

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.759 of 2016

Arising Out of PS. Case No.-270 Year-2015 Thana- BAHERI District- Darbhanga

The State Of Bihar through D. M. Darbhanga

... .. Petitioner

Versus

1. Shailesh Kumar, s/o Late Ram Babu Jha,
2. Karan Jha @ Vikash Jha @ Ashutosh Kumar, son of Late Ram Babu Jha, both residents of Village- Mahia, P.S- Nanpur, District- Sitamarhi.
3. Bihar School Examination Board, Patna

... .. opp. parties

Appearance :

For the Petitioner/s	:	Mr.Parmeshwar Mehta, APP
For O.P. No. 1 & 2	:	M/S Anisur Rahman, Akrun Naiyar, Advocates
For the O.P. No.3	:	Mrs. Namrata Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

9 16-07-2019 This revision application is directed against the order dated 12.5.2016 passed by In-charge Sessions Judge, Darbhanga in Sessions Trial No. 146 of 2016, arising out of Baheri P.S.Case No. 270 of 2015 by which age of opposite party No.2 Karan Jha @ Vikash Jha @ Ashutosh Kumar was assessed at 16 years 7 months and 21 days on the day of occurrence, i.e., 26.12.2015 and as such declared him as juvenile in this case.

Fact of the case, in short, is that Baheri P.S. Case No. 270 of 2015 was registered under Sections 302, 386, 387, 120B/34 of the Indian Penal Code and Section 27 of the Arms Act and it appears that and it appears that the matter traveled to the file of learned Sessions Judge and it was numbered as



Sessions Trial No. 146 of 2016 and before learned Sessions Judge opposite party No.1 has filed a petition along with photo copy of certified copy of order-sheet dated 5.11.2014 passed by Juvenile Justice Board, Sitamarhi in Nanpur P.S.Case No. 1195 of 2014, G.R.No. 609 of 2014 (State vs. Karan Jha) and photo copy of order-sheet dated 2.3.2015 passed by Juvenile Justice Board, Sitamarhi in J.J.B. Case No. 1236 of 2015, G.R.No. 2998 of 2014 (State vs. Karan Jha) with an affidavit and prayed for sending the case of opposite party No.2 to Juvenile Justice Board for inquiry and trial. Later on it appears that on 12.5.2016 again another petition has been filed by opposite party No.1, elder brother of opposite party No.2 with an affidavit and photo copy of Admit Card, Mark Sheet, Provisional Certificate of Secondary School Examination Board, 2014 claiming that opposite party No.2 is juvenile and prayed for transfer of the case of opposite party No.2 to Juvenile Justice Board, Darbhanga.

It appears that learned In-charge Sessions Judge, Darbhanga vide order dated 12.5.2016 declared opposite party No.2 as juvenile and the case record of opposite party No.2 was directed to be sent to the Juvenile Justice Board, Darbhanga.



Being aggrieved by the same, the present revision application has been preferred by the State of Bihar through District Magistrate, Darbhanga on the ground that during during course of verification of the documents produced before the learned In-charge Sessions Judge on behalf of opposite party No.2 it came to light that the documents produced by opposite party No.2 Karan Jha are in the name of Ashutosh Kumar and his first admission was in Shikshaya a Vasiya Shakshik Sansthan, Dadar Kolhua (Ahiyapur), Muzaffarpur and further case of the State is that Karan Jha (opposite party No.2) has appeared in the Secondary School Examination from Bihar School Examination Board in the year 2010 from M.R.S. High School, Maniyari, Muzaffarpur in which his date of birth is shown as 21.10.1995 and the aforesaid certificate was produced by Karan Jha along with other certificates as I.D. proof in opening Bank Account in Bank of Baroda, Dadar Kolhua, Muzaffarpur and the above fact shows that Karan Jha has appeared twice with different date of birth. Further the Voters' Card which has been used as identity proof in opening of Bank Account, the date of birth mentioned is 1992 but in spite of that learned In-charge Sessions Judge has declared the opposite party No.2 as juvenile without conducting inquiry by himself or



sending it to Juvenile Justice Board for inquiry and also without giving an opportunity to the State to contest the claim of opposite party No.2.

It further appears that during pendency of this revision application Bihar School Examination Board was also directed to be made a party by a co-ordinate Bench of this Court and counter affidavit has also been filed by Bihar School Examination Board from which it appears that opposite party No.2 obtained the said mark sheet/provisional certificate by way of appearing and giving his Matriculation Examination conducted by the Board in the year 2014 in the name of Ashutosh Kumar and details as per Board is that Ashutosh Kumar is son of Rambabu Jha and his mother's name Sugandha Jha, year of examination 2014(A), and his Roll Code No. 51516 and Roll No. 1400158 and his date of birth is 05.05.1999. Counter affidavit further disclosed that opposite party No.2 has also appeared in the Secondary School Examination in the year 2010 and record shows the following details: Name Karan Kuma Jha, Father's name Rambaboo Jha, Mother's name Sugandha Devi, year of examination 2010 (A), Roll Code 51072, Role No. 687 and his date of birth is 21.10.1995.

Submission of learned counsel for the State-petitioner



is that learned Sessions Judge without giving an opportunity of being heard to the State has passed the order without making any detailed inquiry and as such the impugned order suffers from inherent illegality and impropriety.

Opposite party No.2 has appeared through a Counsel but he is also unable to defend the impugned order in view of above fact. However, he has submitted that opposite party No.2 has been declared juvenile by In-charge Sessions Judge and he is in custody and vide order dated 21.7.2017 the impugned order has been stayed.

Having heard the learned counsel for the parties and in view of the facts as discussed above, this Court comes to a conclusion that the impugned order passed by learned In-charge Sessions Judge suffers from illegality and impropriety as he has declared the opposite party No.2 as juvenile without conducting an inquiry by himself or sending it to Juvenile Justice Board for inquiry.

In such view of the matter, this application is allowed. The impugned order is set aside and the matter is remitted back to the learned trial court for considering the claim of opposite party No.2 as juvenile either by itself or by sending it to Juvenile Justice Board after giving an opportunity to adduce



evidence to both sides and after being heard.

(Vinod Kumar Sinha, J)

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