

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.464 of 2017

Arising out of PS.Case No. -null Year- null Thana -null District- BHAGALPUR

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Krishna Sinha Wife of Sri Kailash Singh, Resident of Village- Dhuabai, P.S.- Sanokhar, District- Bhagalpur, at Present resident of Baba Basuki Nath Colony, Mirjan Hat, P.S.- Mojahidpur, District- Bhagalpur

.... Petitioner

Versus

1. The State of Bihar.
2. Md. Nishat Alam @ Md. Nishad Alam @ Md. Monty, Son of Md. Sharif @ Shafique, Resident of Village- Shahjangi, P.S.- Habibpur, District- Bhagalpur

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Prahlad Kumar Bhagat, Advocate
For the State	:	Mr. Navin Kumar Pandey, APP
For O.P. No.2	:	Mr. Jagannath Singh, Advocate
		Mr. P.K. Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 08-01-2018

Heard learned counsel for the petitioner, learned APP for the State as well as learned counsel appearing on behalf of opposite party no.2.

2. The petitioner has preferred this criminal revision application against the order dated 09.06.2016, passed by learned Additional District & Sessions Judge, 6th, Bhagalpur in Criminal Appeal No.17 of 2016 thereby setting aside the order dated 23.03.2015 of the Juvenile Justice Board, Bhagalpur passed in G.R. No.1580 of 2014, arising out of Sanokhar P.S. Case No.40 of 2014.

3. The brief fact giving rise to the case is that opposite party no.2 is one of the accused in Sanokhar P.S. Case No.40 of 2014 registered under Sections 364(A)/34 of the Indian Penal Code. Later



on Section 376 of the Indian Penal Code as well as Section 4 of the POCSO Act are added but charge-sheet was submitted under Sections 366(A), 376, 395(A)/34 of the Indian Penal Code as well as under Section 4 of the POCSO Act. The Juvenile Justice Board, Bhagalpur made an enquiry for determination of the age of opposite party no.2 and school admission register was produced in which his date of birth was recorded as 05.10.1996 while being admitted in Class L.K.G. and also photo copy of Matric Registration Card was produced in which the date of birth is recorded as 10.02.1998, so finding the contradictions in these two documents regarding date of birth, the Juvenile Justice Board, Bhagalpur directed for examination of the accused by the medical board for assessment of his age. The medical board assessed his age in between 20-30 years and the Juvenile Justice Board relying on the decision of Om Prakash Vs. State of Rajasthan (AIR 2012 SC 1608) declared him major. The accused preferred Criminal Appeal No.17 of 2016. By the impugned order the learned Additional District & Sessions Judge, 6th, Bhagalpur declared him juvenile on the basis of copy of the matriculation certificate produced by the accused.

4. Learned counsel for the petitioner submits that two contradictory documents with regard to his age were produced by the accused before the Juvenile Justice Board. In one document his date



of birth is recorded as 05.10.1996 that is the first attended school in the class of L.K.G. and another document the Matric Registration Card showing his date of birth as 10.02.1998, therefore, in view of the ratio decided in Om Prakash (supra), the Juvenile Justice Board, Bhagalpur after examination by the Medical Board declared the accused as major but the appellate court merely considering photo copy of the Matriculation Registration Certificate without verifying its genuineness declared him juvenile.

5. Learned counsel appearing on behalf of opposite party no.2 submits that there is no illegality in the impugned order as matriculation certificate is the most reliable document and, therefore, there is no illegality in declaring the accused as juvenile.

6. Having considered the rival submissions and on perusal of the records, the Court finds that the appellate court has applied the wrong provision of law while declaring the accused a juvenile because the age determination of a juvenile is to be done as per the then prevalent law i.e. the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012. Rule 11 of the said Rule contains the procedure to be followed for determination of the age but the appellate court relied on Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 over looking the Rules framed by the State of Bihar. In view of Section 68 of Juvenile Justice (Care and



Protection of Children) Act, 2000, the State Government is empowered to carry the purposes of the Act by publishing notification in the official gazette. If any State frames such model Rules then such Rule is applied in the particular State unit but the learned appellate court over looking the provision of law placed reliance on Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that too without verifying the genuineness of the matriculation certificate of the accused. This is more important whether that document is a genuine or not which requires to be verified from the concerned Board, so for the aforesaid irregularity and illegality the impugned order dated 09.06.2016, passed by the learned Additional District & Sessions Judge, 6th, Bhagalpur in Criminal Appeal No.17 of 2016 is set aside and the matter is again remanded back to the Juvenile Justice Board for conducting afresh age determination enquiry as per the provision of Rule 11 of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012, the Rule effective at the time of the alleged occurrence. It is also reiterated that during the enquiry the genuineness of the matriculation certificate be also verified by the concerned examination board and as per Rule 11 of the Rules the matriculation or equivalent certificate and the date of birth certificate from the first attended school is the most relevant document for the age determination. In absence of these two documents further



provisions are to be adopted and in view of Rule 11B, if necessary, the Board may also rely on the medical opinion furnished by the Medical Board.

7. With the aforesaid observations, the criminal revision application stands allowed. However, the Juvenile Justice Board, Bhagalpur is also directed to expedite the enquiry and to conclude the same within a month from the date of receipt/production of a copy of this order.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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