

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.518 of 2015

Arising Out of PS.Case No. -240 Year-1995 Thana -Manjhagarh District- GOPALGANJ

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Shamshir Alam @ Shamsheer Allam S/o Noor Alam, resident of Village-Pipra, P.S. Manjhagarh, District Gopalganj. At present Resident of Village Tetahli, P.S. Barharia, District Siwan through under guardianship of his mother Razia Begum.

.... Petitioner

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Satish Kumar Sinha, Advocate

Mr. Javed Aslam, Advocate

For the Respondent/s : Mr. Brajendra Nath Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-08-2016

In the present case preferred under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act of 2000'), the petitioner has challenged the order dated 23.08.2012 passed by learned *Ad hoc* Additional Sessions Judge, Gopalganj in Sessions Trial No. 255 of 1998, arising out of Manjhagarh P. S. Case No. 240 of 1995, whereby he has held that the petitioner was not a juvenile on the alleged date of occurrence and refused to send his case before the Juvenile Justice Board.

2. Manjhagarh P. S. Case No. 240 of 1995 was registered on 09.12.1995 against the petitioner and others under

Sections 147, 148, 149, 323, 447 and 307 of the Indian Penal Code.

At the stage of framing of charge, the petitioner filed an application under Section 7-A of the Act of 2000 claiming himself to be a juvenile on the alleged date of occurrence, i.e., 09.12.1995, as his date of birth according to Matriculation Certificate issued by the Bihar School Examination Board, is 06.03.1978. The learned *Ad hoc* Additional Sessions Judge, Gopalganj, vide order dated 23.08.2012, passed in Sessions Trial No. 255 of 1998, rejected the application of the petitioner on the ground that on the alleged date of occurrence his age was 17 years, 9 months and 3 days and, thus, he was not a minor.

3. The operative part of the impugned order, dated 23.08.2012, passed by the court below is as under :-

“Perused the case record as well as birth certificate filed on behalf of the petitioners which are issued by the Bihar Bidyalay Pariksha Samitee. From the perusal of date of birth certificate of the accused, it appears that birth of petitioner Ezaz Alam is 3.2.1983 while occurrence took place on 09.12.1995. Another petitioner’s date of birth according to certificate is 6th March 1978 whereas date of occurrence is 09.12.1995. So it is clear from the certificate filed by the petitioner Shamsher Allam that at the time of occurrence his age was 17 years 9 months 3 days.



So this petitioner was not minor at the time of occurrence. But another petitioner Ezaz Alam was minor according to certificate filed by him and he was at the time occurrence 12 years 10 months 6 days. So I come to the conclusion that the petitioner Shamaher Allam was major at the time of occurrence and trial of this petitioner is not come u/s 7(a) of the J.J. Act but another petitioner Ezaz Allam was at the time of occurrence minor, so trial of this petitioner comes u/s 7(a) of J.J. Act. In view of above submission made by petitioners' side I come to the conclusion that the trial of Ezaz Allam is not come under jurisdiction of this court, rather comes under the court of J.J. Act u/s 7(a). Accordingly, it is, therefore, ordered that the trial of the petitioner Ezaz Allam is hereby separated and is sent to the court of J.J. Act for the trial and disposal. Let a copy of this order be sent to the court of J. J. Act. Put up on 10.09.2012 for further proceeding."

4. It is submitted by the learned counsel for the petitioner that the order impugned is patently bad in the eyes of law, as the court below itself has held that on the date of occurrence the petitioner had not completed the age of 18 years and in that view of the matter it ought to have declared the petitioner a juvenile.

5. *Per contra*, learned Additional Public



Prosecutor for the State has submitted that the alleged occurrence had taken place prior to enactment coming into force of the Act of 2000. He has submitted that under the Juvenile Justice Act, 1986 (for short 'the Act of 1986'), a 'juvenile' would mean a boy, who has not completed the age of 16 years. Since the court below has assessed the age of the petitioner to be more than 16 years, on the date of occurrence, it has rightly rejected the application of the petitioner claiming himself to be a juvenile.

6. I have heard learned counsel for the parties and perused the record.

7. A 'juvenile' under the Act of 1986 means a boy who has not completed the age of 16 years and a girl who has not completed the age of 18 years. In the Act of 2000, the distinction of a boy and a girl has been done away with and a uniform age of juvenile has been prescribed. Section 2 (k) of the Act of 2000 defines a 'juvenile' or a 'child' as a person, who has not completed 18 years of age. As per Section 2(l) of the Act of 2000, 'juvenile in conflict with law' means a 'juvenile' who is alleged to have committed an offence and has not completed 18 years of age on the date of commission of offence.

8. Whether the date of occurrence would be the reckoning date for determining the age of the alleged offender as a

juvenile offender or the date when he is produced in the court/competent authority was the question before a Full Bench of the Supreme Court in **Umesh Chandra vs. State of Rajasthan**, since reported in (1982) 2 SCC 202. In the said case, the Court observed:-

“28. As regards the general applicability of the Act, we are clearly of the view that the relevant date for the applicability of the Act is the date on which the offence takes place. Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing mens rea as in the case of an adult. This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place. It is quite possible that by the time the case comes up for trial, growing in age being an involuntary factor, the child may have ceased to be a child. Therefore, Ss. 3 and 26 became necessary. Both the sections clearly point in the direction of the relevant date for the applicability of the Act as the date of occurrence. We are clearly of the view that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial.”

(underlining mine)

9. Subsequently, in **Arnit Das vs. State of Bihar**, since reported in **(2000) 5 SCC 488**, a Division Bench of the Supreme Court held that the date of first appearance of the accused before the court would be the relevant date for applicability of the act, so far as the age of the accused, who claims to be a 'juvenile', is concerned.

10. Having noticed the conflicting views in **Arnit Das vs. State of Bihar** (supra) and **Umesh Chandra vs. State of Rajasthan** (supra), the Division Bench of the Supreme Court in **Pratap Singh vs. State of Jharkhand & Anr.** referred the case to the Constitution Bench vide order dated 07.02.2003. The Constitution Bench in **Pratap Singh vs. State of Jharkhand and Anr.**, reported in **(2005) 3 SCC 551** formulated two questions for authoritative decision. They are :

(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced in the court/competent authority.

(b) Whether the Act of 2000 will be applicable in the case a proceeding is initiated under Juvenile Justice Act, 1986 and pending when the Act of 2000 was enforced with effect from 01.04.2001.

11. The Constitution Bench having considered the legislative intent underlining various provisions of the Act of 2000 read with the preamble, aims and objects answered the dual questions in para 37, which reads as under :-

“37. The net result is :

(a) The reckoning date for the determination of the age of the juvenile is the date of the offence and not the date when he is produced before the authority or in the Court.

(b) The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1-4-2001.”

(underlining mine)

12. In **Pratap Singh vs. State of Jharkhand** (supra), the Constitution Bench has clearly held that the Act of 2000 would be applicable in a pending proceeding in any court/authority initiated under the Act of 1986, which is pending when the Act of 2000 came into force.

13. The decision in **Pratap Singh vs. State of Jharkhand** (supra) led to substitution of Section 2(l), insertion of Section 7-A and proviso and explanation to Section 20 of the Act of 2000 by Act 33 of 2006 as also introduction of the Juvenile Justice

(Care and Protection of Children) Rules, 2007 containing Rule 12, which lays down the procedure to be followed in determination of age of a 'juvenile' or a 'child'.

14. Section 20 of the Act of 2000, as amended, reads as under:-

“20. Special provision in respect of pending cases.-

Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

[Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.- In all pending cases including trial, revision, appeal or any other criminal

proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.]”

(underlining mine)

15. It would be evident from the reading of the explanation to Section 20 of the Act of 2000 that in all pending cases including the trial, revision, appeal, or any other criminal proceedings in respect of a ‘juvenile in conflict with law’, in any court, the determination of juvenility of a ‘juvenile’ has to be in terms of clause (l) of Section 2, even if the ‘juvenile’ ceases to be a ‘juvenile’ on or before 01.04.2001, when the of the Act of 2000 came into force and the provisions of Act of 2000 would apply as if the same proceedings had been enforced for all purposes and all material times when the alleged offence was committed.

16. As noted hereinabove, clause (l) of Section 2 of the Act of 2000 stipulates that ‘juvenile in conflict with law’ means a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such

offence.

17. At this stage, it will also be apt to take note of Section 7-A inserted in the Act of 2000 with effect from 22.08.2006, which reads as under :

“7-A. Procedure to be followed when claim of juvenility is raised before any court.-

1. Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

2. If the court finds a person to be a juvenile on

the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence, if any, passed by a Court shall be deemed to have no effect.”

(underlining mine)

18. The effect of the proviso to sub-section (1) of Section 7-A is that a ‘juvenile’ who had not completed 18 years of age on the date of commission of the offence would also be entitled to the benefit of the Act of 2000 as if the provision of Section 2(k) of the said Act defines ‘juvenile’ or ‘child’ to mean a person who has not completed 18 years of age had always been existence even during the operation of the Act of 1986.

19. It is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 7-A and 20 of the Act of 2000 that all persons, who were below the age of 18 years, on the date of commission of the offence, even prior to 01.04.2001, would be treated as ‘juvenile in conflict with law’.

20. In the present case, the trial court has rejected the claim of juvenility of the petitioner on the ground that at the time of occurrence, his age was 17 years, 9 months and 3 days and the alleged date of occurrence is 09.12.1995

21. In view of the provisions of the Act of 2000, as

discussed above, it would be evident that the trial court was not right in coming to the finding that the petitioner was not a 'juvenile in conflict with law' as on the date of occurrence his age was less than eighteen years, i.e., 17 years, 9 months and 3 days.

22. I also find that for coming to the conclusion that the petitioner was not a 'juvenile', the trial court has not held any inquiry, as envisaged under the Act of 2000. It has simply relied on the entry of date of birth of the petitioner in the Matriculation Certificate.

23. I have already noticed section 7-A of the Act of 2000, hereinabove, which prescribes procedure to be followed, when claim of juvenility is raised before any court. Section 7-A mandates that whenever a claim of juvenility is raised, an inquiry has to be made and such inquiry would take place by receiving such evidence, 'as may be necessary' but not an affidavit so as to determine the age of such person. The word 'evidence' as defined under Section 3 of the Evidence Act, 1872 reads as under:-

“Evidence” .— “ Evidence” means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;

(2) [all documents including electronic records produced for the inspection of the Court], such

documents are called documentary evidence.”

24. The word ‘as may be necessary’ used in Section 7-A of the Act of 2000 gives a discretion to the court to take necessary evidence while determining the question of juvenility of an offender.

25. The receiving of evidence pre-supposes that the statement given in evidence would be subject to cross-examination. Further, while holding inquiry in respect of a document, the entries made in it are to be verified and proved by some sort of evidence. The trial court did not call for the school records or any verification report from the Bihar School Examination Board, which is said to have issued the Matriculation Certificate of the petitioner. The authenticity and genuineness of the entry of date of birth in the Matriculation Certificate has not been inquired into.

26. Taking into consideration the provision prescribed under Section 7-A of the Act of 2000, I am of the opinion that for coming to the finding that on the date of alleged occurrence, the petitioner was aged about 17 years, 9 months and 3 days, no proper inquiry was held by the trial judge.

27. In the opinion of this Court, before coming to the finding regarding the age of the petitioner, the trial court ought to have taken such evidence, as would have been necessary, and,

then recorded a finding regarding the claim of juvenility of the petitioner at the time of commission of the offence.

28. From the impugned order, it would appear that no sooner the petitioner produced the copy of Matriculation Certificate, the trial court determined the age relying on the entry made in it. The trial court had taken such entries to be absolutely correct without holding any inquiry.

29. In my opinion, the approach of the trial court was not correct.

30. Thus, on the basis of the aforesaid discussions, the impugned order dated 23.08.2012 passed by the learned *Ad hoc* Additional Sessions Judge, Gopalganj in Sessions Trial No. 255 of 1998, arising out of Manjhagarh P. S. Case No. 240 of 1995, is set aside.

31. The trial court is directed to transfer the record of the case of the petitioner to the Juvenile Justice Board, Gopalganj, forthwith. The Juvenile Justice Board is directed to conduct an inquiry into the matter in accordance with law prescribed in that regard in respect of claim of juvenility of the petitioner, as early as possible, preferably within two months from the date of receipt/production of the record of the case from the trial court. In case, the petitioner is found to be a 'juvenile' on the

alleged date of occurrence, the Juvenile Justice Board will continue with the further inquiry and decide the case in accordance with law applicable to a ‘juvenile’. In case, the Juvenile Justice Board comes to a conclusion that the petitioner was not a ‘juvenile’ on the date of occurrence, it shall transfer the record of the case to the Sessions Court. In that situation, the Sessions Court would proceed with the trial from the stage to which it has already reached as on date.

32. With these observations and directions, the revision application is allowed.

(Ashwani Kumar Singh, J.)

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