

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23161 of 2016

Arising Out of PS.Case No. -166 Year- 2009 Thana -MUZAFFARPUR SADAR District-
MUZAFFARPUR

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1. Renu Devi, Wife of Pappu KUMar @ Dharmendra Kumar, Resident of village-
Mamarkhabad, P.S.- Pandarak, District- Patna Petitioner

Versus

1. The State of Bihar
2. Poshan Yadav, son of late Yugal Yadav, resident of village Sherpur, P.S. Sadar,
district Muzaffarpur Opposite Parties

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Appearance :

For the Petitioner : Mr. Ravi Ranjan, Adv.

For the State : Mr. Aslam Ansari, APP

For op no. 2 : M/S Suraj Narain Yadav, Umesh Prasad & Annu Shree, Advs.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 22-02-2017

Opposite party no. 2, Poshan Yadav, who is informant of the case, has filed counter affidavit today.

2. Heard the learned counsel for the petitioner, opposite party no. 2 and the State.

3. This application is for quashment of order, dated 05.03.2016, passed by the learned Additional Sessions Judge, VII, Muzaffarpur, in Sessions Trial No. 362 of 2010 arising out of Sadar P.S. Case No. 166 of 2009, whereby the Court below has refused to enquiry regarding juvenility of the petitioner, as claimed by the petitioner.

4. The petitioner is an accused in Sessions Trial No. 362 of 2010, a case under Section 364/34 of the Indian Penal Code. Later on Section 302 of the Indian Penal Code has also been added.

5. The petitioner filed a petition before the learned trial judge under Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, (hereinafter referred to as, 'the Act') praying therein that on the date of occurrence the petitioner was a juvenile, hence, her matter be sent to the



Juvenile Justice Board for adjudication of her juvenility. She produced her horoscope in support of her date of birth as on 22.05.1993 (Annexure 2). Date of occurrence is 22.07.2009

6. The learned trial Judge refused the prayer on the ground that there is direction of the Hon'ble Apex Court for expeditious disposal of the trial and the petition has been filed just to delay the trial. The Court below, further, recorded that on 16.10.2009 confessional statement of the petitioner was recorded wherein she disclosed her age as twenty years. P.W. 8 stated that the petitioner was married with co-accused, Pappu Yadav, in the year 2008 and normally no female is married, these days unless she attains age of eighteen years. The Court below, further, recorded that in her statement, recorded under Section 313 of the Criminal Procedure Code, the petitioner disclosed her age as twenty seven years.

7. Contention of the petitioner is that the learned trial judge did not properly consider the provisions of Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, which mandates enquiry regarding the claim of juvenility raised before the Court, as such, the impugned order suffers from non-application of judicial mind.

8. On the other hand, the learned counsel for opposite party no. 2 submits that the material available on the record would disclose that the petitioner never raised this question that she is a juvenile rather disclosure of her age in the confessional statement and statement, recorded under Section 313 of the Criminal Procedure Code, would reveal that she was about twenty years of age on the date of commission of crime.

9. Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, reads as follows :



“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 any 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 recognized 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.”

10. In Kulai Ibrahim @ Ibrahim Vrs. State, reported in A.I.R. 2014 S.C., 2726, the Hon’ble Apex Court considered the provision of Section 7-A of the Juvenile Justice (Care and Protection of the Children) Act, 2000, as reproduced above and held that delay can not act as an impediment in seeking enquiry as Section 7-A of the Act.

11. A bare perusal of the provision of Section 7-A of the Act would reveal that whenever a claim of juvenility is raised before any Court, the Court shall make an enquiry and take such evidence as may be necessary to determine the age of such person.

12. In the present case, without enquiry, finding has been recorded by the learned Additional Sessions Judge, which



is not sustainable in law.

13. Hence, the impugned order is hereby **set aside** and this application stands **allowed**.

14. The learned Court below is directed to re-consider the prayer of the petitioner, according to law.

(Birendra Kumar, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
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