

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.326 of 2016

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

Mukesh Yadav @ Mukesh Kumar Son of Indradev Yadav,
Resident of Village - Gopalpur Nichala Tola, Police Station -
Chanan, District - Lakhisarai.

.... Petitioner

Versus

The State of Bihar

.... Respondent

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Appearance :

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

For the Respondent/s : Mr. Akshay Lal Pandit, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date: 28-03-2017

Heard learned counsel for the petitioner
and learned counsel for the State.

2. The petitioner is aggrieved by an order dated 19.02.2016, passed by learned Adhoc Additional Sessions Judge, Vth, Lakhisarai, in S.T. No. 702/2014 (arising out of Chanan P.S. Case No. 47/2013, whereby he has rejected the prayer made by the petitioner for making an inquiry for the purpose of determining his age, as according to him, the petitioner was juvenile as on the date of occurrence.

3. The petitioner is an accused of commission of offence punishable under Section 304(B) read with 34 of the Indian Penal Code. He is husband of the deceased-wife. Marriage between the petitioner and the deceased,



as per First Information Report, was solemnized merely 7 years before the date of occurrence. The date of occurrence is 21.08.2013, as per the First Information Report. The petitioner claims his juvenility on the basis of entry of date of birth i.e. 17.07.1997 in the matriculation certificate. On the basis of said date of birth, it is the claim of the petitioner that he was nearly 16 years of age as on the date of occurrence, i.e. 20.08.2013.

4. From the impugned order, I find that the petitioner had disclosed his age to be 23 years on the date when he was remanded on 13.11.2013. In the background of the allegation that marriage was solemnized nearly 7 years before the date of occurrence, it is not easy to accept that the petitioner was married at the age of 9 years. The date of birth entered in the provisional matriculation certificate cannot be, in such circumstance, treated as conclusive proof for the determination of age of the petitioner as on the date of occurrence.

5. Learned counsel for the petitioner has vehemently argued that under the rules, an inquiry by seeking opinion of medical board is required only if the documents as mentioned in the Rule 11 of the Juvenile Justice (Care and Protection of Children) Rules, 2007



(hereinafter referred to as the "Rules") are not available. Since, in the present case, the petitioner produced mark-sheet matriculation examination and provisional matriculation certificate, the court below ought to have declared the petitioner a juvenile, learned counsel contends.

6. I do not find any merit in the submission that the court ought to have decided the petitioner's juvenility on the basis of entry of date of birth existing in the mark-sheet of matriculation examination. The petitioner admittedly did not produce the original matriculation certificate, which is one of the documents referred to in Rule 11 of the said Rules. The provisional certificate relied on by the petitioner could also not have been the basis for determination of petitioner's age under the Rules, since the said document does not figure in the list of documents in the said Rules.

7. However, learned counsel for the petitioner may be right in his submission that the court below ought to have referred to claim of the petitioner for determination of his age to Medical Board, as, he was able to produce some material before the court below in support of his claim that he was a juvenile as on the date of occurrence.



8. This has to be taken into account that the petitioner raised his plea of juvenility at the advanced stage of trial when nine (9) witnesses had already been examined by filing application on 05.02.2016, for the first time. He did not take any plea before any authority right from the date of lodging of the First Information Report.

9. Because of belated claim of juvenility being raised by the petitioner, the trial before the court below as natural consequence, going to hamper. On the one hand, in accordance with the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000, and the rules framed thereunder, a claim of juvenility, if supported by some documents as raised, the same has to be determined in accordance with the Rules. The jolt which the criminal trial, if such claim is found to be not genuine, cannot be overlooked.

10. In the facts and circumstances of the case, I do not find the order dated 19.02.2016, passed by learned Adhoc Additional Sessions Judge – Vth, Lakhisarai to be sustained. The said impugned order is, accordingly, set aside.

11. The age determination inquiry is directed to be conducted by the Juvenile Justice Board, Lakhisarai for which purpose the petitioner is directed to present himself



within 15 days from today. If he does so, the age determination inquiry will be done by seeking medical opinion from the medical board. The certificate, which he has relied on, cannot form the sole basis for determination of age. The age determination must be completed within two months from the date of communication of present order.

12. If the Board finally comes to a conclusion that the petitioner was not a minor, as on the date of occurrence, the petitioner will be required to pay a cost of Rs. 1,00,000/- (Rupees One Lac) to be deposited in the account of Juvenile Justice Board, Lakhisarai to be spent on the welfare of the Juveniles.

13. With this observations and directions, this application stands allowed.

(Chakradhari Sharan Singh, J.)

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