

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.912 of 2016

=====

1. Baliram Singh @ Bali Singh S/o Late Sabhapati Singh R/o Village-
Dihri, P.S.- Udwant Nagar, Distt- Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Dharmendra Singh S/o Madho Singh R/o Village- Dihri, P.S.- Udwant
Nagar, Distt- Bhojpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ravindra Kumar

For the Respondent/s : Mr. Sri Chandra Bhushan Prasad

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL JUDGMENT & ORDER

10 14-07-2017

Heard learned counsel for the parties.

The opposite party No.2 has been declared to be juvenile as on the date of occurrence, by order, dated 03.08.2016, passed by the learned 3rd Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No. 220 of 2013 arising out of Udwant Nagar P. S. case No. 27 of 2012, registered for the offences punishable under Sections 302,307, 120B, 323/34 of the Indian Penal Code and Section 27 of the Arms Act.

The said order has been put to challenge by the informant of the case in the present criminal revision filed under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

The declaration of the petitioner as juvenile by the Court below is based on report of the Medical Board



submitted on 26.07.2016, in which his age has been determined as between 18-20 years. The date of occurrence is 10.01.2012. Thus, on the basis of the Medical Board's opinion, the petitioner having been found to be 14-16 years of age, the Court below has declared him to be a juvenile.

There are certain facts over which there is no dispute.

The petitioner had claimed juvenility on the basis of certificate issued by the School, which according to him, he had first attended. In the said certificate, his date of birth was found to be recorded as 09.06.1994. Even on the basis of the date of birth as declared by him before the Court below, he would have been 17 years and seven months as on the date of occurrence. Said a differently, it was the claim of the petitioner before the Court below that his age was 17 years and seven months as on the date of the occurrence as per the certificate issued by the School first attended by him. In the Medical Board's opinion, his maximum age was 16 years,i.e., between 14-16 years as on the date of occurrence, which is much less than even what the petitioner had claimed before the Court below. There is another fact, which is not in dispute. The Opposite party NO.2 had appeared for matriculation examination held by the Bihar School Examination Board in the year 2003. Relevant portion of the cross list prepared by the Bihar School Examination Board of



the said examination has been brought on record by the petitioner which shows that the petitioner had declared his date of birth as 05.04.1987. In the said examination, the petitioner had failed. On the basis of this date of birth, he was nearly 25 years (3 months less) as on the date of occurrence.

On the basis of his own declaration made by the petitioner and his parent when he was to appear for the Matriculation Examination 2003, his date of birth has been shown to be 05.04.1987. The School Leaving Certificate which he relied before the Court below disclosed his age to be 17 years and seven months.

In that background, in my opinion, the opinion of the Medical Board cannot be accepted which holds age of Opposite party No.2 to be much less (09-11years) than what had been disclosed while appearing for matriculation examination in the year 2003.

Learned counsel appearing on behalf of Opposite party No.2 has submitted that there being dispute between two dates of birth noticed by the Court below, the Court below had rightly referred the matter to the Medical Board seeking opinion. In terms of Rule framed under Juvenile Justice (Care and Protection of Children) Rules, 2007, the opinion of the Medical Board has to be accepted and there is, therefore, no illegality in the impugned order, learned



counsel has submitted.

Learned counsel for the petitioner while countering the said submission has relied **(2017) 2 SCC 210 Mukarrab and others Vs. State of Uttar Pradesh)** and has submitted that Medical opinion evidently appears to be manipulated and tainted and no reliance can be placed on such opinion. I find substance in the submission made on behalf of the petitioner. A report of the Medical Board should not be accepted mechanically.

In the present case what I find that as per his own disclosure for appearing for Matriculation Examination, the Opposite party No.2 was born on 05.04.1987. If the report of the Medical Board is to be accepted, he was born between 1996 to 1998, which has huge gap between the age of Opposite party No.2 himself. There is no dispute about the fact that the petitioner had appeared in 2003 matriculation examination by the Bihar School Examination Board. If what has been suggested by the Medical Board is to be accepted, when the petitioner was appearing for the said matriculation examination he was between 5-7 years of age, which is beyond imagination and it could never be the case of the Opposite party No.2 that he appeared for the matriculation examination in 2003 at the age of 5 to 7 years.

The impugned order cannot be sustained and is, accordingly, set aside.



This application is, accordingly, allowed.

Let the trial before the Court below proceed treating the opposite party No.2 not a juvenile in conflict with law.

ArunKumar/-

U			
---	--	--	--

(Chakradhari Sharan Singh, J)

