

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1241 of 2016

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1. Praveen Kumar Rai @ Praveen Rai, Son of Yogeshwar Rai.

2. Baby Kumari, Daughter of Yogeshwar Rai.

Under the guardianship of his father, namely, Yogeshwar Rai.

Both resident of Village Sirisiya, P.S. Chanpatia (Sirisiya O.P.),

District-West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar

2. Ajit Rai @ Raghav Rai, Son of Late Kanhaiya Rai, resident of Village Baitapur, P.S. Shikarpur, District West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Adv.

Mr. Mukesh Kumar, Adv.

Mr. Shivjee Singh, Adv.

For the State : Mr. R.S. Chaudhary, APP

For the Opp. Party No. 2 : Mr. Ram Kishun Prasad, Adv.

Mr. Nishant Kumar Sinha, Adv.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 06-07-2017

There are two petitioners, who are brother and sister. Both of them have been made accused in Chanpatia P.S. Case No. 172 of 2008, registered for the offence punishable under Sections 304(B) and 201/34 of the Indian



Penal Code.

2. Petitioner No. 1 is said to be the husband of the deceased. The occurrence had taken place in the year 2008. Petitioner No. 1, based on the entry of his date of birth in the certificate of Madhyama issued by the Bihar Sanskrit Shiksha Board, which is equivalent to matriculation, claimed juvenility as on the date of occurrence, *i.e.*, 01.11.2008. The date of birth of petitioner No. 1, as entered in the certificate of Madhyama, is admittedly 04.01.1991. The said certificate has been claimed to have been issued in July 2011.

3. Petitioner No. 2 also claimed her juvenility, claiming her date of birth to be 22.12.1992, as on the date of occurrence, on the basis of register maintained by the government school.

4. The plea so raised on behalf of the petitioners before the court below, for them to be declared as juvenile has been rejected by the learned Additional Sessions Judge-VI, Bettiah, West-Champaran, in Sessions Trial No. 01 of 2010, by an order, dated 28.10.2016, which is under challenge in the present criminal revision application, filed under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (*hereinafter referred to as the 'Act'*).

5. How the age determination enquiry has to be conducted under the provisions of the Act, read with the



extant Rules, has been clearly laid down by Supreme Court in case of **Ashwani Kumar Saxena Vs. State of Madhya Pradesh**, reported in **(2012)9 SCC 750**. The Supreme Court has 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, which is *pari materia* with the Rule 11 of the Bihar J.J. Rules 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."

(emphasis supplied)

6. It is evident from the Supreme Court's decision in case of **Ashwanii Kumar Saxena** (supra), as noted above, that the Court/J.J. Board can go for age determination enquiry by seeking medical opinion through a duly constituted Medical Board, only when matriculation or equivalent certificate or date of birth certificate from school first attended or birth certificate given by the Corporation or Municipal Authority or a *Panchayat* are unavailable. The Supreme Court made it clear that in case exact assessment of age could not be done, then the Court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

7. Learned counsel, appearing on behalf of opposite party No. 2, the informant, opposing the said submission, as regards case of petitioner No. 1, has submitted



that in one of the documents, maintained by a government school, his date of birth has been found to be 03.03.1987, which information he has received under the Right to Information Act.

8. Submission made on behalf of the petitioners is convincing. Considering the clear provision under Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, and the way the same has been interpreted by the Supreme Court, I am of the view that petitioner No. 1 ought to have been declared to be a juvenile on the basis of date of birth recorded in the certificate of passing *Madhyama* examination, which is equivalent to matriculation examination, held by Bihar Sanskrit Siksha Board. The certificate has been claimed to have been issued much prior to the date of examiantion.

9. Coming to the claim of petitioner No. 2, it has been asserted in this regard that her date of birth is 22.12.1992, as mentioned in the Transfer Certificate, issued by the school where she was studying. It is the claim of opposite party No. 2 that her date of birth is 03.01.1992. Even the plea of the informant is accepted and the date of birth of petitioner No. 2 is treated to be 03.01.1992, she could have been declared juvenile as on the date of occurrence, *i.e.*, 01.11.2008, being less than 18 years of age.



10. However, in the present proceeding, on the basis of what is being submitted on behalf of the parties, the Court cannot declare petitioner No. 2 to be a juvenile. A decision, in my view, will have to be taken by the Juvenile Justice Board as regards petitioner No. 2. Needless to say that if it is proved that petitioner No. 2 is younger than petitioner No. 1, she can be declared juvenile on that basis.

11. Be that as it may, the impugned order, passed by the court below, cannot be sustained. The impugned order, dated 28.10.2016, is, accordingly, set-aside. Petitioner No. 1 is declared to be a juvenile. So far as petitioner No. 2 is concerned, let the Juvenile Justice Board take a decision on her juvenility within a period of three (3) months from the date of receipt/production of a copy of this order.

12. This application is allowed in part, accordingly.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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