

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL REVISION No.624 of 2021**

Arising Out of PS. Case No.-84 Year-2019 Thana- KOPA District- Saran

XXX Son of Rustam Shah Resident of Village - Anwal, P.S.- Kopa, District – Saran. Petitioner/s

Versus

1. The State of Bihar
2. Nagendra Sharma Son of Late Kapildev Sharma Resident of Village - Anwal, P.S.- Kopa, District - Saran Chapra.
3. The Central Board for Secondary Education, 2, Community Centre, Preet Vihar, through its Secretary Delhi 110301

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar, Advocate Mr. Ayush Kumar, Advocate
For the State	:	Mr. Md. Fahimuddin, APP
For the CBSE	:	Mr. Vinay Kumar Tripathy, Advocate
For the O.P. No. 2	:	Mr. Sanjay Kumar Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

8 11-11-2022 Heard Mr. Mukesh Kumar assisted by Mr. Ayush Kumar, learned counsel for the petitioner, Mr. Md. Fahimuddin, learned APP for the State, Mr. Sanjay Kumar Singh, learned counsel for the O.P. No. 2 and Mr. Vinay Kumar Tripathi, learned counsel for the O.P. No. 3.

Petitioner in this case is aggrieved by and dissatisfied with the judgment dated 24.08.2021 passed by the learned First Additional District and Sessions Judge-cum- Children Court, Saran at Chapra in Cr. (Juvenile) Appeal No. 20 of 2021 arising out of Kopa P.S. Case No. 84 of 2019 whereby and whereunder order dated 27.08.2019 passed by Juvenile Justice Board, Saran at Chapra in Enquiry No. 247 of 2019 assessing the petitioner to



be major has been affirmed.

Learned counsel for the petitioner has drawn the attention of this Court towards the appellate order passed by learned First Additional District and Sessions Judge -cum- Children Court, Saran at Chapra in Cr. (Juvenile) Appeal No. 20 of 2021 arising out of Kopa P.S. Case No. 84 of 2019. It is submitted that before the appellate court the appellant-petitioner had produced photocopies of the certificates showing the date of birth of the appellant but those documents have been rejected on the ground that those have been filed without seeking permission to produce those documents as additional evidence in this appeal.

Learned counsel submits that the learned appellate court could not appreciate that plea of juvenility is to be considered at any stage. The appellate court could not have applied the strict principles of the Cr.P.C. and law of evidence in the matter of assessment of age of the petitioner.

Learned counsel submits that under the scheme of the Juvenile Justice (Care and Protection of Children) Act of 2015, if the matriculation certificate issued by the Central Board of Secondary Education (hereinafter referred to as “Board”) is available then the date of birth mentioned in the said certificate



would be taken as the date of birth of the petitioner and the plea of juvenility will be considered accordingly.

It is only when the matriculation certificate or any other proof of age as envisaged under Section 94 is not available then only the medical test could have been conducted.

Mr. Vinay Kumar Tripathy, learned counsel representing the Board submits that the matriculation certificate issued by the Board is a genuine document and the date of birth of the petitioner is rightly mentioned therein as 01.08.2003.

Learned counsel for the O.P. No. 2 has though opposed this application but considering the entire facts and circumstances and the materials available on the record, this Court is of the considered opinion that the learned Board as well as the First Additional Sessions Judge, Saran at Chapra have erred in considering/determining the age of the petitioner.

In the opinion of this Court when the documents were presented before the learned appellate court, the court should have conducted an enquiry, instead the court chose to reject those documents on the ground that the documents were filed without seeking permission.

Section 94 of the J.J. Act, 2015 reads as under:-

“Presumption and determination of age
(1) Where, it is obvious to the Committee or the Board, based on the appearance of the



person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the 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.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

To this Court, it is crystal clear that the impugned order(s) are liable to be set aside and the matter is required to be remitted to the learned J.J.B., Saran at Chapra to consider the plea of juvenility of the petitioner concerned. In result, the impugned orders are set aside and the Juvenile Justice Board, Saran, Chapra is directed to determine the age of the petitioner on the alleged date of occurrence



in accordance with law and in the light of the discussions made
hereinabove.

The application is allowed.

(Rajeev Ranjan Prasad, J)

lekhi/-

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'.

