

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.984 of 2017

Arising Out of PS. Case No.-100 Year-2013 Thana- MARHAURA District- Saran

Vikas Kumar, Son of Late Akhilesh Kumar Sinha, Resident of Mohalla- Shiv Bazar, P.S.- Bhagwan Bazar, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Bismillah Ansari, Son of Sirajuddun Ansari, Resident of Village- Narhan, P.S.- Raghunathpur, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bindyachal Singh, Adv. Mr. Ram Binod Singh, Adv.
For the Respondent/s	:	Mr. Sanjay Kumar Tiwary 1
For the Informant	:	Mr. Ravi Prakash, Adv.

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 22-11-2018 This revision application is directed against the judgment dated 22.8.2017 passed in Juvenile Appeal No.32 of 2017 by which the learned Appellate court has set aside the order dated 9.2.2017 passed by the Juvenile Justice Board declaring O.P.No.2 as juvenile.

2. The prosecution case in short is that in absence of the informant and his wife, his son who was alone in the house and when he returned from the work, he did not find his son till 4 o'clock in the evening, on the basis of the same Marhaura P.S.Case No.100 of 2013 was lodged. It further appears that later on dead body of his son was recovered.

3. The petitioner is not named in the FIR and later on



during the investigation, it appears that one Bablu Kumar had demanded ransom Rs.07 lac from the O.P.No.2 through his own and voice of Bablu Kumar was recorded and that claim to be voice of the petitioner.

4. The petitioner was arrested and after investigation, the police submitted charge-sheet and after cognizance he claims to be juvenile and on commitment of the case was sent for trial before the Additional District & Sessions Judge, Saran, before whom, the petitioner claims to be juvenile and on verification of his claim, the record was sent to the Juvenile Justice Board, Saran (in short the J.J.B.) for determination of age.

5. It appears that the Juvenile Justice Board on the basis of the report of the Medical Board found him aged about 22-23 years and 2 ½ months, hence he was found juvenile at the time of occurrence, aged about 17 ½ years.

6. It further appears that the O.P.No.2 filed an application on 27.2.2017 before the J.J.B. that the petitioner may be re-examined by the Medical Board but the J.J.B. rejected the application of the O.P.No.2 vide order dated 7.3.2017. Against which the O.P.No.2 preferred Criminal Appeal No.29 of 2017 but the appeal was withdrawn by him,



which will appear from order dated 24.3.2017 passed in Cr. Appeal No.29 of 2017. It further appears that in the meantime, and the petitioner was released on bail.

7. It further appears from perusal of the record that the appellant filed an appeal bearing Juvenile Appeal No.32 of 2017 challenging the order dated 9.2.2017 whereby the petitioner has been declared juvenile and the learned IInd Additional District & Sessions Judge, Saran at Chapra allowed the appeal filed by the O.P.No.2 and set aside the order dated 9.2.2017 passed by the J.J.B.

8. Being aggrieved by the aforesaid order, the present appeal has been preferred. The contention of the learned counsel for the petitioner is during inquiry, the Transfer Certificate issued by School has been filed before J.J.B. and finding the certificate produced by the petitioner as forged, the order for constitution of the Medical Board was passed and medical board found him to be aged between 21 to 23 years and he was declared juvenile at the day of occurrence, as such there is no illegality in the order of the J.J.B. but the learned appellate court without considering the aforesaid fact has set aside the order dated 9.2.2017 passed by the J.J.B. declaring him juvenile, which is not sustainable in the eye of law.



9. On the other hand learned counsel for the O.P.No.2 has submitted that at the time of the inquiry Transfer Certificate of the petitioner was found false and thereafter the School Leaving Certificate issued by the High School, Mahdali was filed by O.P.No.2 in which the date of birth of the petitioner was shown as 10.12.1992, showing that on the day of occurrence, the petitioner was major but without considering and without verifying the aforesaid document, the J.J.B. had ordered for constitution of the Medical Board, who declared him to be juvenile as such the impugned order of the J.J.B. is against the provisions of Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short the J.J.B. Act, 2015).

10. Having heard both sides and on perusal of the record, it appears that during the enquiry by the J.J.B., the certificate issued by the Headmaster of the Middle School, Babhanganwa and the certificate issued by the Headmaster was found forged as the Head Master himself deposed that he had not issued such certificate. It further appears that thereafter a School Leaving Certificate was filed by the O.P.No.2 showing the petitioner major on the day of occurrence but without considering the same, the learned J.J.B. has ordered for constitution of the medical Board, vide order dated 1.6.2016 and



the Medical Board has submitted a report and considering the same, the petitioner was found to be juvenile.

11. So far determination of age is concerned, Section 94 (2) of the J.J.B. Act, 2015 provides for presumption and determination of age which are as follows : -

“94. Presumption and determination of 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.”

12. As such Section 94(2) of the J.J. Act, 2015 is quite clear that the Board shall undertake process of age determination by seeking evidence firstly by obtaining the date of birth certificate of the School or Matriculation or equivalent



certificate issued from the concerned Examination Board, if available and in absence thereof the birth certificate given by the Corporation or Municipal Authority or Panchayat and only in absence of above two, the age shall be determined by ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board. However, in the present case age certificate produced by the petitioner was found to be forged and another certificate produced by the informant has not been considered rather Medical Board was constituted whereas Section 94 (2) of the J.J. Act, 2015 clearly provides that in absence of birth certificate from the school or corporation or municipal authority only the age shall be determined by a Medical Board. It appears that the learned J.J.B. failed to appreciate the above provisions as contained in Section 94 (2) of the J.J.B. Act, 2015 in right prospection and without verifying the genuineness of the certificate provided by the O.P.No.2 has proceeded for medical examination by the Medical Board declared the petitioner juvenile. Considering the same the appellate court has allowed the appeal and set aside the order dated 9.2.2017 and further directed that the J.J.B. will consider the veracity of the school living certificate produced by the informant first before passing



any order regarding his juvenility.

13. Considering the above facts and circumstances, there is no illegality or impropriety in the impugned judgment. This this revision application is devoid of any merit. Accordingly, the same is dismissed.

14. Let the LCR be sent back to the J.J.B., Saran forthwith.

(Vinod Kumar Sinha, J)

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