

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.259 of 2016

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Vijay Kumar Singh, Son of Late Gorelal Singh, resident of Village-
Barauni-1, Ward No. 2, P.S.-Teghra, District-Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Sonu Kumar @ Rajesh Kumar @ Rajan Kumar @ Yash Kumar,
Son of Lalo Singh, resident of Village-Barauni-1, Ward No. 2, P.S.-
Teghra, District-Begusarai.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Prem Kr. Jha, Adv.
Mr. Rajesh Kr. Jha, Adv.
Mr. Shiv Narayan Jha, Adv.
Mr. Mukesh Mishra, Adv.
Mr. Nishant Kr. Jha, Adv.

For the State : Mr. Navin Kr. Pandey, APP

For the O.P. No. 2 : Mr. Pramod Kr. Pandey, Adv.
Mrs. Minakshi Kumari, Adv.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 02-02-2017

I have heard learned counsel for the
petitioner and learned counsel appearing on behalf of



opposite party No. 2 at length. I have also heard learned Additional Public Prosecutor appearing for the State.

2. The petitioner is the informant of Teghra P.S. Case No. 392 of 2015, corresponding to G.R. No. 6551 of 2015, registered for the offences punishable under Section 302 read with Section 201 of the Indian Penal Code (*hereinafter referred to as the 'IPC'*). He is aggrieved by the judgment and order, dated 18.01.2016, passed by the Court of learned Sessions Judge, Begusarai, in Cr. Appeal No. 11 of 2016, whereby, the learned court below has upheld an order of Juvenile Justice Board, Begusarai (*hereinafter referred to as the 'J.J. Board'*), dated 07.12.2015, declaring opposite party No. 2 a juvenile, as on the date of occurrence.

3. At the outset, it is to be pointed out that in view of the nature of the controversy which had arisen, facts of which I shall be referring to hereunder; by an order, dated 09.01.2017, the father of opposite party No. 2 was directed to be personally present in Court. Pursuant to the said order, the father of opposite party No. 2 appeared before this Court on 16.01.2017. In presence of the father of opposite party No. 2, learned counsel for the petitioner, Mr. Pramod Kumar Singh, has stated that he has instructions to withdraw the claim of juvenility of opposite party No. 2. It has been



submitted on behalf of opposite party No. 2 that he will have no grievance, if his claim of juvenility, in the facts and circumstances of the case, is turned down by this Court.

4. Briefly narrated, the case of the prosecution, as contained in the First Information Report, which is based on a written complaint of the informant filed before the Officer-In-Charge of Teghra police station, is that, on 04.11.2015, when his grandson, namely, Laxman Kumar, aged nearly 4 years, was found missing, he tried to search him out and at about 8.30 in the night, he found the child lying unconscious behind the house. The child was taken to hospital, where he was declared dead. With an allegation that opposite party No. 2 had murdered him by strangulating his neck, because of previous enmity, the First Information Report came to be registered for the aforesaid offences. The police, upon completion of investigation, submitted charge-sheet against opposite party No. 2 on 30.12.2015.

5. When the investigation was on, opposite party No. 2 raised claim of juvenility in the Court of learned Chief Judicial Magistrate, Begusarai, who transferred the records to the J.J. Board Begusarai for necessary enquiry and order. On 07.12.2015, the J.J. Board declared opposite party No. 2 to be a juvenile as on the date of occurrence, on the basis of



matriculation certificate issued by the Bihar School Examination Board, Patna (*hereinafter referred to as the 'B.S.E.B.'*), in the name of Yash Kumar and deposition of his mother as Meera Devi and father as Lalo Singh. The informant, who is the petitioner in the present case, preferred an appeal before the learned Sessions Judge, Begusarai against the said order, dated 07.12.2015 of the J.J. Board, giving rise to Cr. Appeal No. 111 of 2016. The said appeal came to be dismissed by the judgment and order dated 18.01.2016. This is also to be noted that opposite party No. 2 had applied for bail before the J.J. Board, which was rejected by an order, dated 08.12.2015, against which he had preferred an appeal before the learned Sessions Judge, Begusarai. The said appeal was also dismissed by the said judgment and order dated 18.01.2016.

6. In that background, the petitioner, questioning the judgment and order, dated 18.01.2016, passed by the learned Sessions Judge, Begusarai, in Cr. Appeal No. 111 of 2016, affirming the decision of the J.J. Board, declaring opposite party No. 2 to be a juvenile, has filed Cr. Revision No. 170 of 2016. Against the same judgment and order, dated 18.01.2016, passed by learned Sessions Judge in Cr. Appeal No. 127 of 2016, whereby, he had refused to interfere



with the decision of the J.J. Board, disallowing prayer of the Opposite Party No. 2 to be released on bail, Opposite Party No. 2 filed revision application before this Court, which gave rise to Criminal Revision No. 170 of 2016 (Sonu Kumar @ Yash Kumar v. The State of Bihar and Another). Both the revision applications were earlier heard together. However, Criminal Revision No. 170 of 2016 (Sonu Kumar @ Yash Kumar v. The State of Bihar and Another) was permitted to be withdrawn on 16.01.2017 and the said case, accordingly, stood dismissed as withdrawn.

7. When this case was taken up on 23.11.2016, the Court asked learned counsel, appearing on behalf of opposite party No. 2, to produce the original matriculation certificate, on the basis of which the claim of juvenility had been accepted by the J.J. Board and appellate Court, i.e., the Court of learned Sessions Judge, Begusarai. In compliance of the said order, a supplementary affidavit was filed enclosing matriculation certificate and NCC certificates etc., in the name of Yash Kumar.

8. It is the case of the petitioner that opposite party No. 2 was, for the first time, admitted in Government Middle School, Barauni-I (Teghra) in Calss-II, on 02.01.2001, which was his first attended school. In the admission register



his name appears as Rajesh Kumar, Son of Lalo Singh and Shakuntala Devi, with his date of birth as 05.02.1995. After completion of study in Class-VIII, for further studies, he obtained School Leaving Certificate (SLC), issued on 09.04.2008, in which his date of birth had been entered as 05.02.1995. These documents have been brought on record by way of annexures to the present criminal revision application. It is also asserted in the criminal revision application that in the name of Rajesh Kumar, opposite party No. 2 had earlier filled up registration form as regular student with his father's name as Lalo Singh and mother's name Shakuntala Devi in the year 2009, with his date of birth 05-02-1995 from R.J.K. High School, Barauni when he was allotted registration No. 26053-13607-09 by the B.S.E.B. and he had appeared in annual matriculation examination, held in the year 2010, in which he was allotted his roll No. 0280, roll Code 26053 with his date of birth as 05.02.1995. He failed in the said examination, as is evident from the marks-sheet, dated 22.05.2010, which has been brought on record by way of Annexure-8 to the supplementary affidavit. It is further the case of the revision petitioner that the Opposite Party No. 2 again filled up registration form as a private student in the changed name of Rajan Kumar, in place of Rajesh Kumar,



Son of Lalo Singh (father) and Meera Devi (mother), from R.S.D.S. High School, Simaria, district-Begusarai, in the year 2010 in which he was allotted registration No. 26002-00537-10 by the B.S.E.B.. Whereas, this time, the name of father remained the same, in place of mother's name Shakunatala Devi, it has been mentioned as Meera Devi and the date of birth was also changed from 05.02.1995 to 05.01.1994. He is said to have appeared in the annual matriculation examination, held in the year 2011, with roll No. 0159, roll Code 26002. He passed the said examination with 3rd division. The said certificate of passing has been brought on record by way of Annexures 6 and 6/1 to this application. In the matriculation certificate, the date of birth of opposite party No. 2 is mentioned as 05.01.1994, father's name as Lalo Singh and mother's name as Meera Devi. It is further the case of the petitioner that opposite party No. 2 again filled up registration form as regular student, this time with the name of Yash Kumar, from Amrit Krishnadeo Shobhelal High School, Jaunapur Rajpur, under the district of Samastipur, wherein, he was allotted registration No. 63521-51160-13 by the B.S.E.B. This time his father's name, Lalo Singh remained unchanged. He mentioned his mother's name as Meera Devi and date of birth as 28.08.1999. He



appeared in the annual matriculation examination, in the year 2013, with roll No. 1400247, roll Code 63521. He passed the said examination in 2nd division. The matriculation certificate, issued in the year 2014, has been brought on record by way of Annexure to the supplementary affidavit filed by opposite party No. 2 and in one of the affidavits filed on behalf of the petitioner also. This is the certificate on which reliance had been placed by opposite party No. 2, in order to justify his claim of juvenility before the Board and the Sessions Court.

9. It is the case of the petitioner that all these grounds were taken before the learned Appellate Court, but the same have been completely overlooked. Opposite party No. 2 has not controverted these facts. It was in the background of specific pleading that opposite party No. 2 appeared at the matriculation examination, at least, three (3) times with names, dates of birth, father's name remaining the same, while submitting his registration form, this Court wanted to know as to how many sons the father of opposite party No. 2, namely, Lalo Singh, was having. Accordingly, by an order, dated 09.01.2017, this Court directed the father of opposite party No. 2, namely, Sonu Kumar @ Yash Kumar, to be personally present in Court on 16.01.2017, along with his sons, namely, Rajan Kumar and Rajesh Kumar. In the light



of this Court's order, said Lalo Singh, the father of opposite party No. 2, appeared before this Court personally with his son, namely, Niraj Kumar. He told this Court that he did not have any son in the name of Rajan Kumar or Rajesh Kumar.

10. Considering the statement made by the father of opposite party No. 2, this Court formed a *prima facie* opinion that opposite party No. 2 had played fraud with the J.J. Board, appellate Court and this Court in order to establish his claim of juvenility.

11. The facts, as noted above, leave no doubt that opposite party No. 2, Son of Lalo Singh, appeared in the matriculation examination three (3) times with different dates of birth and relied on certificates, issued by the B.S.E.B., in his 3rd examination. For the first time, he appeared in the said examination in the year 2010 with his date of birth as 05.02.1995. He subsequently appeared in the year 2011 examination with his date of birth as 05.01.1994 and lastly in the year 2014 examination with his date of birth as 28.08.1999.

12. The question, which has arisen, is that what procedure should be adopted in such circumstance for age determination enquiry, as contemplated under the Bihar Juvenile Justice (Care and Protection of Children) Rules,



2012, according to which, if matriculation or equivalent certificate is available, age of a person has to be determined for considering his claim of juvenility on that basis.

13. So far as the present case is concerned, since the plea of juvenility taken by opposite party No. 2 has been withdrawn, any exercise to determine the issue of juvenility, now, on a challenge, having been made in the present criminal revision application, will be a futile exercise. In any view of the matter, the last certificate, on the basis of 2014 examination, cannot be accepted as valid document for the purpose of arriving at a conclusion as to whether opposite party No. 2 could be held to be a juvenile or not. There being two certificates, one issued in the name of Rajan Kumar on the basis of 2011 examination, showing his date of birth as 05.01.1994, and another based on 2014 examination with his name as Yash Kumar, showing his date of birth as 28.08.1999, reflect same parentage, i.e., father's name-Lalo Singh and mother's name-Shakuntala Devi. Opposite party No. 2 is, thus, having two certificates of having passed matriculation examination. In one certificate, his date of birth is mentioned as 05.01.1994 and in second as 28.08.1999. After having passed the matriculation examination, on the basis of 2011 examination, how he could appear again in



2014 examination with his changed date of birth is a matter of concern. I do not think the rules, governing matriculation examination conducted by the B.S.E.B., permit a student, having passed the same examination, to appear again with different registration number and date of birth. There is something wrong with the manner in which the students are allowed to appear at matriculation examination without due verification as to whether such candidates had earlier appeared in any such examination or not.

14. I must observe here that the B.S.E.B. will be duty bound to look into this aspect of the matter and develop a system to minimize and prevent fraud of this nature. The B.S.E.B. must keep in mind the fact that entries in matriculation certificates, issued by the B.S.E.B., are of much significance and a lot of weightage is given to such entries at different stages of one's life for different purposes.

15. This case is an example and an eye-opener in the matter of age determination enquiry, as contemplated under the provisions of Juvenile Justice (Care and Protection of Children) Act. There cannot be two views on that. But there cannot be, at the same time, any bar for the J. J. Board or the Court to look into the bonafide and genuineness of claim of juvenility, based on such certificates by seeking



certain information from the claimant, and if need be, inquire the authenticity of the document. There may be umpteen number of cases where by playing fraud or tricks, persons can successfully raise a claim of juvenility, relying on the rules governing such enquiry. The Supreme Court decisions clearly lay down that if the documents, as envisaged in the rule, are available, age determination will have to be done on that basis. The fraud in this case surfaced and came up from adjudication upto this level because the informant was vigilant and capable.

16. Keeping in view the developments in the present case from the stage of the claim having been raised by the petitioner of his juvenility till the date of withdrawal of such claim before this Court in the present proceeding, I have considered it appropriate, in order to minimize the fraud that can be played in a proceeding claiming juvenility, to issue a general direction to be followed by the Juvenile Justice Boards and the Courts below while considering the claim of a person to be juvenile on the ground of entry of his date of birth in a document in following terms:-

Any application claiming juvenility of
a person on the ground of entry of his date of
birth in one of the documents referred to under



the Juvenile Justice (Care and Protection of Children) Act, 2000/ Juvenile Justice (Care and Protection of Children) Act, 2015 or rules framed thereunder, must be supported by an affidavit sworn by the parents/guardian of such person if he/she is a minor on the date of making of the application or otherwise the person himself; making a declaration to the following effect:-

(i) There is no entry of date of birth of such person in any other document covered by the statutory provision prescribing procedure for age determination enquiry, which is different from one which is being relied on.

(ii) If the claim is based on entry of date of birth in a certificate of having passed matriculation examination, whether the person had appeared in any other examination of equivalent level, with any different date of birth.

17. With these directions and observations, the impugned judgments and orders, dated 07.12.2015, passed by the J.J. Board, and 18.01.2016, passed by learned Sessions Judge, Begusarai, are set aside. Let the criminal case be transferred to regular court.



18. This criminal revision application is, accordingly, allowed.

19. Let this order be communicated to all District and Sessions Judges, Chief Judicial Magistrates and Principal Magistrates, Juvenile Justice Boards, of the State of Bihar.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.02.207
Transmission Date	17.02.2017

