

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.156 of 2017

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Rajesh Sharma @ Hridya Narayan Sharma @ Babun Sharma @ Rajesh Kumar,
Son of late Bhagwat Singh, resident of Village- Khudauri, Police Station-
Hulasganj (Ghosi), District- Jenahanabad.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Home, Old Secretariat, Patna.
4. The Inspector General (Prison) Bihar, Patna.
5. The Secretary, Social Welfare Department, Bihar, Patna.
6. Bihar School Examination Board, Patna through its Chairman.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate, Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Vikas Kumar, A.C. to A.G.
For the B.S.E.B.	:	Mr. Amarendra Kumar, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 30-03-2017

Through this writ application, the petitioner seeks
following reliefs:-

“(i) The respondents be directed to consider the case of the petitioner under Section 64 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter called as the Act) and after such consideration all the benefits of the beneficial legislation be afforded to him.

(ii) The petitioner after being adjudged as juvenile be ordered to be released forthwith as by now he has undergone the imprisonment/detention of three years, the maximum period under the Act.



(iii) The petitioner having been considered as a juvenile on the date of occurrence be exonerated from all disqualifications attached with the conviction and sentence passed on him. The present criminal writ is assailing out of S.Tr. No.92 of 1986/388 of 1986 in connection with Ghoshi (Hulasganj) P.S. Case No.93/1985.”

It is contended on behalf of the petitioner that though a petition for consideration of his case by the State Government was filed before the competent authority on 10.11.2011 itself, a copy of which has been appended as Annexure 12 to the supplementary affidavit, no consideration has been made to his claim which was required to be done by the State Government under Section 64 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as “the Act”).

The admitted facts of this case are as under:-

The petitioner was convicted for the offence punishable under Sections 302/149 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for life. He was also sentenced to undergo imprisonment for three years for offences punishable under Section 148 of the Indian Penal Code. The petitioner’s appeal filed before the High Court as well as the Apex Court were admittedly dismissed.

The petitioner, after enforcement of the Act, as claimed, filed a petition on 10.11.2011 before the Inspector General of Prison,



Patna for his release claiming that he was less than 18 years old on the date of occurrence. It is claimed that no order was passed on this. Subsequently, the petitioner approached the trial court by filing a petition under Section 7A of the Act on 24.10.2012 by raising a claim of juvenility on the date of occurrence. His claim was rejected by the trial court on 25.05.2013 (Annexure 7). While considering the claim, the court has come to the conclusion that due to non-availability of the admission register and other documents, it would not be possible to place reliance upon the matriculation certificate as in the matriculation certificate, name of student is shown as Rajesh Kumar whereas petitioner's name is Hridya Narayan Sharma @ Babun Sharma @ Rajesh Kumar. Hence, exclusiveness of certificate becomes questionable and, as such, on that ground, he cannot be accepted as a juvenile on the date of occurrence when the Court had assessed his age to be of 25 years and specially when the petitioner himself disclosed his age to be 20 years. Petitioner, thereafter, approached this Court by filing Cr. W.J.C. No.637 of 2013 which was withdrawn by him to agitate the matter before the appropriate forum.

A question was put to the learned counsel for the petitioner at the time of hearing of this case as to whether at that point of time the petitioner had raised this question before the Division Bench that his application contained in Annexure 12 was never



considered by the State? The answer was in negative. Thus, the petitioner, though had a chance to agitate such issue did not admittedly agitate the same when he came to this Court by filing the aforesaid writ application. Thereafter, the petitioner filed Cr.Rev. No.929/2013 assailing the order passed by the trial court contained in Annexure 7 but that revision was also dismissed vide order dated 06.02.2014 as contained in Annexure 9 by a learned Single Judge Bench of this Court. The petitioner again filed an application under Section 7A of the Act which was again dismissed on 07.06.2016. Against the aforesaid order also, it is informed that the criminal revision was filed but that was withdrawn by the petitioner. It appears that after exhausting all the remedies it came to the mind of the petitioner regarding the application filed before the State authorities in the year 2011 then he has filed this writ application now for consideration.

Petitioner places reliance upon Section 64 of the Act to impress upon this Court that once an application was filed that was to be disposed of in terms of Section 64 of the Act. For better appreciation, the relevant provision is quoted as under:-

“64. Juvenile in conflict with law undergoing sentence at commencement of this Act.- In any area in which this Act is brought into force, the State Government or the local authority may direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to



a special home or kept in fit institution in such manner as the State Government or the local authority thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of section 16 of this Act.”

From bare perusal of the aforesaid provision, it appears that it will come into operation only if a juvenile is in conflict with law on the date of occurrence. Once it is admitted as such then, under the said provision, the State authorities could have proceeded to consider his case for placing him in special home or a fit institution by passing the necessary orders. However, in the case in hand, his juvenility has not been accepted rather the claim has been rejected vide Annexure 7. It is not admitted position that petitioner was a juvenile even as per new statutory provision. Had it been a case that though the petitioner, being more than 16 years of age but of 18 or less than 18 years, though was not a juvenile under the old Act but after enforcement of new law he was to be considered as juvenile, then the matter could have been considered but admittedly this is not a fact as he himself had disclosed his age to be of 20 years. Since a court of law has decided the issue, and a criminal revision No.929 of 2013, filed against such order, has been dismissed vide Annexure 9, this Court cannot direct the State authority to re-consider the issue of



juvenility of the petitioner and pass necessary order under Section 64 of the Act.

That apart, learned counsel for the State has drawn attention of this Court that now another Statute has been enforced in the name and style of Juvenile Justice (Care and Protection of Children) Act, 2015. It is contended that there is no such provision *pari materia* to Section 64 in the new Act. Learned counsel for the petitioner has also not been able to demonstrate that there is such provision under the new law also.

Be that as it may, in view of the discussion made above, in our view, petitioner has not made out a case for interference in the matter.

Accordingly, this writ application is dismissed.

(Dr. Ravi Ranjan, J)

(Vikash Jain, J)

Sanjay-II/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2017
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