of Mohalla-Jhun Jhun Mahal,
P.S.-Gardanibagh, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Rajesh Kumar, Advocate

For the State : Mr. Aditya Narayan Singh I, APP

For B.S.E.B. : Mr. Gyan Shankar, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date: 21-11-2016

Heard learned Counsel for the petitioner, learned Additional Public Prosecutor appearing on behalf of the State learned Counsel appearing on behalf of the Bihar School Examination Board.

2. The petitioner, who is an accused in the concerned Gardanibagh Police Station Case No. 69 of 1999, disclosing commission of offence punishable under Section 302/34 of the Indian Penal Code, claimed himself to be a juvenile, as on the date of occurrence on 01.02.1999.

3. In support of his claim of juvenility, he relied on his matriculation certificate, showing his date of birth as

15.03.1983. Accordingly, it was claimed that he was below 16 years of age as on the date of occurrence, i.e., on 01.02.1999.

4. It appears that vide order, dated 05.08.2015, the learned 1st Additional Sessions Judge, Patna, has directed for determination of petitioner's age by a Medical Board for determining his claim of juvenility. The date of birth, as recorded in the matriculation certificate, has not been accepted on the ground that the witnesses could not disclose as to what was the basis for declaration of date of birth of the petitioner before the School Authorities either at the High School level or at the Primary School level, leading to entry in the matriculation certificate.

5. The said order, dated 05.08.2015, is being assailed in the present criminal revision application filed under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

6. Learned Counsel for the petitioner has relied on Rule 11 (3) of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012, to contend that the question of referring the petitioner to the Medical Board would have arisen only in the absence of the documents, mentioned in Clause (a) of sub-rule (3) of Rule 11 of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012. According to him, there being no dispute over the genuineness of the

matriculation certificate, which he had produced before the Court below, the Court below ought not to have proceeded for constitution of Medical Board, for referring the petitioner for his medical examination for determination of his claim of juvenility. Rule 11 (3) of the 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) 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), (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."

7. On examination of the said provision, I find that the learned Counsel for the petitioner is correct in his submission that once there was no dispute over the genuineness of the matriculation certificate, the Court ought not to have proceeded for constitution of a Medical Board for determination of the petitioner's age. The provisions are unambiguous and clear.

8. The Court below was required to decide the petitioner's age for juvenility if the documents, as mentioned in sub-rule (3) (a) of Rule 11 of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012, were available

before the Court below. Recourse to Clause (b) of sub-rule (3) of Rule 11 of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012 could have been taken only in the absence of documents mentioned in Clause (a) of sub-rule (3) of Rule 11 of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012.

9. The impugned order, dated 05.08.2015, passed by the learned 1st Additional Sessions Judge, Patna, therefore, requires interference, being in conflict with the statutory provisions.

10. This application is accordingly allowed. The impugned order is hereby set aside.

11. The matter is remanded back to the Court below for passing an order afresh on the basis of the documents and evidence available before it on record.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.11.2016
Transmission Date	23.11.2016