

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1267 of 2018

Arising Out of PS. Case No.-3 Year-2017 Thana- MAHILA P.S. District- Banka

(XXX) Daughter of Md. Azad Ansari, A Minor Daughter of Her Father Md. Azad Ansari Resident of Village- Churaili, P.S. Banka, District- Banka.
... .. Petitioner

Versus

1. State Of Bihar
2. Ahmad Raza@Md. Ahmad Ansari Son of Md. Safique Ansari Resident of Village- Churaili, P.S. Banka, District- Banka.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. S.K. Lal, Advocate Mr. Pritish Kumar Lal, Advocate
For the State	:	Mr. Akhileshwar Dayal, Advocate
For the O.P. No. 2	:	Mr. Anil Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

- 3 30-08-2022 Heard Mr. S.K. Lal, learned counsel assisted by Mr. Pritish Kumar Lal, learned counsel for the petitioner and Mr. Anil Singh, learned counsel for O.P. No. 2 as also Mr. Akhileshwar Dayal, learned APP for the State.

2. The petitioner in the present case is aggrieved by and dissatisfied with the order dated 18.08.2018 passed by learned Additional Sessions Judge-I, Banka in G.R. No. 73 of 2017 arising out of Banka (Mahila) P.S. Case No. 03 of 2017 registered for the offences punishable under Section 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offence Act (in short 'POCSO Act') whereby and whereunder the O.P. No. 2 has been declared juvenile on the alleged date of occurrence.



3. Learned counsel for the petitioner has assailed the impugned order giving the brief background of the case leading to passing of the impugned order dated 18.08.2018. In order to appreciate the issues involved in this case, this Court would briefly record the facts as under:

(i) As per the first information report, the O.P. No. 2 allegedly committed rape upon the petitioner while she was returning her home on 08.01.2017. The FIR was lodged giving rise to Banka (Mahila) P.S. Case No. 03 of 2017 for the offences under Section 376 IPC and Section 4 of the POCSO Act. The statement of the victim girl was recorded under Section 164 Cr.P.C. on 11.01.2017.

4. The O.P. No. 2 was arrested and was produced in court. He raised a plea of juvenility on the basis of a school leaving certificate granted by one Madarsa. In view of the said certificate of the Madarsa, the learned Special Judge, POCSO Act referred the matter to Juvenile Justice Board (hereinafter referred to as 'the JJB') for determination of age. At this stage, the petitioner appeared before the JJB and filed a petition dated 02.02.2017 alleging that the O.P. No. 2 is making false and forged certificates. In paragraph '2' of her petition, she made a statement that the petitioner was a student of Jaithour



Government High School, Banka and had appeared in the class X examination from the Bihar School Examination Board, Patna (hereinafter referred to as 'the BSEB'). In the said certificate, his date of birth was mentioned as 05.12.1998, therefore, on the alleged date of occurrence i.e. 08.01.2017 he was more than 18 years of age.

5. The JJB, as it appears, directed for a medical examination of the O.P. No. 2. A three members Medical Board examined him and found his age above 20 years on 10.03.2017.

6. It is alleged that the Medical Board was constituted when the learned Principal Magistrate was not able to determine the age but later on very surprisingly on 01.05.2017 when the matter was fixed for production of admission register, no step was taken and the ordersheet would show that no order was recorded on 01.05.2017. According to the petitioner, all of a sudden the Principal Magistrate passed an order on 03.05.2017 which was not a date fixed in the matter. The order was passed behind the back of the petitioner. Learned Principal Magistrate allowed the O.P. No. 2 provisional bail till determination of age.

7. The petitioner challenged the order dated 03.05.2017 before this Court in Cr. Revision No. 662 of 2017 which was allowed by this Court on 13.09.2017. The order of



the learned JJB was set aside and the matter was remanded for a fresh order in accordance with law. The Board vide its order dated 17.10.2017 took cognizance for the offences under Section 354B of the Indian Penal Code and Section 8 of the POCSO Act and allowed O.P. No. 2 to continue on provisional bail.

8. It is stated that during pendency of the Cr. Revision against the order dated 03.05.2017, the JJB vide its order dated 09.08.2017 declared O.P. No. 2 a juvenile. This order was challenged by the petitioner before the learned District and Sessions Judge, Banka. The learned Additional District and Sessions Judge-I, Banka set aside the order dated 09.08.2017 declaring O.P. No. 2 a juvenile. Against the order of the learned Additional District and Sessions Judge-I, Banka, the O.P. No. 2 filed a revision before this Court in Cr. Revision No. 152 of 2018. It was heard and disposed of on 22.06.2018 by remanding the case to the appellate court for giving a hearing and for passing a fresh order in accordance with law.

9. It is stated that by the impugned order the learned Additional District and Sessions Judge-I, Banka has affirmed the order dated 09.08.2017 passed by JJB, Banka.

10. Mr. S.K. Lal, learned counsel assisted by Mr.



Pritish Kumar Lal has assailed the impugned order dated 18.08.2018 on various grounds. Learned counsel submits that O.P. No. 2 had appeared in the matriculation examination of the year 2016 conducted by BSEB. The certificate of the BSEB (Annexure '1') was duly admitted in evidence in course of inquiry. It shows that the petitioner had appeared in the said examination of the BSEB from Government High School, Jaithour, Banka. The certificate is dated 29th May, 2016 in which the date of birth of the O.P. No. 2 is mentioned as 05.12.1998.

11. Learned counsel submits that the O.P. No. 2 claimed his date of birth as 16.09.2000 on the basis of a school admission register of a Madarsa showing that the O.P. No. 2 was admitted in the said school on 01.07.2008. He had passed 8th Board from Madarsa in the month of February, 2014 and had appeared for 'Fauquania' (class X) and the Madarsa issued a certificate dated 12.10.2016 showing him to have passed his 'Fauquania' examination.

12. Learned counsel submits that the Bihar School Examination Board certificate had been issued on 29th May, 2016. O.P. No. 2 had failed in that examination and it is evident from the certificate of the Madarsa that the said certificate has been issued 5 months after the O.P. No. 2 failed in his



matriculation examination from the BSEB.

13. Mr. Lal, learned counsel further submits that initially the learned JJB passed the order dated 03.05.2017 on a date which was not fixed in the case and without giving an opportunity of hearing to the petitioner and thereafter when this Court remanded the matter for fresh consideration to the learned appellate court, the appellate court did only a formality by recording the facts of the case and thereafter in one paragraph reaching to a conclusion saying that “under the aforesaid facts and circumstances, the date of birth 16.09.2000 of juvenile is accepted.....”. The learned appellate court has taken a view that as per the Bihar Juvenile Justice Rules, 2003, the date of birth certificate from the school first attended would come first in the chronology, the matriculation and equivalent certificate would come later.

14. It is submitted that the learned JJB as well as the appellate court have completely misled themselves in ignoring the material fact that the very certificate of the Madarsa showing O.P. No. 2 to have passed his ‘Fauquania’ examination has been issued on 12.10.2016 i.e. much after the matriculation certificate showing him failed in class X examination. It is submitted that admission of a document in evidence is one thing whereas



credibility of that document would be a totally different thing.

15. In the present facts, the very credibility of the Madarsa certificate belie on the apparent materials showing that this certificate has been obtained by O.P. No. 2 only after he failed in class X examination in which he had appeared from Government High School, Jaithour, Banka.

16. Learned counsel submits that this Court while remanding the matter to the learned appellate court had not deprived the appellate court from exercising its appellate power in any manner. It is submitted that no doubt this Court's order said that the appellate court shall hear the parties for passing a fresh order but the meaning of the word 'hearing' cannot be given a restricted meaning and any such attempt would not be in the interest of justice. In the later part of its order, this Court had in fact pointed out that in this case a decision has to be taken by the appellate court after going through the entire materials on the record.

17. It is submitted that when the matter was remanded to the appellate court, the petitioner filed an application on 19.07.2018 praying therein to call for admission register of younger brother of the O.P. No. 2 and Nikahnama register and brought before the appellate court to pass a fresh order after



making fresh inquiry. It is submitted that the appellate court should have been conscious of the fact that the JJB had passed the impugned order behind the back of the petitioner and on a date which was not fixed in the matter which had been casting a strong doubt over the credibility of the order of the JJB. It is submitted that despite all these efforts taken by the petitioner, the appellate court rejected the petition dated 19.07.2018 saying that this Court in Cr. Revision No. 152 of 2018 has directed the appellate court to pass a fresh order after giving a hearing to the parties so the fresh inquiry is not warranted.

18. Learned counsel submits that in these circumstances, the judgment of the Hon'ble Supreme Court in the case of **Rishipal Singh Solanki vs. State of Uttar Pradesh and Ors.** Reported in **AIR 2022 SC 630** may be profitably referred to and the principles laid down in paragraph '29' of the said judgment would be helpful in reaching to a just and proper conclusion.

Submission on behalf of O.P. No. 2

19. Opposing the present application, Mr. Anil Singh, learned counsel for O.P. No. 2 submits that in this case the school admission register of the Madarsa would get the first preference as it would be the first document mentioned under



clause (i) of Sub-Section (2) of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the J.J. Act'). It is his submission that the matriculation certificate of the BSEB would come next to the school admission register of Madarsa.

20. It is his further submission that the O.P. No. 2 had passed his 'Wastania' (class 8th) examination in the year 2014 and 10th (Fauquania) in the year 2016 which would be apparent from the Madarsa leaving certificate issued on 12.10.2016. In his submission, the learned JJB as well as appellate court has not committed any error in accepting the entry made in the school admission register over and above the entry made in the matriculation certificate issued by BSEB. Learned counsel has relied upon the judgment of the Hon'ble Division Bench of this Court in the case of **Salamdin Mian vs. the State of Bihar and Ors.** reported in **2022 (1) PLJR 855** to submit that under the scheme of Section 94 of the J.J. Act, the school admission register would come first in chronological order.

21. Learned counsel for the O.P. No. 2 submits with reference to the order dated 09.08.2017 passed by JJB, Banka that the Incharge Principal of Government High School, Jaithour, Banka was examined and according to the admission



register of the said school, the O.P. No. 2 was not a regular student of the said school and he had appeared in class X examination from the said school in the year 2016 and his date of birth was recorded on the basis of an affidavit of his father showing the date of birth of O.P. No. 2 as 05.12.1998.

22. It is his further submission that while remanding this case in Cr. Revision No. 152 of 2018, this Court had not permitted the appellate court to take any additional material in evidence, hence, the appellate court has rightly not conducted a fresh inquiry and has confined itself to giving an opportunity of hearing to the party and passing of a fresh order.

Consideration

23. Having regard to the submissions noted hereinabove and the materials available on the record, this Court finds that undisputedly the O.P. No. 2 had appeared in the matriculation examination conducted by BSEB in the year 2016 from Government High School, Jaithour, Banka. Evidence has come in course of inquiry that in the said school admission register his date of birth was mentioned as 05.12.1998 and the same has been recorded in the certificate dated 29th May, 2016 issued by the BSEB. The O.P. No. 2 had failed in class X examination.



24. To claim his juvenility, the O.P. No. 2 produced before the learned JJB a school admission register of Madarsa showing that he had passed his 'Wastania' examination in the year 2014 and his 'Fauquania' examination in the year 2016. What is very relevant to be mentioned is the date of issuance of certificate showing O.P. No. 2 to have passed 'Fauquania' examination. This certificate has been issued on 12.10.2016 which is 5 months after the date of issuance of matriculation certificate of the BSEB.

25. Under these circumstances, no doubt the JJB and the appellate court both were required to examine as to which document would be a credible piece of evidence to determine the age of the O.P. No. 2. If the school admission register of the Madarsa showing date of birth of the O.P. No. 2 as 16.09.2000 is taken as credible piece of evidence, this Court would have no hesitation in accepting the submission of learned counsel for O.P. No. 2 but this Court would not be accepting the submission of learned counsel for O.P. No. 2 on this point. To this Court, it appears that the school admission register of Madarsa lacks credibility and it would not be safe for this Court to give credence to a register of a Madarsa over and above the documents of a Government High School i.e. school admission



register of a Government High School. The JJB in its order has recorded that the Incharge Principal of the Government High School was examined on 29.06.2017 and according to his admission register the date of birth of O.P. No. 2 is 05.12.1998 that too is based on the affidavit of the father of the O.P. No. 2. In the appellate court, father of the O.P. No. 2 took a plea that he had given an affidavit regarding the age of his son as 05.12.1999 but the authority made it 05.12.1998. Such statement at a belated stage was made only to somehow get rid of the date of birth entered in the admission register of the Government High School. The learned appellate court definitely failed to appreciate this aspect of the matter.

26. This Court, therefore, finds that the evidence of the Incharge Principal of the Government High School saying the date of birth i.e. 05.12.1998 mentioned in the school admission register of the Government High School, and the matriculation certificate of the BSEB issued much before issuance of Madarsa certificate would clinch the whole issue.

27. In the above view of the matter, this Court is not going into the issue as to whether this Court had remanded the case to the learned appellate court only for the purpose of hearing and not to take any other material on record before



hearing of the case. This court would, however, definitely indicate that being appellate court, the appellate court had all the powers of the learned JJB and exercise of such powers in the interest of justice would definitely have a better outcome.

28. At this stage, this Court refers the judgment of the Hon'ble Supreme Court in the case of **Rishipal Singh Solanki (supra)** paragraph '29' thereof is quoted hereunder for a ready reference:-

"29. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

(i) A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

(ii) An application claiming juvenility could be made either before the Court or the JJ Board.

(iia) When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.

(iib) If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

(iic) When an application claiming juvenility is made under section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a Court, then the procedure contemplated under section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act,



2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the concerned criminal court, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide section 9 of the JJ Act, 2015).

(iii) That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for *prima facie* satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

(iv) The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

(v) That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a *prima facie* conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

(vi) That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

(vii) This Court has observed that a hyper-technical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

(viii) If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act,



2015 is not misused by persons to escape punishment after having committed serious offences.

(ix) That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

(x) Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions.

(xi) Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.”

29. In the said case, the Hon’ble Supreme Court observed that Section 94 of the J.J. Act, 2015 raises a presumption regarding the juvenility of the age of the child brought before the J.J. Board or the Committee. But in case, the Board or Committee has reasonable grounds for doubt about the person brought before it is a child or not it can undertake the process of determination of age by seeking evidence. Thus, the Hon’ble Supreme Court held that the presumption has to be drawn on observation of the child, however, the said presumption may not be drawn when the Committee or the Board has reasonable grounds for doubt regarding the person brought before it is a child or not. In such a case, it can



undertake the process of age determination by evidence. The same principle has been reiterated by the Hon'ble Division Bench of this Court in the case of **Salamdin Mian (supra)**.

30. In the light of the discussions made hereinabove, this Court is of the considered opinion that the learned JJB, Banka as well as learned Additional Sessions Judge-I, Banka have committed error in appreciation of the materials available on the records and have wrongly applied the law on this subject.

31. The impugned orders are, therefore, set aside.

32. This revision application is allowed.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

U		T	
---	--	---	--

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

