

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 39 of 2018

Arising Out of PS. Case No.-123 Year-2014 Thana- BHAGWANPUR District- Vaishali

Md. Hasib @ Md. Hasibur Rahman Son of Md. Subhan, Resident of Village-
Rahua, P.S.- Bhagwanpur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Chhotu Kumar Paswan Son of Wiral Paswan, Resident of Village- Sah Miya
Rahua, P.S.- Bhawanipur, District- Vaishali.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Abdul Mannan Khan, Advocate
For the Opposite Party No. 2	:	Mr. Sanjeev Nikesh, Advocate
For the State	:	Mr. Md. Arif, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 02-09-2019

Heard learned counsel for the petitioner; learned APP
for the State and learned counsel for the opposite party no. 2.

2. Before the Court proceeded to take up the matter, it
noticed that in the application at page no. 1, the following has
been written:

*“In the matter of an application under
section 53 of the Juvenile Justice (Care and
Protection of Children) Rules, 2000.”*

3. When called upon learned counsel for the petitioner
as to how the application has been filed under the Rules when it
should have been under the Act, he admitted to his error and after



tendering apology sought permission to correct the provision of law.

4. Learned counsel for the petitioner is permitted to make necessary correction in the application. Let the same be done during the course of the day.

5. Having said that, the Court takes cognizance of the fact that the said glaring defect was not noticed by the Stamp Reporting Section and has passed the stage and today the matter has been taken up for hearing.

6. Upon being called, Mr. Tej Kumar Rajak, Assistant Section Officer as well as Mr. Somen Sah, Section Officer submitted that this is the normal procedure adopted by them. The Court is shocked at such response. This discloses utter ignorance as also defiance. When confronted with the mistake instead of admitting the same, the stand is that what has been done by them is correct.

7. In view thereof, the Court was of the opinion that proceeding be initiated against the said two persons. However, they have tendered written apology with the undertaking that such mistake shall not be repeated in future. The same be kept on record. Thus, the Court is refraining from directing for action



against them. However, they are warned that if in future such mistake is repeated, the same shall result in serious consequences.

8. The present application has been filed under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 against the order dated 25.09.2017 in Criminal Appeal No. 33 of 2014 passed by the learned Additional Sessions Judge, VIII, Vaishali by which the order dated 20.10.2014 passed in GR No. 2598 of 2014/Tr. No. 876 of 2014 by the Juvenile Justice Board, Vaishali declaring the opposite party no. 2 to be a minor, has been upheld.

9. Learned counsel for the petitioner submitted that the order is based only on the so called matriculation certificate of the opposite party no. 2 showing his date of birth as 06.04.2000 and the incident being of 07.06.2014, the opposite party no. 2 has been declared to be a juvenile contrary to the provisions of the Bihar Juvenile Justice (Care of Protection of Children) Rules, 2003 (hereinafter referred to as the 'Bihar Rules'), which gives primacy to the date of birth recorded in the school first attended followed by the Matriculation certificate. Learned counsel submitted that in terms of the entry in the register of the school first attended by the opposite party no. 2, his date of birth is 06.04.1995 and, thus, on the date of occurrence, his age was more than 19 years. It was



submitted that even the medical report has shown that on 12.09.2014, he was 19 years of age and, thus, on 07.06.2014 i.e., the date of occurrence, he was not a juvenile.

10. In support of such contention, learned counsel referred to the decision of this Court in **Chandrika Sao vs. State of Bihar** reported as **2012 (3) PLJR 890** and the order of the Division Bench in the same case reported as **2014 (1) PLJR 589**.

11. Learned APP and learned counsel for the opposite party no. 2 fairly submitted that in view of the law laid down by the Court, especially in the aforesaid two judgments relied upon by the learned counsel for the petitioner, the order may not be sustainable.

12. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the order of the Juvenile Justice Board, Vaishali as well as the appellate order by which the opposite party no. 2 has been declared to be juvenile on the date of occurrence, cannot be sustained.

13. Reliance has rightly been placed by learned counsel for the petitioner on the Division Bench judgment in the case of **Chandrika Sao** (supra). The Court deems it appropriate to



reproduce paragraphs no. 8, 9 and 10 of the said judgment which reads as under:

“ 8. Clearly superiority has been conferred upon the Rules made by the State Government. The Rules of the Central Government are only described as model Rules and they are to hold the field if it is vacant and once the State Government has framed the Rules, only such Rules are to be followed by the Courts within the State of Bihar. The superior status of the State Government in the matter of framing of Rules is also clear from the proviso according to which the State Government is required to conform to the model Rules only as far as is practicable. Clearly the State Government is not bound to follow the entire provisions of the Model Rules framed by the Central Government.

9. In the present case the Rules framed by the State Government are occupying the field since 2003 and there is no provision in the Act which empowers the Central Government to modify, supersede or amend the Rules framed by the State Government. Model Rules could have been applicable in the State of Bihar only if no Rules had been framed by the State Government.

10. In view of aforesaid discussion, in our considered view the point referred by the learned Single Judge is answered by the proviso to Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Age of suspected juvenile is required to be determined by the Juvenile Justice Boards in accordance with Rule 22 (5) of the Bihar Rules and not in accordance with Rule 12 (3) of the Central Rules of 2007.”

14. Rule 22(5) of the Bihar Rules is in the following terms:

“22(5) In every case concerning a juvenile or a child, the Board shall either obtain-



(i) a birth certificate given by a corporation or a municipal authority; or

(ii) a date of birth certificate from the school first attended; or

(iii) matriculation or equivalent certificate, if available; and

(iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board,

regarding his age; and, when passing orders in such case shall, after taking into consideration such evidence as may be available or the medical opinion, as the case may be, record a finding in respect of his age.”

15. From the aforesaid, it is clear that the Juvenile Justice Board while determining the age of a person who claims to be a juvenile on the date of occurrence has to first consider the birth certificate given by a corporation or a municipal authority. If the same is not available, the date of birth certificate from the school first attended. If the same is also not available then the matriculation or equivalent certificate, if available, and only in the absence of the above three, the medical opinion by a duly constituted Medical Board.

16. In the present case, when before the Juvenile Justice Board, Vaishali, the entry made in the register of the school first attended, showing the date of birth of the opposite party no. 2 to be 06.04.1995 has been proved by the Headmaster of the school, who had appeared before the Juvenile Justice Board, Vaishali on



15.08.2014 along with the admission register of the school and further, the tabulation register of the Bihar School Examination Board also being produced, in which, too, the date of birth of the opposite party no. 2 has been shown as 06.04.1995 as also the Medical Board opining that the age of the petitioner was 19 years, a few months after the date of occurrence, in view of the requirement of law, the opposite party no. 2 has to be held to be a major on the date of occurrence being aged more than 18 years.

17. Accordingly, the order dated 20.10.2014 passed by the Juvenile Justice Board, Vaishali in GR No. 2598 of 2014/TR No. 876 of 2014 as well as the order dated 25.09.2017 passed by the Additional Sessions Judge, VIII, Vaishali in Criminal Appeal No. 33 of 2014, stand quashed.

18. In the normal course, the Court may have remitted the matter to the Juvenile Justice Board for fresh consideration, but in view of the evidences having been noticed by the Court below, the only consideration as to whether the medical certificate or the entry made in the register of the school first attended, coupled with the medical report of the opposite party no. 2, has to be considered, the law being settled that the entry made in the register of the school first attended has to be given priority over the matriculation certificate, it is held that the opposite party no. 2



was major and not a juvenile on the date of occurrence, i.e., 07.06.2014.

19. Accordingly, the case is required to be tried before the regular Court treating the opposite party no 2 as an adult.

20. The application stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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