

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1168 of 2016

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

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1. Md. Nadeem Iqbal @ Nadeem Iqwal @ Arman, son of Md. Musteque, Resident of Village- Rasulpur Khurd, P.S.- Bahadurpur, District- Madhubani.

.... Petitioner

Versus

1. The State of Bihar.
2. Md. Shahid, son of Late Abdul Samad, Resident of Village- Rasulpur Khurd, P.S.- Bahadurpur, District- Darbhanga.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjay Singh
Mr. Sanjeev Kumar Jha
For the Respondent/s : Mr. Shailendra Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date: 03-03-2017

The age-old pristine maxim "*Fraus et jus naunquam cohabitant*" has never lost its sheen and temper over all these centuries, which means, "*fraud and justice can never dwell together*".

2. Applying the said maxim, the Supreme Court, in the case of **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another v. M. Tripura Sundari Devi**, reported in **(1990) 3 SCC 655**, observed that dishonesty should not be permitted to bear the fruit and benefit to such persons who



played fraud or made misrepresentation. In such situation, the Court should not perpetuate the fraud, the Supreme Court has held.

3. These opening observations are being made in the present judgment and order since upon considering the materials on record and submissions advanced on behalf of the parties, I have formed an opinion that the petitioner had, by playing fraud, got himself declared a juvenile, which has been, subsequently, undone by the orders, which are impugned in the present criminal revision application, filed under Section 102 Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "J.J. Act, 2015"). Since the date of occurrence of the case is 01.06.2006, the petitioner's case cannot be said to be governed by J.J. Act, 2015. The provision of law (Section 102 of the J. J. Act, 2015) under which the present criminal revision application has been filed is apparently incorrect. Mentioning of incorrect provision of law, however, makes no difference. This application has, accordingly, been treated to have been filed under Section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short, J. J. Act, 2000"). In view of the clear provision under Section 25 of the J.J. Act, 2015, the provisions of J.J. Act, 2000 shall apply in the present case and not the provisions of J.J. Act, 2015.



4. The petitioner is aggrieved by an order, dated 01.10.202016, passed by learned Sessions Judge, Darbhanga, in Criminal Appeal No. 36 of 2010, whereby he has dismissed the appeal preferred by the petitioner against an order, dated 14.07.2016, passed by learned Principal Magistrate, Juvenile Justice Board, Darbhanga, in Enquiry Case No. 70 of 2016, arising out of Bahadurpur Police Station Case No. 106 of 2006. By the said order of the learned Principal Magistrate, Juvenile Justice Board, Darbhanga, the petitioner has been declared to be a major, as on the date of the occurrence.

5. Before I deal with the challenge to the impugned order, I must, briefly, take note of the developments from the date of institution of the First Information Report till passing of the order impugned, which are relevant for appreciation of the issues involved.

6. On the basis of fardbayan of Opposite Party No. 2, Bahadurpur Police Station Case No. 106 of 2006 came to be registered for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, in which 06 (six) persons, including this petitioner, were named as accused. It is alleged that on the date of occurrence, i.e. on 01.06.2006, when the brother (deceased) of the Opposite Party No. 2 was resting after taking his meal at about 12:30 PM during the day time, the accused persons and one



unknown arrived at the door of the brother of the informant. The co-accused, Chhote and Istehaque, are said to have caught hold of both the legs and Tammann and Kaptan, arms of the deceased, on instigation of co-accused Mustaque. The petitioner thereafter took out a pistol from his waist and shot at the brother of the informant from close range, who sustained fire arm injuries and was immediately taken to Darbhanga Medical College and Hospital with bullet injuries, where he was declared dead. The First Information Report was immediately lodged thereafter.

7. Four years after lodging of the First Information Report, the petitioner filed a petition under Section 7-A of the J.J. Act, 2000, before learned Chief Judicial Magistrate, Darbhanga, on 20.05.2010, claiming himself to be a juvenile on the basis of School Leaving Certificate, issued by the Headmaster, Middle School, Kiratpur (Ghanshyampur). In view of the plea of juvenility having been taken on behalf of the petitioner, the learned Chief Judicial Magistrate, Darbhanga, referred the matter to the Juvenile Justice Board, Darbhanga, for enquiry on the question of juvenility of the petitioner. The Juvenile Justice Board, Darbhanga, issued notice to the Headmaster of the said Kiratpur Middle School for the verification of the certificate and the age mentioned therein. It seems that the Headmaster appeared before the



Juvenile Justice Board along with the admission register, whereafter the petitioner was declared a juvenile by the Juvenile Justice Board, Darbhanga, on 07.06.2010. After having been declared juvenile, the petitioner was allowed bail.

8. In course of enquiry, under Section 14 of the J.J. Act, 2000, the informant of the case (respondent no. 2 herein) filed a petition, under Section 340 of the Code of Criminal Procedure, 1973 (for brevity, "the Code") on 19.09.2012, seeking an enquiry into the conduct of the petitioner for having produced forged document in support of his plea of juvenility. The said petition was rejected by the Juvenile Justice Board, Darbhanga. The Opposite Party No. 2 thereafter preferred criminal appeal against the said order of the Juvenile Justice Board, Darbhanga, which was also finally dismissed by learned Additional Sessions Judge I, Darbhanga.

9. Aggrieved by the appellate order, the informant filed criminal revision application, registered as Criminal Revision No. 1018 of 2012, which was dismissed as withdrawn, on 27.11.2014. The informant again filed Criminal Appeal No. 1 of 2015 before the Sessions Judge, Darbhanga, against the order whereby the petitioner was declared juvenile, which, too, was dismissed by order, dated 19.03.2015.

10. The informant thereafter filed criminal



revision application, registered as Criminal Revision No. 306 of 2015, before this Court. This Court, by an order, dated 16.07.2015, disposed of Criminal Revision No. 306 of 2015, asking the Court below to hold a fresh age determination enquiry within a period of two months from the date of receipt of the copy of the order, in presence of both the parties. Accepting the said order, dated 16.07.2015, passed in Criminal Revision No. 306 of 2015, the parties appeared before the Juvenile Justice Board, Darbhanga, for fresh enquiry. In the fresh enquiry, which was being held by the Juvenile Justice Board, Darbhanga, under the orders of this Court, the informant produced before the Juvenile Justice Board, Darbhanga, a photocopy of certificate of petitioner of having passed matriculation examination, in which date of birth of the petitioner had been entered as 26.01.1988.

11. I may pause here for a moment to make it clear that the petitioner was declared as juvenile on the basis of his plea of his date of birth being 26.01.1990 entered in the School Leaving Certificate; whereas, in his matriculation certificate, issued on 16.09.2002, his date of birth has been entered as 26.01.1988. If the said date of birth entered in the matriculation certificate is to be taken to be correct, the petitioner was more than 18 years of age as on the date of occurrence, i.e. 01.06.2006. On the basis of the date of birth



as entered in the matriculation certificate, the petitioner can be said to have passed the matriculation examination at the age of 14 years and less than 08 months. If the date of birth, which the petitioner claims on the basis of School Leaving Certificate in support of his plea of juvenility, he had passed the matriculation examination at the age of 12 years and 8 months.

12. Submission has been advanced on behalf of the petitioner that higher date of birth than his actual date of birth was declared at the time of filling up the application form for matriculation examination so as to become eligible to appear at the matriculation examination. Nothing, however, has been shown to the Court as to what is the minimum eligibility of age requirement for appearing at the matriculation examination, which had compelled the parents of the petitioner to declare higher date of birth than his actual date of birth.

13. The fact remains that on the date of occurrence, the petitioner had the said matriculation certificate in his possession. When he filed an application on 20.05.2010, claiming his juvenility, he did not disclose that he had passed matriculation examination and that the date of birth entered in the matriculation certificate was different from his actual date of birth. When he raised the claim of his juvenility before the



Court, he had become mature enough at the age of more than 20 years as per his own claim of date of birth being 26.01.1990. It is, thus, clear that the petitioner, when he raised the claim of juvenility, had wisdom to understand that he was raising a false plea, by concealing his matriculation certificate before the Court and he placed reliance on a certificate issued by the Headmaster of the Kiratpur Middle School, to get advantage of the beneficial legislation enacted for juveniles.

14. The story does not end here. The Juvenile Justice Board, Darbhanga, had sought medical opinion and the Medical Board, constituted for the said purpose, determined the age of the petitioner to be between 25 and 26 years, as on the date of the examination, i.e. on 25.05.2016. If the determination of age, according to the Medical Board, is taken to be correct, the age of the petitioner would come to 16 years, even if higher side of the age determined by the Medical Board is taken for the purpose of determination of age of the petitioner as on the date of occurrence.

15. Before the Juvenile Justice Board, Darbhanga, there were, thus, following three documents/materials for determination of age of the petitioner, under Section 7-A of the J.J. Act, 2000 read with Rule 12 (3) of the Juvenile Justice (Care and Protection of



Children) Rules, 2007 (hereinafter referred to as "J. J. Rules, 2007").

- (i) School Leave Certificate issued by the Headmaster, Middle School, Kiratpur (Ghanshyampur), showing his date of birth to be 26.01.1990;
- (ii) Report of the Medical Board showing the petitioner's age, as on the date of examination, i.e. 25.05.2016, between 25-26 years;
- (iii) The matriculation certificate issued on 16.09.2002 showing his date of birth to be 26.01.1988.

16. On the date when the petitioner claimed his juvenility, the J. J. Rules, 2007, were in operation. Rule 12 (3) of J. J. rules, 2007, read thus:-

"12. Procedure to be followed in determination of age.-

- (1) xx xx xx
- (2) xx xx xx
- (3) In very 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 the 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."



17. There should be no doubt over the fact that on the date when the petitioner had taken a plea of his juvenility, the J. J. Rules, 2007, were in force.

18. Mr. Sanjay Singh, learned Counsel appearing on behalf of the petitioner, has submitted that since occurrence dates back to the year 2006, age determination enquiry will be governed by the procedure under Section 22 (5) of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2003, before coming into the force of J. J. Rules, 2007, Rule 22 (5) of which read thus:-

"22. Procedure to be followed by a Board in holding inquiries and the determination of age.-

(1) xx xx xx

(2) xx xx xx

(3) xx xx xx

(4) xx xx xx

(5) In every case concerning a juvenile or a child, the Board shall either obtain –

(i) a birth certificate given by a corporation or a municipal authority; or

(ii) a date of birth certificate from the school first attended; or

(iii) matriculation or equivalent certificate, if available; and

(iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a



margin of one year, in deserving cases for the reasons to be recorded by such Medical Board,

regarding his age; and, when passing orders 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."

19. It is his plea that there is apparent difference between the procedure prescribed for age determination before coming into force of J. J. Rules, 2007, on the point of order of preference of the documents to be relied on for determination of age. He has submitted that under the old Rules, the petitioner relied on the best evidence available on the basis of order of preference, i.e. School Leaving Certificate, and he did not produce the matriculation certificate, the same being the least preferred document. He has placed reliance, in support of his contention, on a decision of the Supreme Court, in the case of **Jarnail Singh v. State of Haryana**, reported in **(2013) 7 SCC 263**.

20. The submissions, so advanced, is fit to be rejected on the sole ground that procedure for age determination enquiry as prescribed under the rules in force on the date of enquiry framed under J.J. Act, 2000, will have to be adopted. The age determination enquiry cannot be done



on the basis of rules, which are not in force as on the date of enquiry, framed under the J.J. Act, 2000. Once, this plea is rejected, the contention of Mr. Sanjay Singh, that the petitioner had rightly relied on the entry made in the School Leaving Certificate, loses its force. Evidently thus, as on the date of age determination enquiry of the petitioner, J. J. Rules, 2007, were in force. The matriculation certificate of the petitioner was, admittedly, available and was in his possession having the entry of his date of birth as 26.01.1988. It has been held by the Supreme Court repeatedly that only in the absence of any matriculation or equivalent certificates, the Court needs to obtain the date of birth certificate from the School first attended other than a play school. The question of obtaining medical opinion from a duly constituted Medical Board would have arisen only if the above mentioned documents, under Rule 12 of the J. J. Rules, 2007, were unavailable. The petitioner had concealed this vital document at the time of age determination enquiry, which is, now, an undisputed fact.

21. How the age determination enquiry has to be conducted under Section 7-A of the J.J. Act read with the extant rules has been clearly laid down by Supreme Court in case of **Ashwani Kumar Saxena v. State of Madhya Pradesh** reported in **(2012)9 SCC 750**. The Supreme Court



dealt elaborately the provisions of Section 7-A of the Act and Rule 12 of the J.J. Rules, 2007 framed by the Government of India, and held in paragraph 32 as follows:-

“32. “Age determination inquiry” contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the Court to seek evidence and in that process, the Court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the Court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a Panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the Court, reasons to be recorded, may, if considered necessary, given the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.”



22. The Supreme Court, in the case of **Jarnail Singh** (supra), has specifically held that matriculation or equivalent certificate being the first option, it has to be treated as highest rated option and once highest rated option is available, no other evidence can be relied on.

23. I have no hesitation in holding that age determination enquiry has to be held on the basis of rules in force, framed under J. J. Act, 2000, on the date of enquiry, by adopting first available basis, out of number of options envisaged in the relevant rules, meaning thereby that if an option is expressed in a preceding clause, it shall have overriding effect on an option expressed in the subsequent clause, since the first option is essentially the highest rated option, which would conclusively determine the age of a person.

24. In the case of **Om Prakash v. State of Rajasthan and Another**, reported in **(2012) 5 SCC 201**, the Supreme Court came heavily on the conduct of the persons attempting to make out a case of his juvenility by concealing material facts. The Supreme Court held in the said decision that such practice will have to be discouraged if the evidence and other materials on record fail to prove that the accused was a juvenile at the time of commission of offence. The Supreme Court observed that the benefit of this benevolent



legislation cannot be allowed to be used as a shield to dupe the Courts of Justice while conducting trial and treatment of heinous offences. This will clearly be treated as an effort to weaken the justice dispensing system and, hence, cannot be encouraged, the Supreme Court held.

25. In a recent decision, in the case of **Mokarrab and Others v. State of Uttar Pradesh**, reported in **(2017) 2 SCC 210**, the Supreme Court refused to rely upon opinion of the Medical Board in determining the age of the appellants of that case so as to give them benefits of the provisions of J. J. Act, 2000, in the absence of other cogent evidence. In the present case, the most preferred evidence under the Rules establishes that the petitioner was major as on the date of occurrence and had that document been available before the Juvenile Justice Board, Darbhanga, when he had initially taken plea of juvenility, he would not have been declared a juvenile.

26. As I have observed in the very opening paragraph, that the petitioner has attempted to play fraud with the course of justice by concealing his matriculation certificate at the time of raising plea of his juvenility, in my view, not only such attempts need be discouraged, such orders are required to be passed by the courts, which may have deterrent effect.



27. As has been noticed above, the First Information Report was lodged in the year 2006. The petitioner raised false plea of juvenility in the year 2010; whereas he has passed matriculation examination in the year 2002 itself. On the date when he raised the plea of his juvenility, he himself was major. He was, thus, aware and fully conscious of the fact that he was raising a false plea of juvenility by concealing his date of birth entry in the matriculation certificate. Because of the plea, the completion of trial got delayed, at least, by seven years. In that view of the matter, I consider it to be a fit case where exemplary cost should be awarded while dismissing the application.

28. Accordingly, this application is dismissed with a cost of Rs. 50,000/- to be deposited in the account of Bihar State Legal Services Authority within two months from today to be utilized for the welfare of the juveniles in Observation Homes.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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