

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.832 of 2018

Arising Out of PS. Case No.-32 Year-1990 Thana- SHRIKRISHNAPURI District- Patna

Uma Shankar Kumar, S/o Shivbalak Shaw, R/o Village- Manas Path, West Patel Nagar, P.S.- S.K. Puri, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Gyandeo Sharma, Son of Sukhdeo Sharma, R/o Mohalla- Boring Road, P.S.- S.K.Puri, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Manoj Kumar, Advocate Mr.Karandeep Kumar, Advocate
For the Respondent/s	:	Mr.Amar Jyoti Sharma, Advocate Mr.Ashok Kumar Varma, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

10 25-04-2019 Heard learned counsel for the parties.

This criminal revision has been preferred, under Section 397 and 401 of the Code of Criminal Procedure, against the order dated 24.04.2018, passed by the court of learned Fast Track Court No.– I, Patna in connection with S.K.Puri Police Station Case No.32 of 1990, corresponding to Sessions Trial No.1010 of 1992.

The petitioner is an accused in connection with S.K. Puri Police Station Case No.32 of 1990 and was facing trial before the learned Fast Track Court No.-I, Patna, in Sessions Trial No.1010 of 1992. The petitioner raised before the trial Court that on the date of occurrence he was a juvenile. In



support of the claim the petitioner produced matriculation certificate.

The date of occurrence was on 10.03.1990, whereas in the Matriculation Certificate date of birth of the petitioner is entered as 05.10.1975. The petitioner had passed matriculation examination in the year 1991. The learned court-below disbelieved the entry of date of birth in the matriculation certificate only on conjectures and surmises that since the petitioner passed matriculation examination after the date of occurrence he might have changed the date of birth to take advantage of the protection contained in Juvenile Justice (Care and Protection of Children), Act 2015.

Contention of the petitioner is that there was no other material before the learned Court-below to doubt the correctness of the assertion. Moreover, the learned Court-below did not follow the procedure prescribed under Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 while not accepting the matriculation certificate as evidence of date of birth of the petitioner and not treating the petitioner as a juvenile by impugned order dated 24.04.2018 passed in Sessions Trial No.1010 of 1992, whereas another co-accused, *Vinay Kumar Mishra* was declared juvenile on the basis of



matriculation certificate produced by him, vide previous order dated 25.06.2015 mentioned in the impugned order.

Learned counsel for the respondent submits that the offence was committed in the year 1990. Hence, the Juvenile Justice Act, 1986 was applicable and in that Act the age of the juvenility was 16 years. Learned counsel further submits that even in the new Act, for the heinous offences defined under sub-Section 33 of Section 2, a different provision for preliminary assessment of age by the Board is there under Section 15 of the Act.

Section 2 (35) defines “*Juvenile*” means a child below the age of 18 years.

Section 9 (1) prescribes procedure to be followed by a Magistrate who has not been empowered under this Act.

Sub-Section 1 provides that :

“When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction”.

Sub-Section 2 provides that :

“In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if



the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, 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, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act”.

Sub-section 3 provides that :

“If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect”.

Sub-Section 4 provides that :

“In case a person under this section is required to be kept in protective custody, while the person’s claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety”.

In the case in hand, the question of juvenility was raised before the Fast Track Court No.1, Patna. Hence, the Fast Track Court No.1, Patna was bound to follow the procedure of sub-Section 2 of Section 9, which it has not followed for determining the age of the person claiming to be a juvenile, rather has rejected the only evidence of age of the accused i.e.



matriculation certificate on conjectures and surmises without any material to doubt that the entry of date of birth was result of some after thought action. Therefore, the impugned order is not sustainable in law and accordingly, the same is fit to be set aside.

Section 15 of the Act, which provides for preliminary assessment of age into heinous offences by Board is not applicable in the facts and circumstances of the case because the matter is not before the Board.

In the result, the impugned order is *set aside* and this criminal revision is *allowed* and the matter is remitted back to the court below to pass order according to law.

(Birendra Kumar, J)

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