

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 1433 of 2018

Arising Out of PS. Case No.-121 Year-2018 Thana- GARKHA District- Saran

Niraj Kumar, Son of Birendra Rai, who is father and natural guardian,
Resident of Village - Nagra Baswaria Tola, P.S. - Khaira (Nagra O.P.), Dist. -
Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nilam Kumari, D/o Deo Narayan Rai, Resident of Village - Rampur Bathani
Tola, P.S. - Garkha, District - Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nawal Kishore Singh
For the Respondent/s : Mr. Md. Sufiyan

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 07-05-2019

Heard learned counsel for the parties.

2. The petitioner is one of the accused in connection with Garkha P.S. Case No. 121 of 2018, a case registered under different provisions of the Indian Penal Code including Section 376D of the Indian Penal Code as well as Section 4/6 of the Protection of Children from Sexual Offenses Act, 2012.

3. The allegation relates to commission of gang rape. The petitioner raised before the Juvenile Justice Board that he was a juvenile on the alleged date of occurrence i.e. 03.04.2018 as the date of birth of the petitioner is 08.04.2001. In support of his juvenility, the petitioner produced School Leaving Certificate issued by Primary School, Nagra wherein the petitioner had studied from Class-IV on wards. The petitioner further produced admit card of his



appearance in the 10th standard exam conducted by the Bihar School Examination Board. The learned Juvenile Justice Board, Saran doubted the entry in the school register on the ground that there was no material on the basis whereof date of birth of the petitioner was entered in the School Admission Register, especially, in absence of material as to the school where the petitioner had studied in Class-I to IV. The Court asked the petitioner to produce the School Admission Register of the first school where the petitioner attended. When the petitioner failed to produce, the matter was referred to the Medical Board and the Medical Board was of opinion that the petitioner was of 22 years of age. Learned Juvenile Justice Board has placed order of this Court dated 02.02.2017 passed in Cr. Revision No. 259 of 2016 in the case of Vijay Kumar Singh vs. The State of Bihar wherein this Court held that if the school documents appear to be forged and fabricated resort to medical opinion may be taken. In that case, the person who had claimed juvenile passed more than one time matriculation examination and each time mentioned different date of birth. In that view of the matter, this Court doubted the correctness of the entry of date of birth in the matriculation certificate, therefore, that case is not applicable in the present facts and circumstances of this case.

4. The petitioner challenged the aforesaid order in Cr. (Juvenile) Appeal No. 53 of 2018 before the learned Sessions Judge,



Saran at Chapra. The matter was heard by the learned 1st Additional Sessions Judge, Saran at Chapra and by judgment dated 27th October, 2018, the appeal was dismissed.

5. Grievance of the petitioner is that the learned Juvenile Justice Board did not follow the mandate of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 in the matter of determination of age of the person claiming juvenility. His contention is that the petitioner passed Secondary School Examination from Bihar School Examination Board, Patna and his date of birth entered in the certificate is 08.04.2001 consistent with the entry in the School Leaving Certificate and School Admission Register produced before the Board. However, at the time of determination of the age, the provisional certificate was not with the petitioner because exam result was pending, hence, the same was not produced before the Board.

6. Contention is that the Board as well as the Appellate Court did not consider that the School Leaving Certificate produced by the petitioner and the admit card were genuine documents. Therefore, the Board should not have resorted to the medical examination as per the law.

7. Learned counsel for the informant submits that correctness of the School Leaving Certificate and entry in the School Register regarding date of birth of the petitioner was doubted for the



reason that the Headmaster, who appeared before the Board, specifically stated that he is not aware as to on what basis entry of his date of birth was made therein. Moreover, the opinion of the Medical Board would reveal that there is huge difference of age of juvenile and that of the petitioner, therefore, the orders of the learned court below cannot be faulted with.

8. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads 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.”

9. The provisions aforesaid requires the Board when it has reasonable ground for doubt regarding whether the person brought before it is child or not to undertake the process of age determination by seeking evidence by obtaining (1) the date of birth certificate from the school or the matriculation or equivalent certificate from the concerned Examination Board and in absence of the aforesaid certificate, the birth certificate given by a corporation or a municipal authority or a panchayat and only in absence of both of the above two, the resort of age determination through medical process would be taken.

10. In this case, the petitioner had produced certificate from the school regarding his date of birth and that certificate was verified from entry made in the School Admission Register, therefore, that should not have been doubted merely



because there was no material on the record to substantiate regarding the source of the aforesaid information. Usually, the parents inform the school regarding the date of birth of their child who are most competent person to disclose the date of birth of their child on the basis of their personal knowledge and it was business of the school to record that the information was received from the parents or otherwise. Moreover, soon thereafter the petitioner has passed the matriculation examination and he is in possession of the provisional certificate granted by the Bihar School Examination Board. The Juvenile Justice Board should have verified the genuineness of the aforesaid certificate and thereafter the law mandates that the Board was bound to accept the matriculation certificate in support of the date of birth of the petitioner and no other option was left with the Board in view of the provisions of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Therefore, the impugned order dated 11.07.2018 passed by the Juvenile Justice Board, Saran in J.J.B. Case No. 1430 of 2018 as well as order dated 27.10.2018 passed in Cr. (Juvenile Appeal) No. 53 of 2018 are not sustainable in law as they are against the mandate of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Therefore, both the orders are hereby set aside and the matter is remitted back to



the Juvenile Justice Board for fresh determination of age of the petitioner according to law.

11. The petitioner shall produce his matriculation certificate before the Juvenile Justice Board and Juvenile Justice Board may verify the genuineness of the same from Bihar School Examination Board and only in the event of finding of incorrectness of the certificate for any reason, the Board would go to the area of determination of the age on the basis of opinion of the Medical Board.

12. With the aforesaid, observation this criminal revision stands allowed.

(Birendra Kumar, J)

Kundan/-

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