

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.268 of 2018

Arising Out of PS. Case No.-286 Year-2017 Thana- DUMRA District- Sitamarhi

Satyendra Patel @ Satendra Patel, son of Krishna Patel, resident of village-Mishrauliya, P.S.-Dumra, District-Sitamarhi.

... .. Petitioner

Versus

1. The State of Bihar
2. Munna Kumar, son of Shankar Patel, resident of village-Mishrauliya, P.S.-Dumra, District-Sitamarhi

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Ashhar Mustafa, Advocate Mr. Ashish Kumar Ranjan, Advocate Mr. Abu Narar, Advocate
For the State	:	Mr. Aditya Narayan Singh 1, APP
For O.P. No. 2	:	Mr. Ashok Kumar Jha, Advocate Mr. Sumit Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 30-06-2022 Heard Mr. Ashhar Mustafa, learned counsel for the petitioner and Mr. Sumit Jha, learned counsel representing the O.P. No. 2 as also Mr. Aditya Narayan Singh 1, learned APP for the State.

The petitioner in the present case is challenging the order dated 23.01.2018 passed by learned ADJ-I-cum-Special Judge (POCSO), Sitamarhi in Dumra P.S. Case No. 286 of 2017 (JJB No. 1176 of 2018) whereby and whereunder the learned Special Judge (POCSO) has been pleased to declare that O.P. No. 2 is a juvenile for the proceeding under the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act of 2015').



It appears on a reading of the impugned order that the O.P. No. 2 raised the claim of juvenility saying that his date of birth is 18.05.2000 and he was admitted for the first time in class I in Mishrauliya Primary School in the year 2006 where he studied up to class VIII and thereafter he went to High School, Dumra from where he did his matriculation and presently he is a student of intermediate class. In support of his claim of juvenility the school leaving certificate of class VIII, admit card, provisional certificate and marksheet of class X of the Bihar School Examination Board were adduced as evidence.

The informant happened to be a teacher of Mishrauliya Primary School. He contested the claim of juvenility by O.P. No. 2. In support of his stand, the informant requested the learned Special Judge (POCSO) to call for the Admission Register of the Mishrauliya Primary School. The Principal of the school, namely, Ravindra Kumar (EW 1) produced the register. In his examination-in-chief, he stated that in the Admission Register the date of birth of the O.P. No. 2 is mentioned as 05.02.1998 and the class in which he was admitted is mentioned as class II but in course of his cross-examination, EW 1 admitted that the Admission Register which he has brought is in torn condition and on the pages of the Admission



Register, the name of the school is not mentioned. He also admitted that the register does not show the signature of either of the parents or guardian of O.P. No. 2. In paragraph '2' of his cross-examination, this witness admitted that there is a cutting with respect to the class in which the O.P. No. 2 was admitted in the school. Class I has been cut down and class II is mentioned therein. He had not brought the Attendance Register of the other classes and he had no proof in hand to show that on the basis of the admission register showing date of admission 19.02.2004, the O.P. No. 2 has studied in the said school in any other class. This witness has further stated that O.P. No. 2 has studied in this school from class I to class VIII and after passing out class VIII, the Principal issues a school leaving certificate.

Further in paragraph '3' of the cross-examination, this witness says that O.P. No. 2 was admitted on 02.01.2006 in class I and his date of birth is mentioned as 18.05.2000. He had passed his class VIII examination on 31.03.2014 and was issued a school leaving certificate original of which is on the record signed by the then Principal Shri Pawan Kumar Mishra. This has been marked as Exhibit 'A'. This witness has stated that the informant Satyendra Patel is a teacher in the same school for 13-14 years. He denied the suggestion that the admission register



was fabricated at his instance in order to falsely implicate the O.P. No. 2.

Learned counsel for the petitioner submits that the learned Special Judge has wrongly recorded that there was any cutting in the register. The Court ignored the re-examination part of the evidence of PW 1 wherein the said witness had produced the attendance register of the year 2004 in which the name of the O.P. No. 2 is mentioned in the attendance register of class II at serial no. 109. This register was marked 'X' for identification.

It is further submitted that in the present situation of this case where the date of birth of the O.P. No. 2 mentioned in the certificate of the Bihar School Examination Board was disputed by the petitioner the only course open to the learned Special Judge (POCSO) was to direct ossification test of O.P. No. 2 and that could have been the basis for assessment of age of the juvenile.

On the other hand, Mr. Sumit Jha, learned counsel representing the O.P. No. 2 submits that the learned Special Judge has passed the impugned order after discussing in detail the evidences available on the record. The learned Court has noticed that EW 1 Ravindra Kumar had produced a register on



which the name of the school was not mentioned and in front of the entry showing name of the O.P. No. 2 there was no signature either of the parents or the guardian. Even at a belated stage, when he was re-examined on recall, he attempted to produce an attendance register of class II but that could not be proved and Exhibited for the reason that EW 1 was not aware of as to who had prepared the said attendance register. It is submitted that normally on the attendance register the signature of the class teacher is present but in this case no signature of any class teacher was proved as a result whereof the attendance register remained marked 'X' but could not be exhibited in accordance with law.

Learned counsel further points out that contrary to the aforesaid documents brought by the petitioner in evidence, there were cogent materials to support the claim of juvenility of O.P. No. 2 in form of school leaving certificate which was issued by the then Principal of the school in the year 2008 showing the date of birth of the O.P. No. 2 as 18.05.2000. Based on this school leaving certificate, the O.P. No. 2 was admitted in class IX in the High School from where he had passed out his matriculation examination conducted by the Bihar School Examination Board.



Learned counsel submits that the learned Special Judge has, thus, committed no error in appreciating the evidences placed on the record and on being fully satisfied with the materials produced on behalf of the O.P. No. 2, the learned Court has declared the age of the O.P. No. 2 as that of juvenile.

As regards the submission that the Court should have gone for an ossification test, learned counsel submits that the submission made on behalf of the petitioner is only misconceived.

Referring to the scheme of Section 94 of the Act of 2015, learned counsel submits that under clause (i) of sub-Section (2) of Section 94 the date of birth mentioned in the school register or the matriculation certificate or a date of birth certificate issued by a Municipal Corporation are to be given preference over the ossification test. It is only when these documents are not available that the court has to resort to the next procedure i.e. under clause (ii) and (iii). Again referring to a 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** learned counsel submits that the Hon'ble Supreme Court has in categorical words held that ossification test cannot be the sole criteria 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 an inquiry useful guiding factor to be considered in the absence of documents mentioned in Section 94(2)(i) of the Act of 2015. It is, thus, submitted that the impugned order needs no interference by this Court in its revisional jurisdiction.

Learned APP for the State has submitted that the learned court below has rightly relied upon the matriculation certificate which was very much available on the record and was duly adduced as evidence.

Having regard to the submissions made on behalf of the petitioner, the O.P. No. 2 and the State as also on perusal of the records, this Court is of the considered opinion that the learned Special Judge (POCSO) has rightly relied upon the date of birth mentioned in the matriculation certificate of O.P. No. 2.

This Court finds that the informant had challenged the claim of juvenility of the O.P. No. 2 but in course of evidence he was unable to produce cogent materials to impress upon the Court that there is a bona fide dispute with respect to the date of birth mentioned in the matriculation certificate.

This Court has noticed that in paragraphs '2' and '3'



of his cross-examination EW 1 has categorically stated about the cutting in the register and that the O.P. No. 2 was first admitted on 02.01.2006 in class I and his date of birth mentioned therein is 18.05.2000. He has also stated that on passing of class VIII examination a school leaving certificate is issued by the Principal of the school and in this case in respect of O.P. No. 2 the school leaving certificate was issued by the then Principal which has been marked as Exhibit 'A'.

Apparently, the evidences produced on behalf of the O.P. No. 2 inspired confidence of the Court. No such ossification test was required when the court was fully satisfied with the evidences adduced on behalf of the O.P. No. 2.

In such circumstances, if the learned Special Judge (POCSO) Court has declared the petitioner a juvenile, this Court sitting in it's revisional jurisdiction would not interfere with the same.

This revision application has, thus, no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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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'.

