

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.503 of 2015

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Shivam Ojha, son of Buchan Ojha under the guardianship of father as
natural guardian, resident of village-Baheri, P.S-Bhabhua, District-Kaimur
..... Petitioner/s

Versus

1. State of Bihar
 2. Radheshayam Pandey, son of Late Ram Bachan Pandey, resident of
VIII- Baheri P. S. Bhabhua, Dist-Kaimure Opposite parties
- =====

Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Pandey
For the Respondent/s : Mr. S.Dayal(APP)
For Opposite Party No.2 : Mr. Radha Mohan Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

6 31-01-2017 Heard learned counsel for the parties.

2. The petitioner is aggrieved by an order dated 17.01.2015 passed in Criminal Appeal (Juvenile) No. 369 of 2014 by the learned Sessions Judge, Kaimur, whereby he has confirmed an order dated 14.11.2014 passed by the Juvenile Justice Board, Kaimur in J. Tr. No. 326 of 2014, declaring the petitioner as major.

3. Pursuant to an order of this Court, dated 24.01.2017, a supplementary affidavit has been filed on behalf of the petitioner, bringing on record the matriculation certificate showing the petitioner's date of birth as 11.11.1998.

4. It transpires from the order passed by the Courts below that the matriculation certificate was, for one reason or the other, not produced before the Juvenile Justice



Board for the purpose of age determination enquiry as contemplated under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Bihar J.J. Rules, 2012, though School Leaving Certificate indicating that the petitioner had passed matriculation examination was produced. The Juvenile Justice Board, following Rule 11(3) of the Bihar J.J. Rules, 2012, in the absence of the document prescribed for age determination proceeded to seek opinion of the Medical Board. In the medical examination, age of the petitioner has been found to be between 20 to 22 years.

5. The present criminal revision application has been filed challenging the said orders on the ground that since in the matriculation certificate, date of birth of the petitioner was indicated as 11.11.1998, the Juvenile Justice Board, instead of seeking opinion from the Medical Board ought to have proceeded on the basis of entry of date of birth in the matriculation certificate.

6. The course adopted by the Juvenile Justice Board in seeking medical opinion in the facts and circumstances of the case, cannot be said to be irregular, illegal or contrary to the statutory provisions inasmuch as, admittedly, the matriculation certificate was not made available before the J.J. Board. The matter would have been entirely different, had the matriculation certificate been



produced before the Medical Board.

7. As has been noticed above, the matriculation certificate has now been brought on record. Rule 11 of the Bihar J.J. Rules, 2012 prescribes the procedure for age determination enquiry. Rule 11 (3) of the Bihar J.J. Rules, 2012, which is being extracted hereinbelow:-

"11. Procedure to be followed in determination of
 Age - (1) xx xx xx
 (2) xx xx xx
 (3) *In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or the Committee, as the case may be, by seeking evidence by obtaining :*
 (a) (i) *the matriculation or equivalent certificate, if available; and/or ,*
 (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 municipal corporation or a municipal authority or a panchayat; and*
 (b) *only in the absence of either (i) and/or (ii) of clause (a) above, or in case the court or the board or the committee finds it necessary, 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 recorded by them, may, if to be considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of 6 months and, while 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 and either of the evidence specified in any of the clauses*
 (a) (i), (ii) (iii) *or in the absence whereof, clause (b) shall be proof of the age as regards such child or the juvenile in conflict with law."*

8. Learned counsel appearing on behalf of Opposite party No.2, who is the informant of the case, has vehemently argued that the petitioner is one of the twin



brothers, who is also an accused and his case has also been referred to the Medical Board for age determination. He submits that in the absence of any dispute over the fact that date of birth of the petitioner's twin brother is different from the date of birth as entered in the matriculation certificate of the petitioner, it raises an issue over the correctness of the date of birth of the petitioner. There being doubt over the date of birth of the petitioner, opinion of the Medical Board should be allowed to prevail and, therefore, the impugned orders need no interference by this Court.

9. The manner in which the age determination enquiry is to be conducted has been authoritatively laid down by the Supreme Court in case of **Ashwani Kumar Saxena Vs. State of M.P.** reported in **(2012) 9 SCC 750**, wherein it has been held that in the absence of matriculation or equivalent certificates only, the Court is required to obtain date of birth certificate from the school first attended. Further, only when the matriculation certificate or equivalent certificates or date of birth certificate from school first attended is not available, the Court can be required to obtain the birth certificate issued by the Corporation or Municipal authority or a Panchayat. The Supreme Court has clearly held that medical opinion will be required to be obtained from a duly constituted Medical Board only, if none of the above



mentioned documents can be obtained.

10. In case of **Ashwani Kumar Saxena Vs. State of M.P.** (supra), the Supreme Court has ruled that age determination enquiry contemplated under J.J. Act and the Rules framed thereunder has nothing to do with enquiry under other legislations. The Court observed that there may be situation where the entry made in the matriculation or equivalent certificates, the date of birth certificate from School first attended and even the birth certificate given by the Corporation or a Municipal Authority or a Panchayat may not be correct. But the Court, Juvenile Justice Board functioning under the Act is not required to conduct a roving enquiry and to go behind those certificates to examine the correctness of those documents. This can be done only where those documents and certificates were found to be fabricated or manipulated with the Court, J.J. Board or the Committee need to go for medical report for age determination.

These observations and declaration of law made by the Supreme Court in case of **Ashwani Kumar Saxena** (supra), in my view, answers the submission advanced on behalf of Opposite party No.2.

11. In the present case, it cannot be said that matriculation certificate of the petitioner could not be



obtained. It is a different matter that the said matriculation certificate was, for reasons unknown, not produced before the Juvenile Justice Board for age determination enquiry.

12. Learned counsel for Opposite party No.2 has placed strong reliance on a Supreme Court's decision in case of ***Om Prakash Vs. State of Rajasthan (Cr. L.J. 2266)***. The said decision does not support the submission, which he wants to advance. The said order was passed in a situation where the academic records were attempted to be withheld deliberately to hide the age of the alleged juvenile. In this case, for reasons not known the said matriculation certificate could not be brought on record before the Juvenile Justice Board. The facts of Supreme Court's decision in case of ***Om Prakash*** (supra), are distinguishable from the facts of the present case.

13. Whereas, I do not intend to interfere with the impugned orders at present, in the facts and circumstances of the case, because the orders have been passed in the absence of matriculation certificate of petitioner before the Juvenile Justice Board, I dispose of this application with an observation that if the petitioner files an application afresh for age determination along with a copy of the matriculation certificate, the Juvenile Justice Board shall examine the petitioner's claim again and pass an order in accordance with



the provisions of Bihar J.J. Rules, 2012.

14. This disposes of the application.

(Chakradhari Sharan Singh, J)

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