

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.396 of 2017

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Md. Jakaullah @ Md. Jaqullah, S/o Maksud @ Makshud Ahmed, resident of
Village- Rajwara, P.S.- Taraiya, District- Saran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Salauddin, S/o Md. Israil, R/o Village- Rajwara, P.O. Usri Chand Pura, P.S.-
Taraiya, District- Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Kumar Srivastava, Advocate.

For the State : Mr. Ajay Kumar-I, A.P.P.

For the O.P. No. 2 : Mr. Y.C. Verma, Sr. Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 16-11-2017

Heard learned counsel for the petitioner and learned
counsel for the State as well as learned counsel for the O.P. No. 2.

2. This revision application has been preferred by the
petitioner against the order dated 25.01.2017 passed by 10th
Additional Sessions Judge, Saran at Chapra in Cr. Appeal No. 47 of
2011 thereby affirming the order dated 06.07.2011 passed by Juvenile
Justice Board, Chapra (hereinafter called 'Board') in Enquiry No. 151
of 2011 arising out of Taraiya P.S. Case No. 91 of 2010 holding the
accused-O.P. No. 2 juvenile.

3. A brief fact of the case is that Board, vide order dated
06.07.2011, after holding enquiry, declared O.P. No.-2 juvenile on the



basis of Medical Board's opinion giving flexibility of two years to the lower side of the age. During enquiry, informant's side also appeared and submitted Photostat copy of certificate of Maulvi issued by the Bihar State Madarsa Education Board (hereinafter called 'Madarsa Board') in 2008, which is equivalent to Intermediate examination and as per the said certificate, date of birth of the O.P. No. 2 was 20.07.1991, whereas accused O.P. No. 2 submitted matriculation certificate issued by the C.B.S.E of the year 2007-08 wherein his date of birth is recorded as 10.03.1994. The informant's side challenged the decision of the Board before the Sessions Court and the same was disposed of by impugned order holding the Board's decision correct. The learned Additional Sessions Judge observed that under Juvenile Justice Act, two years flexibility on lower side was given by the Juvenile Justice Board, which is correct approach.

4. Learned counsel for the petitioner submits that in the Maulvi examination, petitioner appeared in year 2008, which is equivalent to Intermediate, whereas matriculation examination conducted by the Madarsa Board is Fokania so that he had appeared in the examination in the year 2006 and the date of birth recorded in the certificate of Maulvi examination on the basis of Fokania, is 20.07.1991. He again appeared in Matriculation examination through CBSE in the year 2007-08 and in that certificate, his age is mentioned



as 16.03.1994.

5. Learned counsel for the petitioner further submits that in any view of the matter, the Board did not enter into enquiry regarding the genuineness of the certificate issued by the Madarsa Board, however, it constituted a Medical Board. Medical Board examined accused on 28.05.2011 and found his age in between 20-21 years and the occurrence is dated 31.08.2010, so the accused was examined after lapse of 09 months from the date of occurrence. So on the alleged date of occurrence, his age becomes 19 years+ so two years lower side and 20 years+ so two years higher side as per Rule 12(3)(b) of the Bihar Juvenile Justice (Care and Protection of Children) Rule, 2007 and the said rule would be applicable in the present case as the occurrence is of the year 2010. The Board has only jurisdiction to give benefit to the child or a juvenile considering his age only on lower side within the margin of one year only and not more than that. But in the present case, margin of two years has been given. If as per the said rule, only one year on lower side giving benefit of margin has been considered on lower side to the assessment of age done by the Medical Board then O.P. No. 2 becomes 18 years and above.

6. Contrary to that, learned counsel appearing on behalf of the O.P. No. 2, submits that in the revisional jurisdiction, the court



has limited jurisdiction, only in case of glaring miscarriage of justice, the court would intervene in the finding of the Board/Sessions court. Moreover, in case of a radiological examination, on the basis of which his age is ascertained two years margin on lower side is given, so the Board has correctly ascertained it after holding enquiry as per Rule and finding the accused less than 18 years, declared him juvenile.

7. Having considered rival submissions and on perusal of record, the Court finds that O.P. No. 2 is an accused in serious offence registered under Section 302 and other allied offences of penal code. The date of occurrence is 31.08.2010. Two contradictory educational certificates, with respect to his age, were produced before the Board, one by the accused, which is a matriculation certificate issued by the CBSE Board of the year 2007-08 showing date of birth 16.03.1994 and a certificate of Maulvi examination issued by the Madarsa Board of the year 2008, which is equivalent to the Intermediate, showing date of birth 20.07.1991. In view of these contradictory documents, the Board decided to get O.P. No. 2 examined by a duly constituted Medical Board for assessment of age and examined him on 28.05.2011 and found him in between 20-21 years of age. O.P. 2 was examined after lapse of approximately 09 months of the alleged date of occurrence. So had he been examined on the date of occurrence, his age would have been in between 19 years 03 months and 20 years 03



months approximately. The Board as well as the Additional District & Sessions Judge-10th has ignored the provisions of Rules, 2007, while determining the age of accused-O.P. No. 2. Rule 12 (3)(b) is quoted hereinbelow:

“12(3)(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.”

8. The rule envisages that if exact assessment of the age could not be ascertained by the Medical Board in such case, the Committee or the Board may by giving reasons and if considers necessary, may give benefit of the person concerned claiming juvenile, the benefit of age on lower side within the margin of only one year and not more than that. The said rule is applicable in the present case also, if it is applied that on the alleged date of occurrence,



O.P. No. 2 becomes 18 years of age. In the result, he becomes a major and does not remain a child. So, O.P. No. 2 is declared a major and not a juvenile and on contrary, he has to be proceeded as being an adult accused and not a child.

9. For the aforesaid reasons, order dated 25.01.2017 passed by 10th Additional District and Sessions Judge, Saran at Chapra in Cr. Appeal No. 47 of 2011 affirming the order dated 06.07.2011 passed by Juvenile Justice Board, Chapra in Enquiry No. 151 of 2011 in connection with Taraiya P.S.Case No. 91 of 2010, is hereby set aside. In the result, application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA.
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