

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.152 of 2018

Arising Out of PS.Case No. -null Year- null Thana -null
District- BANKA

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Ahmad Raza @ Md. Ahmad Ansari, Son of Md. Safique Ansari,
through his father Md. Safique Ansari, resident of Village- Churaili,
P.S. Banka, District- Banka.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Noor Saba Khatoon, D/o Md. Azad Ansari, resident of Village-
Churaili, P.S. Banka, District- Banka.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Singh, Advocate Mr. Dharendra Kumar, Advocate
For the O.P. No. 2	:	Mr. S.K. Lal, Advocate Mr. P.K. Lal, Advocate
For the State	:	Mr. Manoj Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 22-06-2018

Heard learned counsel for the petitioner, informant
and the State.

The petitioner/Ahmad Raza @ Ahmad Ansari @ Md.
Ahmad was made accused in a case instituted for the offence
under Section 376 of the Indian Penal Code and Section 4 of the
Protection of Children From Sexual Offences Act, 2012 vide
Banka (Mahila) P.S. Case No. 3 of 2017 dated 11.01.2017.

The petitioner was declared juvenile by order dated
09.08.2017 passed by the Juvenile Justice Board, Banka on the
basis of his date of birth entered in the certified issued by the
Madarsa Board, Patna which referred to the date of birth of the



petitioner as 16.09.2000, thereby making the petitioner aged about 16 years and 4 months on the date of the occurrence (08.01.2017).

The records reveal that the Juvenile Justice Board, Banka vide order dated 03.05.2017 took cognizance under Section 354 I.P.C and Sections 8 and 12 of the Protection of Children From Sexual Offences Act, 2012 against the petitioner. Since the aforesaid order taking cognizance, referred to above, was passed solely by the Principal Magistrate and was not signed by the other members of the Juvenile Justice Board, Banka, the order was set aside by a Bench of this Court vide order dated 13.09.2017 passed in Cr. Revision No. 662 of 2017. By the aforesaid order, the case was remanded to the Juvenile Justice Board, Banka for passing a fresh order in accordance with law.

Pursuant to the aforesaid order, the Juvenile Justice Board, Banka, vide order dated 17.10.2017 took cognizance under Section 354(B) of the Indian Penal Code and Sections 8 and 12 of the Protection of Children From Sexual Offences Act, 2012 and allowed the petitioner to remain on provisional bail.

Aggrieved by the order passed by the Juvenile Justice Board, Banka, assessing the age of the petitioner and declaring him a juvenile, the victim/Noor Saba Khatoon preferred an appeal against the aforesaid order of the learned Juvenile Justice Board, Banka declaring the petitioner a juvenile.



The Appellate Court, vide its order dated 02.01.2018 set aside the order of the Juvenile Justice Board by declaring the petitioner an adult.

The aforesaid appellate order is under challenge in the present proceeding.

Mr. Anil Singh, learned advocate appearing for the petitioner has submitted that the learned Appellate Court, though took note of the fact that there were two dates of birth available on record viz. one which was entered in the certificate issued by the Madarsa Board, Patna and the other certificate by the Bihar School Examination Board, Patna, but without assigning any reason, accepted the date of birth entered in the certificate issued by the Bihar School Examination Board. It has also been brought to the notice of this Court that the Appellate Court asked the petitioner to take a call as to which certificate was being accepted by him and since no reply was given by the petitioner, taking the date of birth entered in the certificate issued by the Bihar School Examination Board, Patna to be correct, set aside the order of the Juvenile Justice Board, Banka holding the petitioner to be a juvenile.

It was argued that Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 made it incumbent upon the Appellate Court to have looked into, in case of any dispute, the date of birth certificate from the school or the



matriculation or the equivalent certificate from the concerned Examination Board if available and only in absence thereof, other certificate. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as under.

"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 this context, it has been submitted that the other evidence which was before the Appellate Court made it very obvious that the teachers of the Madarsa, Patna had testified to the fact that the petitioner had taken admission in the Madarsa, Patna and the certificate issued by the Madarsa is equivalent to the matriculation certificate.

It has also been submitted that the petitioner has taken admission in the Intermediate course on the basis of the result of the Madarsa Board.

With respect to the entry of the date of birth in the Bihar School Examination Board, Mr. Singh has submitted that the aforesaid certificate was not to be looked into by the Appellate Authority for the reasons that (i) he had failed in the matriculation examination and (ii) that this entry of the date of birth was later in point of time than what was entered in the certificate issued by Madarsa which he had joined sometimes in the year 1994.

Mr. S.K. Lal, learned advocate appearing for the O.P. No. 2, however has submitted that the Bihar School Examination Board certificate is the main certificate which has rightly been relied upon by the Appellate Court in holding that the order



passed by the Juvenile Justice Board regarding the juvenility of the petitioner was incorrect and in the revisional jurisdiction, it would not be proper for this Court to overturn the aforesaid order merely on the ground that there is an additional document viz. the certificate issued by the Madarsa which may be equivalent to the matriculation course.

After going through the materials available on record, it appears that the Appellate Court did not at all advert to the fact that the Madarsa course is equivalent to the matriculation and in terms of Section 94 of the Juvenile Justice(Care and Protection of Children) Act, 2015, any entry in the certificate issued by the Madarsa also could be taken into account, in the first instance, while dealing with the assessment of the juvenility of an accused.

The Appellate Court also, perhaps did not take into account that the juvenile/petitioner has taken admission in the Intermediate course on the basis of the result declared by the Madarsa Board. It further appears to this Court that the Appellate Court was weighing the two certificates and was trying to come to a conclusion but without application of mind, he accepted the age entered in the Bihar School Examination Board certificate to be correct only on the basis of the petitioner not having taken a final call in the matter as to which certificate did he accept to be correct. This is definitely a specious plea for



setting aside the order passed by the Juvenile Justice Board.

It cannot be doubted that a person would only accept the document to be correct if it brings succour to him. In that event, only waiting to the response of the petitioner and deciding the matter because of his not coming up with a definite answer, was not a correct way of adjudicating the issue. The Appellate Court ought to have applied its mind in deciding as to which document had come into existence in the first instance and which one of the date of birth entered into the document ought to have been relied upon.

For the aforesaid reasons, the order dated 02.01.2018 passed by the learned 1st Additional Sessions Judge, Banka in Cr. Appeal No. 15 of 2017, is set aside.

The case is remanded to the Appellate Court for giving a hearing to the parties and for passing a fresh order in accordance with law.

It is, however made clear that no opinion has been expressed by this Court as to which document is the genuine document to be relied upon. This decision has to be taken by the Appellate Court after going through the entire material on record.

The order be passed as expeditiously as possible preferably within a period of sixty days from the date of passing of the order/production of a copy of this order.



In the meantime, the petitioner shall remain on the provisional bail.

The learned advocate appearing for the petitioner has informed this Court that after the Appellate Court Order, the case of the petitioner has been sent to the regular Court for his trial.

Till the time the Appellate Court decides the issue, no further proceeding shall take place in the Trial Court.

Any party, aggrieved by the order of the Appellate Court shall have the liberty to take recourse to the measures provided to them under law.

With the aforesaid observation, the revision petition is disposed of.

(Ashutosh Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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