

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2233 of 2015

Arising Out of PS. Case No.-98 Year-2009 Thana- BARIYARPUR District- Munger

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Murari Sharma S/O Late Jagdish Prasad Sharma Resident of Vill-Bengali
Tola, Kalyanpur, P.S-Bariyarpur, Distt.-Munger

... .. Petitioner/s

Versus

1. The State of Bihar
2. Binno Mandal @ Binod Kumar Son of Giro Mandal Resident of Village-
Bengali Tola, Kalyanpur, P.S-Bariyarpur, District-Munger
3. Superintendent of Police, Munger, District-Munger

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sharda Nand Mishra with Mr. Dhananjay Kumar Gupta, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 18-06-2019

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. In terms of order dated 10.04.2019, a report has been
submitted by the Superintendent of Police, Munger in which it has
categorically been stated that the claim of juvenility by the
opposite party no. 2 does not appear to be genuine.

3. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 for the following relief:

*“That this application is being filed for quashing the
order dt. 10.11.14 passed by Addl. Sessions Judge, 1st
Munger in Session Case No. 257/2010, by which*



declared Juvenile to the accused Binno Mandal @ Binod Kumar on the basis of the School Admission Register whereas in earlier case in Bariyarpur P.S. Case No. 47/2008, he was aged about 20 years and he was arrested and produced before the Court by the order dt. 08.06.08 passed by 1st Class Judicial Magistrate, thus no question arise at the time of the occurrence of the Bariyarpur P.S. Case No. 98/09 dt. 02.11.09 accused was as minor. Thus, the order dated 10.11.14 is fit to be quashed.”

4. The petitioner is the informant of Bariyarpur P.S. Case No. 98 of 2009 dated 02.11.2009 instituted under Section 376 of the Indian Penal Code. The opposite party no. 2 is the sole accused. The Court while dealing with the matter on 10.04.2019 had recorded the following:

“5. Learned counsel for the petitioner submitted that the order is infirm, both on facts as well as in law. It was submitted that the opposite party no. 2 was more than 20 years on the date of occurrence which would be obvious from the fact that the FIR is of the year 2009 and with regard to another FIR being Bariyarpur P.S. Case No. 47 of 2008 dated 07.06.2008, when the opposite party no. 2, being an accused, was produced before the Court concerned on 08.06.2008, the age of the opposite party no. 2 has been recorded as 20 years. Learned counsel submitted that in the said case no plea of juvenility was ever taken. It was further submitted that the enquiry conducted by the Additional District and Sessions Judge 1st, Munger in the present case is also a nullity in law for the reason that whenever before the Court a plea of juvenility is taken, the Court



is obliged to refer the matter to the Juvenile Justice Board, which is the only competent forum for deciding the issue of juvenility. Learned counsel submitted that the Additional District and Sessions Judge 1st, Munger was, thus, in law, required to refer the matter to the Juvenile Justice Board for determination as to whether the opposite party no. 2 was a juvenile on the date of occurrence, but he could not himself have embarked upon such exercise. It was further submitted that only based on the entry in the school register, that too, showing the opposite party no. 2 to have been a student only for one year, compared of the report to the Medical Board, which in the year 2012, which has found him to be over 20 years, the school register showing him to be born in the year 2000, there being vast difference between the two, inasmuch as, if the entry in the school register is taken to be true, then in the year 2000, the opposite party no. 2 would have been 12 years old, whereas the medical report had opined that he was more than 20 years old. Thus, clearly there appears to be some doubt relating to the entry made in the school register. Moreover, it was submitted that the Court could not have relied upon the school entry when there was so much of difference between the medical report and the medical report should not have been totally ignored.

6. In view of the aforesaid, the Court deems it appropriate to direct the Superintendent of Police, Munger to get a thorough enquiry conducted with regard to the so called entry made in the register of Madhya Vidyalaya, Bengali Tola, Bariyarpur, Munger with regard to the admission register of the relevant period which is said to have been produced before the Court. The Superintendent of Police, Munger shall ensure a thorough enquiry on all aspects, including Forensic examination, and then a report shall be submitted by him. It is made clear that such enquiry



shall be conducted under the direct supervision of the Superintendent of Police, Munger.”

5. From the aforesaid and the fact that the Superintendent of Police, Munger has submitted his report clearly indicating that plea of juvenility taken by the opposite party no. 2 is not proper, the Court finds that the order impugned by which the opposite party no. 2 has been declared to be a juvenile cannot be sustained. At this juncture, the Court would refer that despite valid service of notice on opposite party no. 2, nobody appeared when the matter was taken up and heard.

6. Further, purely from the legal point, the said order is also unsustainable for the reason that the Additional Sessions Judge 1st, Munger is not the Competent Authority to decide juvenility. If there is a plea taken or there is presumption with regard to juvenility, the same has to be referred to the Juvenile Justice Board duly constituted under the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2015, which has to conduct an enquiry and give a finding. Thus, both on facts as well as in law, the order cannot be sustained.

7. Accordingly, the same is set aside. The matter is referred to the Juvenile Justice Board, Munger for considering the juvenility plea of the opposite party no. 2. During enquiry, the petitioner shall be permitted to be represented and he shall also be



heard. Moreover, the Juvenile Justice Board, Munger shall ensure that all points raised and documents produced as well as the report of the Superintendent of Police, Munger submitted before the Court in the present case shall be duly considered and taken note of before passing final order. The exercise be concluded latest within two months from the date of production of a copy of this order before the Juvenile Justice Board, Munger.

8. The application stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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