

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.443 of 2018

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Akash Kumar @ Akash Kumar Paswan, Son of Sri Pratap Paswan @ Karu Paswan, Resident of Village- Laxmanpur, P.O.+Police Station- Jamalpur, District- Munger.

.... Petitioner

Versus

The State of Bihar.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Md. Irshad
For the Respondent/s : Mr. Manoj Kumar – 1
For the Informant : Mr. Ambrish Kumar Jha

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 09-10-2018 This revision application has been filed against the order dated 13.12.2017 passed by 5th Additional District Judge, Munger in Sessions Trial No. 316 of 2017, arising out of Jamalpur P.S.Case No. 88 of 2017, by which he has rejected the prayer declaring him as juvenile.

From perusal of the record it appears that the prosecution case is of committing robbery in the house of the informant and petitioner is named in the FIR. In the application filed for declaring the petitioner as juvenile school leaving certificate has been produced which shows that he was juvenile. However, learned court below after enquiry has rejected the prayer of the petitioner for declaring him as juvenile on the ground that school leaving certificate shows that he was admitted in school on



23.4.2017 and the original copy of school leaving certificate has not been produced, further on the look of his photograph he appears to be an adult.

Petitioner has challenged the aforesaid order of learned Additional Sessions Judge on the ground that in school leaving certificate the date of his admission is mentioned as 23.4.2017 in place of 23.4.2012 but there was typing error in the certificate granted by school, later on the same has been produced before the court below after correction but the same has not been considered and moreover learned court below ought to have sent the matter to the JJB for enquiry about juvenility of the petitioner but the same has not been done and petitioner is ready to produce the school admission register also and as such the order of learned court below is not sustainable in the eye of law.

On the other hand, learned counsel for the informant has opposed the prayer on the ground that certificate is manufactured and manipulated one and considering the look of the petitioner he appears to be an adult and prayer for declaring the petitioner as juvenile has been rejected and there is no illegality in the order.

So far enquiry for juvenility is concerned, Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') prescribed for presumption



and determination of age and provides as follows :

“94. Presumption and determination of age.-

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.

(2) 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 seeking 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 thereof;

(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.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

In the present case when the petition was filed, learned



Additional Sessions Judge has himself conducted an enquiry and not sent the matter to the Juvenile Justice Board for determination of the age as prescribed under Section 94 of the Act and in absence of proper enquiry the petition for juvenility has been rejected.

In such view of the matter, the impugned order passed by learned Additional Sessions Judge does not appear to be sustainable and hence it is set aside and the matter is remitted back to the learned Additional Sessions Judge for sending the matter to the Juvenile Justice Board for determination of age of the petitioner, who after proper enquiry as provided under Section 94 of the Act and will pass appropriate order.

With the above observation, this application is allowed.

(Vinod Kumar Sinha, J)

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