

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.564 of 2018

Arising Out of PS. Case No.-161 Year-1988 Thana- ARA NAWADA District- Bhojpur

(XXX) Son of Mahesh Prasad Singh Permanent resident of Club Road, Near
D.M. Residence, Police Station - Arrah, District - Arrah.

... .. Petitioner

Versus

The State Of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr.Ravinder Kumar Singh, Advocate
For the State	:	Mr. Md.S.A.Ahmed, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

23 18-10-2022 Heard learned counsel for the petitioner and Mr. Md.
S.A. Ahmed, learned Additional P.P. for the State.

In the present revision application, the petitioner is seeking setting aside of the judgment and order of the sentence dated 19.11.2010 passed by learned Additional Sessions Judge-I, Ara, Bhojpur in Cr. Appeal No. 01 of 1993 whereby and whereunder while maintaining the conviction of the petitioner under Section 323 IPC, order of sentence dated 14.12.1992 passed by learned Judicial Magistrate, 2nd Class, Ara, Bhojpur in G.R. case no. 2689 of 1988/ Trial No. 79 of 1992 against the petitioner under section 147 IPC has been set side and the sentence under Section 323 IPC has been modified extending the benefit of Probation of Offenders Act directing to execute a bond to keep peace for one year.

On the last date while hearing the revision



application, this Court noticed the submission of learned counsel for the petitioner in its order dated 14.10.2022. The said order is being reproduced hereunder for a ready reference:-

“Heard learned counsel for the petitioner and Mr. S.A. Ahmed, learned Additional Public Prosecutor for the State.

Learned counsel for the petitioner has pointed out from the judgment of the learned trial court that on production of the petitioner in connection with the alleged occurrence on 18.07.1988, the learned C.J.M. observed that the petitioner seems to be a juvenile, therefore, he ordered that the petitioner be sent to the remand home. It is pointed out that after the petitioner was sent to the remand home by virtue of the order dated 18.07.1988, on 19.07.1988 the learned court passed an order that the petitioner is required to appear before the Civil Surgeon after taking Dasti letter from the court for examination of his age by the Medical Board.

It is further submitted that thereafter no order was passed on the issue of juvenility of the petitioner and the trial was conducted without considering that issue.

Learned counsel submits that from the judgment of the learned trial court, itself it would appear that it does not refer to any order by which the juvenility of the petitioner was said to have been decided. Learned counsel further submitted that in the appellate court, this plea was specifically raised by filing a petition dated 30.07.2009 together with a copy of the matriculation certificate dated 24.08.1988 issued by the Bihar School Examination Board showing that the petitioner had



appeared in the matriculation examination in the year 1988 from Catholic School, Ara and his date of birth is 22nd December, 1975. He had passed his matriculation examination in 1st division.

Learned counsel submits that the petitioner appeared in the matriculation examination held in the year 1988 prior to the alleged date of occurrence i.e. 17.07.1988. It is, therefore, a valid piece of material available on the record which the learned appellate court did not consider.

Learned counsel submits that on the alleged date of occurrence, the petitioner was aged below 14 years, therefore, had the issue of juvenility been decided either by the learned trial court or by the learned appellate court, the petitioner could not have been tried as an adult in the present case. This, according to the petitioner has vitiated the entire judgment of the learned trial court as well as the appellate court.

Mr. S.A. Ahmed, learned Additional Public Prosecutor for the State prays for passing over the matter to enable him to go through the entire records which have been received from the learned court below.

Let the matter be passed over for the day, to be taken up on Monday i.e. 17.10.2022 at 03:30 P.M.”

Today, learned counsel for the petitioner has placed before this Court a copy of the order dated 29.11.2021 passed by the Hon’ble Supreme Court in petition for Special Leave to Appeal (Crl.) No. 643 of 2020 to submit that in the said case while considering the prayer for bail of the petitioner, the Hon’ble Supreme Court has once again observed that the claim



of juvenility can be raised before any court at any stage and even after final disposal of the case and if the court finds a person to be a juvenile on the date of commission of the offence, it is to forward the juvenile to the Board for passing of the appropriate order and the sentence if any passed by the court shall be deemed to have no effect.

Learned counsel further submits that the Hon'ble Supreme Court has further held that "even though the offence in this case may have been committed before the enactment of the Act of 2000, the petitioner is entitled to the benefit of juvenility under Section 7A of the Act of 2000, if on inquiry it is found that he was less than 18 years of age on the date of the alleged offence."

Learned counsel submits that in this case the fact that the petitioner seems to be a juvenile has been recorded by the learned C.J.M. on the very first date when the petitioner was produced before him. The learned C.J.M. had directed that the petitioner be produced before the Civil Surgeon for medical examination which was done but thereafter, no further inquiry was conducted and the case proceeded as if the petitioner was an adult and ultimately the petitioner has been convicted.

Learned counsel submits that the matriculation



certificate of the petitioner issued by the Bihar School Examination Board is a clinching document which proves that the date of birth of the petitioner is 22nd December, 1975 and on the alleged date of occurrence he was below 14 years of age.

Learned counsel further submits that in the given facts and circumstances the impugned judgment of conviction and order of sentence are liable to be set aside.

Notice was issued to the informant-O.P. No. 2 but despite paper publication, he chose not to appear.

Mr. Md. S.A. Ahmed, learned Additional P.P. for the State had taken time to go through the lower court's record. Learned Additional P.P. has perused the entire records and submits that the learned court below has not conducted any inquiry and no determination of age was done even though the learned C.J.M. had with his naked eyes identified the petitioner as a juvenile. Learned Additional P.P. does not dispute that this issue was specifically raised by the petitioner before the learned appellate court but the appellate court did not take notice of the petition filed on behalf of the petitioner and proceeded to dismiss the appeal without considering the same.

Having regard to the above noted submissions and the law settled on the issue that plea of juvenility may be raised at



any stage, this Court has considered this as a ground taken on behalf of the petitioner. In the admitted facts of the case saying that no inquiry was conducted by the learned court below, this Court would have no hesitation in recording that the entire trial as against the petitioner has vitiated and the judgment of conviction and order of sentence against the petitioner shall have no effect. Those are being set aside as regards the petitioner. Since the alleged occurrence took place in the year 1988 and now almost 34 years have gone past, this Court is of the considered opinion that no significant purpose would be served by directing the Juvenile Justice Board at this stage to conduct an inquiry particularly when this Court has perused the matriculation certificate and finds no dispute with respect to the age of the petitioner mentioned in the matriculation certificate.

This revision application is, thus, allowed.

(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'.

