

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.551 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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1. Bahadur Mahto Son of late Nathuni Mahto Resident of Village- Ranipur P.s
Chanpatia, west Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Krishna Mahto Son of Prabhu Mahto Resident of Village- Ranipur P.s
Chanpatia, west Champaran.under his Guardianship of his Father Prabhu Mahto

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Satyavrat Verma, Advocate
Mr. Shashank Chandra, Advocate
For the State : Mr. Sanjay Kumar Singh, APP
For O. P. No. 2 : Mr. Bimilesh Kumar Pandey, 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 Counsel
for Opposite Party No. 2 and learned Additional Public
Prosecutor, appearing on behalf of the State.

2. This criminal revision application has been filed, under
Section 53 of the Juvenile Justice (Care and Protection of
Children) Act, 2000, by the petitioner being aggrieved by an
order, dated 24.04.2015, passed, by learned 1st Additional
Sessions Judge, Bettiah, in connection with Chanpatia Police
Station Case No. 345 of 2013, whereby the Opposite Party No.
2 has been declared to be a child in conflict with law.

3. The Opposite Party No. 2 is named in the First
Information Report, registered for the offence punishable under



Sections 376 (2) (F), 302, 301 of the Indian Penal Code and Section 4, 5(M) and 6 of the Protection of Children from Sexual Offence Act, 2012.

4. This is not in dispute that the said determination of juvenility of Opposite Party No. 2 is based on a report submitted by a Medical Board, constituted for the said purpose, in which the age of Opposite Party No. 2 has been found to be 17 to 17½ years, as on the date of medical examination of Opposite Party No. 2. Calculated on that basis, the age of Opposite Party No. 2 has been held to be between 16 to 16½ years, as on the date of occurrence, i.e., 04.11.2013.

5. Assailing the impugned order, learned Counsel for the petitioner has submitted that while declaring Opposite Party No. 2 to be a juvenile, the learned Court below has failed to take into account crucial facts, including the evidence of the parents of Opposite Party No. 2 and cousin (sister) of Opposite Party No. 2. He has further submitted that on first appearance, the age of Opposite Party No. 2 was found to be 20 years by the doctor. He further submits that the said cousin of Opposite Party No. 2 had disclosed in his deposition that Opposite Party No. 2 was one year older to her and on that basis, the learned Court below ought not to have held Opposite Party No. 2 to be a juvenile. His further submission is that according to the statement of the father of Opposite Party No. 2, he had studied up to Class-V and he was admitted in one K. P. M. School,



Bettiah. According to him, the relevant document/register from the said School ought to have been obtained for ascertaining the age/juvenility of Opposite Party No. 2.

6. Learned Counsel appearing on behalf of Opposite Party No. 2, on the other hand, has submitted that there is no illegality in the order, which has been passed on report of the Medical Board, in the absence of any other document, as required under Rule 11 of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012.

7. After having considered the rival submissions, I am of the view that the order impugned cannot be said to be illegal, requiring interfere by this Court in revisional jurisdiction. I do not find much substance in the submissions made on behalf of the petitioner that since father of Opposite Party No. 2 ought not to have been declared a juvenile.

8. Reliance placed in this regard on a decision of the Supreme Court, in the case of **Om Prakash v. State of Rajasthan and Another**, reported in **(2012) 5 SCC 201**, is of no avail. The paragraph 34 of the said decision, in the case of **Om Prakash** (supra), is, as a matter of fact, an answer to his submission, which reads thus:-

"34. The benefit of benevolent legislation under the Juvenile Justice Act obviously will offer protection to a genuine child accused/juvenile who does not put the court into any dilemma as to whether he is a juvenile or not by adducing evidence in support of his plea of minority but in absence of the same, reliance placed merely on



shaky evidence like the school admission register which is not proved or oral evidence based on conjectures leading to further ambiguity, cannot be relied upon in preference to the medical evidence for assessing the age of the accused."

9. He has placed reliance on paragraph 36 of the said decision of the Supreme Court, in the case of **Om Prakash** (supra).

10. The Supreme Court, in the case of **Om Prakash** (supra), has referred to another Supreme Court's decision, in the case of **Ramdeo Chauhan v. State of Assam**, reported in **(2001) 5 SCC 714**, wherein the Supreme Court held that opinion of expert cannot be sidelined in the realm where the court gropes in the dark to find out what would possibly have been the age of an accused for the purpose of affording him a constitutional protection.

11. 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)

12. 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.

13. The Supreme Court reiterated that 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.

14. In view of what has been discussed above, in the light of the Supreme Court’s decisions, which have been taken note of, I do not find any force in the plea of the petitioner based on evidence other than those, which are relevant for consideration for determining the juvenility of a child under Rule 11 of the Bihar J.J. Rules.

15. I accordingly, do not find any merit in this application, which is, hereby, dismissed.

Prabhakar Anand/-

(Chakradhari Sharan Singh, J)

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

