

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11286 of 2021**

Arising Out of PS. Case No.-558 Year-2016 Thana- ARA NAGAR District- Bhojpur

MANISH KUMAR S/o Birjan Sah Resident of Village-Mirganj, P.S-Ara
Town, District-Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Parasmani, Advocate
For the State	:	Mr. Arun Kumar Singh, APP
For the Informant	:	Mr. Rajendra Nath Sinha, Advocate

**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER**

7 26-11-2021 Heard learned counsel for the petitioner and learned
counsel for the State of Bihar assisted by learned counsel for the
informant.

The instant application has been filed by the petitioner
for quashing the order dated 30.8.2018 passed by the learned
Additional Sessions Judge III, Bhojpur at Ara as also the order
dated 8.1.2020 passed by the learned Additional Sessions Judge
XVI, Bhojpur at Ara in Sessions Trial Case no. 125 of 2017
(arising out of Ara Town P.S. Case no. 558 of 2016) whereby the
learned Court below rejected the petitions dated 2.7.2018 and
23.12.2019 filed by the petitioner claiming to be juvenile on the
basis of his school certificate and subsequently for
determination of his age (juvenility) by examination by a



medical board.

The facts in brief are that the petitioner was made accused in Ara Town P.S. Case no. 558 of 2016 registered under sections 302, 379 and 34 of the Indian Penal Code. On completion of investigation charge sheet was submitted in the case against the petitioner and others.

The petitioner filed petitions on 18.6.2018 and 2.7.2018 claiming himself to be juvenile on the basis of school transfer certificate.

As per the case of the petitioner his date of birth being 3.1.2001, on the alleged date of occurrence i.e. 16.11.2016, the age of the petitioner was 15 years 9 months and thus, he was a juvenile. The petitioner prayed that his case be split from the other accused persons and he be tried as a juvenile. A rejoinder was filed on behalf of the informant. By order dated 30.8.2018 (Annexure-5) passed in Sessions Case no. 125 of 2017 the learned 3rd Additional District and Sessions Judge, Bhojpur, Ara was of the opinion that the school transfer certificate produced by the petitioner as a claim of his juvenility together with having perused the original document, the same did not inspire confidence of the Court, there were a number of shortcomings in the document and thus, the application dated 18.6.2018 filed



on behalf of the petitioner was rejected.

Subsequently, another petition dated 23.12.2019 was filed on behalf of the petitioner stating therein that the learned Court had failed to follow the mandatory provisions related to juveniles under the Juvenile Justice (Care and Protection of Children) Act, 2015 ('the Act' in short), and had not determined the age of the accused/petitioner.

The learned Additional Sessions Judge XVI, Bhojpur at Ara by his order dated 8.1.2020 (Annexure 8) was pleased to reject the petition dated 23.12.2019 of the petitioner. It is against these orders dated 30.8.2018 and 8.1.2020 passed by the learned Trial Court that the petitioner has preferred the instant application.

It is submitted by leaned counsel appearing for the petitioner that on an application having been filed on behalf of the petitioner claiming himself to be a juvenile, section 9(2) of the Act required the Court to make an enquiry, to take such evidence as may be necessary and to determine the age of such person as nearly as may be. It is submitted that from the two orders dated 30.8.2018 and 8.1.2020 impugned herein it would transpire that the age of the petitioner not having been determined as required under section 9(2) of the Act, the orders



were not sustainable and should be set aside. Further, the learned Court below be directed to determine the age of the petitioner on the date of occurrence, giving a finding as to whether the petitioner was a juvenile on the said date or not.

It was submitted by learned counsel appearing for the informant that soon after the occurrence the petitioner was arrested on 17.11.2016 and remanded to judicial custody. On 3.4.2017 the learned Magistrate assessed his age to be 21 years. It was further submitted that on the petition having been filed by the petitioner claiming himself to be a juvenile, the learned Court had rejected his claim by order dated 30.8.2018 and once again by order dated 18.1.2020. Thus, his age would be deemed to be more than 18 years on the date of occurrence. It was further submitted that while the examination of witnesses were proceeding in the learned trial Court, after much delay a petition was filed on behalf of the petitioner claiming himself to be a juvenile on the basis of the school leaving certificate which was not found to be true. No appeal was preferred against the order impugned passed in the year 2018. The second petition filed by the petitioner was not maintainable. Learned counsel for the informant in support of his contention relied on the judgment in the case of Anjani Devi vs. State of Bihar (2017 (2) PLJR 697)



and Pappu Singh & Anr vs. State of Bihar (2017 (3) BLJ 265).

It is prayed that there being no merit in this application, the same be dismissed.

Having heard learned counsel for the parties and on having gone through the materials on record, it would be relevant to quote section 9(2) and section 94(2) of the Act.

“9. Procedure to be followed by a Magistrate who has not been empowered under this Act.-

(2) 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 recognised 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.”

“94. Presumption and determination of 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.”

On the petition having been filed by the petitioner on 2.7.2018 on the basis of school transfer certificate, although an enquiry was started by the learned Court below, however, by order dated 30.8.2018 (Annexure 5) the learned Court below did not find the school leaving certificate to be reliable and proceeded to reject the petition of the petitioner. On another petition having been filed by the petitioner, once again the Court did not determine the age of the petitioner on the date of occurrence and holding that there was no need for determination of age of the accused petitioner, proceeded to reject this petition also.

Section 9(2) of the Act quoted herein above is very clear when it states that in case a person alleged to have committed an



offence claims to be a child on the date of commission of the offence, the Court shall make an enquiry and determine the age of such person stating the age of the person as nearly as may be. The learned Court below although proceeded with the enquiry but did not proceed “to determine the age of such person” nor did it proceed to state “.....the age of the person as nearly as may be”.

Even if the learned trial Court is of the opinion that the school leaving certificate being relied on by the petitioner in his claim for being declared a juvenile was not reliable, still the Court should have proceeded with the enquiry, keeping in mind the provision of section 94(2) of the Act and should have determined the age of the petitioner on the date of commission of the offence, as contemplated under section 9(2) of the Act.

It would be relevant to take into consideration paragraph no. 13 of the judgment in the case of Pappu Singh (supra) which is being quoted herein below :

“13. In Parag Bhati (Juvenile) through Legal Guardian-mother-Rajni Bhati vs. State of Uttar Pradesh and Anr..as reported in (2016) 12 SCC 744, it has been held that where the documentary evidence happens to be doubtful, suspicious, then in that circumstance, the enquiry should be allowed to determine the age of the accused whenever plea of juvenility has been raised. For better appreciation, paragraph-36 is quoted below:-



“36. It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in Abuzar Hossain [(2012) 10 SCC 489], an enquiry for determination of the age of the accused is permissible which has been done in the present case”

The learned Court below not having proceeded to determine the age of the petitioner as required under section 9(2) and section 94(2) of the Act, the orders impugned dated 30.8.2018 and 8.1.2020 cannot be sustained and thus both are set aside.

In view of the facts stated herein above, the matter is sent back to the learned trial Court to proceed with the enquiry and to determine the age of the accused-petitioner on the date of commission of the offence in view of the plea of juvenility raised by him. The petitioner will be at liberty to file a fresh petition raising all points and bringing on record all documents which may be available to him with respect to his claim of juvenility. The enquiry shall be proceeded by the learned trial Court from the stage just before passing of the order dated



30.8.2018.

None of the observations made in this order shall be construed by either of the parties as being an observation on the merits of the case of the petitioner for being declared to be a juvenile. This question is left open to be determined by the learned trial Court. The learned trial Court is directed to complete the enquiry with respect to the juvenility of the petitioner within a period of four weeks of receipt of a copy of this order.

The main trial shall not be delayed on account of pendency of the petition praying for the petitioner to be declared a juvenile.

Let the lower Court records be immediately sent back to the learned trial Court.

This application stands allowed with the above observations and directions.

(Partha Sarthy, J)

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