

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.90 of 2018

Arising Out of PS. Case No.-279 Year-2016 Thana- SHAHPUR District- Bhojpur

Rajesh Thakur S/o Raj Narayan Thakur, R/o Village- Chakki Nawranga, P.S.- Shahpur, District- Bhojpur through his father and Natural Guardian Raj Narayan Thakur S/o Nagina Thakur R/o Village- Chaki Nawranga, P.S.- Shahpur, District- Bhojpur. A/P R/o Mauza Bhagwanpur, P.S.- Dayachapra, P.S.- Bairiya, District- Balia U.P.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bhavesh Kumar, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Informant	:	Mr. Sanjeev Kumar with Mr. Amrendra Kumar, Advocates

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 15-07-2019

Heard learned counsel for the petitioner; Mr. Jharkhandi Upadhyay, learned APP for the State and learned counsel for the informant, who has *suo motu* appeared.

2. Learned counsel for the petitioner is permitted to correct the provision of law under which the present application has been filed, i.e., Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'Act').

3. The petitioner is aggrieved by the order dated 15.09.2017 passed by the ACJM 14, Bhojpur in Shahpur PS Case No. 279 of 2016 by which his prayer for declaring him juvenile on



the date of the incident has been rejected as also the order dated 27.11.2017 passed by the 1st Additional Sessions Judge, Bhojpur in Cr. Appeal No. 36 of 2017 by which the appeal has been dismissed upholding the order dated 15.09.2017.

4. The petitioner is the main accused in Shahpur PS Case No. 279 of 2016 instituted under Sections 147/148/149/341/324/325/307/302/120B of the Indian Penal Code and 27 of the Arms Act, 1959.

5. The petitioner taking the plea of juvenility filed an application before the Court which, after proper enquiry, was rejected by order dated 15.09.2017 with a finding that though in the school register his date of birth has been shown as 01.07.2010 but the entry was suspicious as the name of the petitioner was written in a different handwriting, as compared to the other entries made on that page. Accordingly, a Medical Board was constituted which assessed his age as above 19 years on 17.07.2000. The Court, thus, held that since the Medical Board was constituted a few months after the incident which took place on 28.10.2016, the petitioner was clearly not a juvenile on the date of occurrence and accordingly his plea of juvenility has been rejected. It is important to note here that the Court has given a finding after perusing the admission register of the school which was produced before it.



Similarly, before the Appellate Court, the appeal has been dismissed upholding the finding of the original Court. At this stage also, the Court had perused the so called admission register in which the name of the petitioner and his date of birth has been written.

6. Learned counsel for the petitioner submitted that Section 9 of the Act prescribes the procedure which have to be followed by a Magistrate who is not empowered under the Act, if the person claims that he is a child or was a child on the date of commission of offence. Learned counsel submitted that such procedure for enquiry has not been followed. It was submitted that no witnesses were examined while recording a finding that the petitioner was not a juvenile. He referred to a decision of a coordinate Bench in **Tausif Ahmad vs. State of Bihar** reported as **2017(2) PLJR 411**, the relevant being at paragraph no. 15, for the proposition that as per Rule 12 of the Juvenile Justice Rules, 2007 of the Central Government which is *pari materia* with the Rule 11 of the Bihar Juvenile Justice Rules, only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the Court needs to obtain the birth certificate given by a corporation or a municipal authority or a Panchayat (not an affidavit but certificates or documents), and



the question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. It was submitted that in the present case there was an entry in the school register which was produced before the Court.

7. Learned APP and learned counsel for the informant submitted that the Court had called for the school register and after perusing the same recorded the finding that the entry appeared to be manipulated in the sense that the handwriting in the page of the name of the petitioner differed from the handwriting in which the names of the other students on the same page have been written. Learned counsel further submitted that the Court had also recorded that on behalf of the petitioner no witness was produced and, thus, the requirement of holding an enquiry is complete as whatever material was produced before the Court, the Court had got it verified from the original document itself, i.e., the school admission register. Learned counsel submitted that the petitioner even otherwise, in any view of the matter, was aged much more than 16 years on the date of occurrence and, thus, as per Sections 15 and 18 of the Act, he would in any way be tried as an adult in view of heinous nature of the crime committed by him, being the main assailant.



8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, this Court does not find any merit in the present application.

9. First of all, coming to the basic issue as to whether there appears to be irregularity in the entry made in the admission register of the school, this Court has also perused the register. To the naked eye, it is clear that handwriting in which the name of the petitioner has been written is different from the handwriting in which all the names of other students have been written in the register on the same page. Besides, with regard to other names, it appears that they have been filled up in one sitting itself. Thus, this Court does not find any error in recording of a finding of fact by both the Courts below on this issue. Once the only document on which the petitioner relied to establish his juvenility having been found to be unreliable, the Court has rightly proceeded to get him examined by a Medical Board and the Medical Board examining him within a few months of the incident having opined his age as more than 19 years, this Court finds that the rejection of the claim of the petitioner to be declared a juvenile on the date of occurrence cannot be faulted and is based on sound legal and factual ground. Moreover, this Court finds substance in the contentions of learned APP and learned counsel for the informant that the plea of



juvenility being raised by the petitioner, it was incumbent upon him to produce whatever other collateral evidence or witnesses he wanted to examine and not doing so would not throw the onus on the Court below to call for the witnesses in support of the claim of the petitioner. This would be an absurd proposition in law. The Court below has categorically recorded that no witness was produced. In fact, the Court below did what it was required to do inasmuch as, it had called for the original school register and had seen it with its own eyes, and then recorded a finding and which exercise was also undertaken by the Appellate Court, which this Court finds to be a sound view which a prudent man would take.

10. With regard to the judgment relied upon by learned counsel for the petitioner in **Tausif Ahmad** (supra), it would be suffice to say that in the background of the facts and circumstances of the present case, the said decision would not be applicable and is of no use to the petitioner. In the aforesaid case, the Court has only reiterated what is required to be taken note of by the Court below and the sequence of documents which have to be relied upon under the old Act, 2000. In the present case, Section 9 (2) of the Act clearly provides that the Court before which the matter is pending, not being a Board under the Act, shall make an inquiry and 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. In the present case, the Court below took all necessary and required evidence based on the claim of the petitioner himself by calling for the original admission register and, accordingly, has given a finding. As neither any other document was produced before the Court below nor any plea taken or request for any witness to be examined, the Court below by itself could not have embarked on such exercise. Thus, the requirement of law under Section 9 of the Act has been fully discharged by the Court below and rightly upheld by the Appellate Court.

11. For reasons aforesaid, the application stands dismissed.

12. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J)

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