

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.828 of 2018

Arising Out of PS. Case No.-148 Year-2015 Thana- NAGARNAUSA District- Nalanda

Ravi Kumar @ Ravi Ranjan Kumar Son of Ashok Yadav @ Banda, resident of Village- Badiha, P.S.- Nagarnausa, District- Nalanda, under Guardianship of his mother, Manju Devi W/o Ashok Yadav @ Banda, resident of Village- Badiha, P.S.- Nagarnausa, District- Nalanda.

... .. Petitioner

Versus

The State of Bihar.

... .. Respondent

Appearance :

For the Petitioner/s : Mr. Man Mohan Kumar
For the Respondent/s : Mr. Binay Krishna

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 04-12-2018 This revision application is directed against the order dated 21.5.2018 passed by 1st Additional Sessions Judge-cum-Special Judge (SC/ST Act), Nalanda at Biharsharif in Sessions Trial No. 39 of 2016, arising out of Nagarnausa P.S.Case No. 148 of 2015 dated 18.9.2015, whereby and whereunder he has rejected the prayer of petitioner on the petition dated 15.11.2017 filed by the petitioner and co-accused Richu Devi to send their case to the Juvenile Justice Board (in short 'Board'), Nalanda for final determination of their age and proceeding in accordance with law as they have claimed to be juvenile on the alleged date of occurrence and as per medical report the age of petitioner was assessed at 20-21 years on the day of examination, i.e., 20.4.2018. However, learned Additional



Sessions Judge-cum-Special Judge has allowed the prayer of Richu Devi and directed for sending the record to Juvenile Justice Board by separating the record.

The prosecution case, in short, is that when police officials along with Chaukidar proceeded from police station for evening patrolling and conduct raid against absconder accused persons and reached at village Kaila then received information by wireless that in the village Badiha, Ram Uchit Yadav was shot fire by his nephew Ravi Ranjan Kumar, petitioner, and they reached at the house of the petitioner and found the main door of the house locked from inside and when they came to know that petitioner was present in the house they entered inside the house by climbing the wall and opened the main door of the house and thereafter the police party along with Chaukidar entered inside the house and started search to the petitioner on the light of torch and in course of search the informant was taking position and petitioner opened fire which hit near the right shoulder of S.H.O. and he fell down and wife of petitioner was insisting the petitioner to flee away through the roof taking advantage of darkness.

On the basis of aforesaid statement Nagarnausa P.S.Case No. 148 of 2015 was registered under Sections 353,



332, 333, 307, 115/34 IPC and as later on SHO died, Section 302 IPC has also been added. It appears that after commitment the case traveled to the file of Sri Shashi Bhushan Prasad Singh, 1st Additional Sessions Judge-cum-Special Judge, Nalanda for trial.

It appears that on 15.11.2017 a petition has been filed on behalf of petitioner Ravi Kumar and also Richu Devi for sending their case before the Juvenile Justice Board, Nalanda for determination of their age and proceeding in accordance with law and learned court considering the provisions of Section 9 of Juvenile Justice (Care and Protection of Children) Act, 2015 (in short '2015 Act') took up the inquiry and from order dated 17.4.2018 it appears that learned Special Judge has found that there is no legal evidence available on record on the basis of which just and proper finding could be recorded and therefore in accordance with Section 94 of 2015 Act medical examination of the petitioner and Richu Devi is required and directed the Civil Surgeon for constituting a Board of Doctors for medical examination of the petitioner and Richu Devi for assessment of their age.

It further appears from the impugned order dated 21.5.2018 that Medical report shows that age of the petitioner



was in between 20-21 years on 20.4.2018 and learned Special Judge has also found that from physical appearance also accused appears to be aged 21 years. Impugned order further disclosed that the Special Judge has also considered the transfer certificate of the school in which date of birth of the petitioner was mentioned as 10.6.1998 and on which basis petitioner was declared juvenile in earlier case, i.e., J.J.B. Case No. 81 of 2012 and found the prescribed columns of transfer certificate have not been properly filled up and it is not legible. Learned Special Judge having considered the provisions of Section 94 of 2015 Act and held that as there is no reliable document issued by school, Board or any corporation, municipality or panchayat with respect to date of birth of the accused and from medical certificate as well as physical appearance the accused appears to be aged of more than 21 years at present. Occurrence is of 18.9.2015 as such from any corner accused was not juvenile on the date of occurrence and further that the order dated 6.6.2012 has not passed by any committee or J.J. Board after recording the evidence to ascertain the age of accused, rather it is passed by S.D.J.M. and age of the accused has not been decided and accordingly he has rejected the petition dated 15.11.2017 filed by the petitioner. However, so far Richu Devi is concerned, he



has come to the conclusion that as full fledged inquiry on the point of juvenility of the accused Richu Devi was not done the case record of accused Richu Devi was separated and sent to the JJB, Nalanda for determination of her age in accordance with law and further proceeding by order dated 21.5.2018.

Section 9(2) of the 2015 Act provides as follows :

“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.”

In view of the aforesaid provision learned Special Judge is also competent to hold inquiry for determination of age. However, he has to follow the provisions of Section 94 of the 2015 Act and Section 94(2) of the Act provides as follows :

“In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeing evidence by obtaining -

(i) the date of birth certificate from the school, or the matriculation or equivalent



certificate from the concerned examination Board, if available; and in the absence there;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.”

On a plain reading of Section 94(2) of 2015 Act it is clear that learned court has to first look for the birth certificate from the school, Matriculation or equivalent certificate and in absence of those documents, secondly he has to consider birth certificate issued by Corporation or Municipality or Panchayat and only in their absence a Medical Board has to be constituted for determination of their age. However, from the order dated 17.4.2018 or from the order dated 21.5.2018 it does not appear that the court has given any opportunity to the petitioner to produce the certificate issued by the school or municipal authority or panchayat, rather aforesaid orders dated 17.4.2018 and 21.5.2018 disclosed that transfer certificate of school was filed and JJB in another case, i.e., JJB Case No. 81 of 2012 has held the petitioner juvenile, in spite of that learned Special



Judge has ordered for constitution of Medical Board and after receipt of the same, rejected the prayer of the petitioner of declaring him juvenile/child in conflict with law.

In such view of the matter, the order dated 21.5.2018 suffers from inherent illegality and is not sustainable in the eye of law. Accordingly, the order dated 21.5.2018 is set aside. Learned 1st Additional Sessions Judge-cum-Special Judge, Nalanda at Biharsharif is directed to send the record of the petitioner to the JJB for conducting inquiry for determination of age as per the provisions under Section 94 of 2015 Act. It is made clear that once the same is received by J.J.B. it shall submit report within three months from the receipt of the record.

With the above observation, this revision application is allowed.

(Vinod Kumar Sinha, J)

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