

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 528 of 2017

- Pankaj Sao, S/o Heeralal, Aged About 21 Years, R/o Village Baroli, Police Station-Basna, District-Mahasamund, Chhattisgarh.

---- Applicant

Versus

- The State Of Chhattisgarh Through Station House Officer, Police Station Basna, District-Mahasamund, Chhattisgarh

---- Respondent

For Applicant : Mr. Vaibhav A. Goverdhan, Advocate.

For Respondent : Mr. B.P. Banjare, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

01/03/2021

Heard.

1. This revision petition has been brought being aggrieved by the order dated 1.5.2017 by which the application of the applicant praying to be proceeded against as juvenile was rejected by the Special Court under POCSO Act in Special Sessions Case No.20/2016.
2. It is submitted by the counsel for applicant, that date of birth of applicant is 5.7.1995. In the FIR lodged on 11.10.2016, it was the statement of prosecutrix that her relationship with the applicant started about 3-4 years prior to the date of lodging of FIR. Therefore, the incident started occurring from the year 2012 and on that date age of the applicant was below 18 years. The learned Special Court has passed erroneous order without making any inquiry on the claim made by the applicant. Section 9 of Juvenile Justice (Care and Protection of Children) Act, 2015 provides that when any magistrate not empowered to exercise the powers of a Board or a Children's court under this Act, is of opinion that a person brought before him under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a child, he shall record such opinion and forward the child

and the record of the proceeding to the competent authority having jurisdiction over the proceeding. Hence, it was the duty of the Special Court to forward the case immediately to the Board for proceeding against this applicant. It is also submitted that Section 94 provides for presumption and determination of age in which inquiry is prescribed. The learned Special Court should have proceeded to make an inquiry on the application filed by the applicant and by not doing so the Court below has committed an error. The applicant had earlier preferred a criminal revision No.256/2017 in which similar issue was raised before this Court and this Court had granted liberty to the applicant to raise the ground of minority before the Court below.

3. The applicant has raised this ground which has been erroneously and arbitrarily dismissed by the Special Court. The prosecutrix has been examined in the trial and she has made admission in her cross-examination that the FIR was lodged after four years from the date of first incident of her physical relation with the applicant. Therefore, the cause of action to raise the ground of minority in favor of the applicant arose by the admission of the prosecutrix in her cross-examination before the Court.
4. The applicant counsel placed reliance on the judgment of this Court in *Manoj Vishwkarma v. State of Chhattisgarh*, in (2017) 2 CGLJ 587, and it is prayed that the impugned order be set aside and the Special Court be directed to make inquiry on the point of juvenility of the applicant in accordance with Section 94 of the Act, 2015.
5. Learned State counsel opposes the submissions made by counsel for applicant and submits that learned Special Court has not committed any error in passing the impugned order, therefore, the revision petition be dismissed.
6. Considered on the submissions. Statement of the prosecutrix in the investigation and in the Court appears to be this that about four years prior to lodging of FIR, the first incident occurred when the applicant had established physical relation with her and this continued upto October, 2016. According to her narration, such incident of physical relation with her by the applicant had occurred with a frequency until the FIR was lodged.

7. It is the statement of applicant himself that his date of birth is 5.7.1995 and according to that he has attained majority on 5.7.2013. The offence, as alleged, even if considered to have started prior to applicant's attaining majority, even then the same has continued upto October, 2016 and all the incidents of physical relationship with the prosecutrix after 15.7.2013 upto October, 2016 have occurred after his attaining majority.
8. It is a case of continuing offence. Section 472 of CrPC defined continuing offence according to which in case of continuing offence, a fresh period of limitation shall begin to run at every moment of time during which the offence continues. In the present case the relationship, as alleged, of the applicant with minor prosecutrix had been a continuing one, but every act of his physical relation with minor prosecutrix has to be regarded as separate offence. Even if it is so the applicant has to account for the allegations levelled against him regarding commission of offence of rape that have occurred after the date on which he has attained majority. It is not the case that the incident of alleged raped has occurred only once and that was four years prior to the lodging of FIR. Hence, I am of considered view that the learned trial Court has not committed any error in rejecting the application praying for inquiry on the point of juvenility of the applicant. As a result, this criminal revision is found to be without any substance which is liable to be and is hereby dismissed.

Sd/-

(Rajendra Chandra Singh Samant)

Judge