

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.452 of 2017

Arising Out of PS.Case No. -140 Year- 2015 Thana -Danapur District- PATNA

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Ravi Kumar @ Ravi Rai Son of Lalit Rai, Resident of Ford Service Center, Near of Roshan Bihar Apartment, West Bailey Road, P.S.- Danapur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Santosh Kumar Singh, Son of Late Ram Mohan Singh, Resident of Hari Palace, Flat No. 303, Judges Colony, P.S.- Danapur, Town and District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N. K. Agrawal, Sr. Adv.
For the Respondent/s : Mr. Manoj Kumar, APP
For the Informant : Mr. Rajeev Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 23-05-2017

Heard Mr. N.K. Agrawal learned senior counsel for the petitioner learned counsel for the State as well as Mr. Rajeev Kumar Singh learned counsel appearing on behalf of the informant.

2. The petitioner filed this revision petition against the order dated 24th March, 2017 passed by Additional District & Sessions Judge VI, Danapur, Patna in Danapur P.S. Case No. 140/2015 under Sections 302 and 34 of the Indian Penal Code and section 27 of the Arms Act, whereby the learned Additional District & Sessions Judge VI, Danapur, Patna set aside the order dated 21.12.2016 passed by the Juvenile Justice Board holding the petitioner juvenile on the basis of School Transfer Certificate issued in favour of



the petitioner showing his date of birth as 13.07.1999.

3. The brief facts which are relevant are that the petitioner is an accused in Danapur P.S. Case No. 140/2015 corresponding to Sessions Trial No. 920/2015, which is pending before the Additional District & Sessions Judge VI, Danapur, Patna. The petitioner filed a petition before the learned Additional District & Sessions Judge VI, Danapur, Patna that he was studying in Shiv Parvati Shanti Niketan Middle School, Sheikhpura, Patna and his date of birth is 13.07.1999. The petitioner claimed himself to be a juvenile in conflict with law. Learned Additional District & Sessions Judge VI, Danapur, Patna separated the case of the petitioner and sent the same to the Juvenile Justice Board for enquiry under the Juvenile Justice Act (hereinafter referred to as the 'Act'). Juvenile Justice Board held an enquiry and vide order dated 21.12.2016 held that the date of birth of the petitioner is 13.07.1999, as appeared in the School Transfer Certificate issued by the Shiv Parvati Shanti Niketan Middle School, Sheikhpura, Patna, but the informant immediately thereafter filed a petition on 24.12.2016 annexing the photo-copy of the School Transfer Certificate along with the certificate of the Headmaster of Shiv Parvati Shanti Niketan Middle School, Sheikhpura, Patna in the court of Juvenile Justice Board for holding a fresh enquiry, as the Assistant Teacher of the school was not competent to issue such



certificate. School Transfer Certificate is not genuine. It is further stated that according to Rule 12 of Juvenile Justice (Care and Protection of Children) Rule, 2007 the victim did not produce the certificate enumerated therein and therefore, he must be examined by the medical board before declaring him to be juvenile, but the Juvenile Justice Board did not pass any order. The informant preferred Cr. Appeal No. 02/2017 against the order dated 21.12.2016. The learned Additional District & Sessions Judge VI, Danapur, Patna set aside the order dated 21.12.2016 passed by the Juvenile Justice Board holding the petitioner juvenile in conflict with law and held that the enquiry was not held in accordance with the Rule 12 of Juvenile Justice (Care and Protection of Children) Rule, 2007. A fresh enquiry is required to be held in accordance with the law vide order dated 24.03.2017.

4. Against the aforesaid order, the petitioner preferred this revision petition. Mr. N. K. Agrawal learned senior counsel for the petitioner assails the order that the appellate court has illegally directed the Juvenile Justice Board to get the petitioner examined by the medical board before recording the finding with regard to juvenility of the petitioner. It is submitted that the Juvenile Justice Board has rightly held the petitioner juvenile on the basis of School Transfer Certificate.



5. In reply to the aforesaid submission, the learned counsel for the State as well as learned counsel for Opposite Party no. 2 submitted that there is no illegality in the order.

6. On the basis of the submission of the parties, the only question arises as to whether the Juvenile Justice Board has rightly held the petitioner juvenile on the basis of School Transfer Certificate? For deciding this question Rule 12 of the Juvenile Justice (Care and Protection of Children) Rule, 2007 is relevant which is as follows:-

12. Procedure to be followed in determination of age –

(1.) In every case concerning a child or a juvenile in conflict with law, the Court or the Board, as the case may be, the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2.) The Court or the Board or, as the case may be, the Committee shall decide the juvenility or otherwise of the juvenile or the child or, as the case may be, the juvenile in conflict with law, *prima facie* on the basis of physical appearances or documents, if available, and send him to the observation home or in jail.

(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, as the case may be, the Committee by seeking evidence by obtaining –

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or



(iii) of clause (a) above, 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 to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing order 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 the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4.) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or, as the case may be, the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5.) Save and except where, further inquiry or otherwise is required, *inter alia*, in terms of section 7-A, section 64 of the Act and these rules, no further inquiry shall be conducted by the Court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6.) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.

On bare perusal of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rule, 2007, it would appear that the rule firstly requires that the matriculation certificate or certificate of



equivalent examination should be produced in absence of the same, the birth certificate or the certificate issued by the school in which the accused is firstly admitted, should have been produced. In absence of all these certificates for ascertaining of age of a person claiming to be juvenile the board should obtain the medical opinion with regard to the age of such person.

7. From perusal of the order passed by the Juvenile Justice Board, it appears that the Juvenile Justice Board held the petitioner juvenile on the basis of School Transfer Certificate. The petitioner was not firstly admitted in the Shiv Parvati Shanti Niketan Middle School Sheikhpura and therefore, the petitioner failed to produce such certificate for ascertainment of his age as required under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rule, 2007. Therefore, Juvenile Justice Board should have obtained the opinion of the medical board for ascertaining the age of the petitioner, but the Juvenile Justice Board rushed to the conclusion on the basis of School Transfer Certificate. The genuineness of which is challenged by the informant. The learned Additional District & Sessions Judge, Danapur, Patna has rightly set aside the order of the Juvenile Justice Board and directed the Juvenile Justice Board to hold enquiry afresh to ascertain the age of the petitioner.

8. Having considered the facts and submission of the



parties, I do not find any illegality in the order dated 24.03.2017 passed by the Additional District & Sessions Judge, Danapur, Patna in Cr. Appeal No. 02/2017 and the order impugned does not require any interference. Accordingly, the revision petition is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
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