

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.175 of 2018

Arising Out of PS. Case No.-40 Year-2017 Thana- MAHILA P.S. District- Araria

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WASIM @ MD. WASIM AHMAD @ MD. WASIM ALAM S/o Raisuddin @
Md. Raisuddin, R/o Village- Sanjheli Ward No.2, Raniganj (O.P.-Araria) R.S.
District- Araria Under the guardianship of His Elder Brother Md. Matin S/o
Rajsuddin @ Md. Rajsuddin

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Bibi Farzana D/o Md. Amin , R/o Village- Sanjheli , P.S.- Raniganj (O.P.-
Araria R.S.) District- Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Prasad Singh
For the Respondent/s : Mr. Narendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 13-03-2018 The petitioner is aggrieved by the order dated

10.01.2018 passed by the learned 1st Additional Sessions

Judge-cum-Spl. Judge (POCSO Act), Araria in Spl. (POCSO)

Case No. 24 of 2017, arising out of Mahila P.S. Case No. 40

of 2017 whereby the prayer made on behalf of the

petitioner for sending the case to the Juvenile Justice

Board, Araria for assessment of his age and trial has been

rejected.

The petitioner was made accused in a case under

Sections 376, 506 and 34 of the Indian Penal Code and

Sections 3/4 of the POCSO Act. Before the learned 1st



Additional Sessions Judge-cum-Spl. Judge (POCSO Act), Araria, a prayer was made by the petitioner that his age has wrongly been Stated to be 21 years even though his date of birth as mentioned in the registration card issued by the Bihar School Examination Board was 01.02.2001, making him a juvenile on the date of occurrence.

From the perusal of the order impugned, it appears that the court below, on coming to the conclusion that the offence for which the petitioner has been charged was in the nature of a continuing offence, took the last date as the date of commission of offence before the case was lodged by the victim and assessed the age of the petitioner at 16 years and five months on that date.

However the prayer for remanding the case to the Juvenile Justice Board was rejected on the ground that the Special Court was entitled to inquire and assess the age of the accused and only thereafter if an accused is found to be a juvenile, the court would be required to send the case to the Juvenile Justice Board for trying/passing a sentence against such juvenile accused.



Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as follows:

9. Procedure to be followed by a Magistrate who has not been empowered under this Act. - (1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a Court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the Court itself is of the opinion that the person was a child on the date of commission of the offence, the said Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any Court and it shall be recognised at any stage, even after final



disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the Court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the Court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.

A bare perusal of the provision contained in Section 9(2) and Section 9(3) makes it very clear that any court other than the board before which such a plea is taken is entitled to hold an assessment of the age of the so-called juvenile accused. In case it is found that the accused/petitioner before the court is a juvenile on the date of the occurrence, the court would send the case to



the appropriate Juvenile Justice Board for passing orders and sentence if any.

This being the position of law, no fault is found with the order dated 10.01.2018.

Needless to state that the learned Special court, POCSO Act shall assess the age of the petitioner and if it is found that he is a juvenile, he shall refer the matter to the Juvenile Justice Board for passing an order on sentence. The order impugned, at this stage cannot be faulted with as it is in consonance with the provisions of Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

The petition therefore is disposed of with the aforesaid direction and observation.

(Ashutosh Kumar, J)

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