

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.8 of 2022

Arising Out of PS. Case No.-268 Year-2020 Thana- BAHERI District- Darbhanga

Prabhu Sankar Ray @ Prabhu Sankar @ Golu S/O Satish Ray R/O Mohalla/Village- Bithauli, P.S.- Baheri, Distt.- Darbhanga, Through His Mother Namely Sunita Devi Aged About 46 Years Female W/O Satish Ray R/O Mohalla/Vill.- Bithauli, P.S.- Baheri, District- Darbhanga

... .. Petitioner

Versus

1. The State of Bihar
2. Mohan Kumar Ray S/O Late Sasikant Ray R/O Mohalla/Vill.- Bithauli, P.S.- Baheri, District- Darbhanga

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Kedar Jha, Advocate
For the Respondent/s : Mr. Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 23-06-2022

Learned counsel for the petitioner undertakes to remove all the defects as pointed out by the Stamp Reporter within four weeks after start of normal functioning of the Court.

2. Heard Mr. Kedar Jha, learned counsel for the petitioner and Mr. Akhileshwar Dayal, learned APP for the State.

3. The petitioner in the present case is aggrieved and dissatisfied with the order dated 08.07.2021 passed by learned 1st Additional Sessions Judge-cum-Children Court, Darbhanga in Cr. Appeal No. 06 of 2021 whereby and whereunder the order dated 19.03.2021 declaring the petitioner a major passed by learned Juvenile Justice Board, Darbhanga in J.J.B. Case No. 482 of 2021 arising out of Baheri P.S. Case No. 268 of 2020 registered for the



offences punishable under Sections 341, 323, 324, 307, 427, 302, 504/34 of the Indian Penal Code has been affirmed.

4. Learned counsel for the petitioner has assailed the impugned judgment and order on the solitary ground that the learned Juvenile Justice Board as well as the Appellate Court have wrongly taken into consideration the school admission register of the school from which the petitioner has passed his matriculation examination. It is his contention that once the petitioner had passed out his matriculation examination from the Central Board of Secondary Education (in short 'CBSE') in which his date of birth is recorded as 30.06.2003, the said date of birth is to be taken as a conclusive proof of the fact that the petitioner is a juvenile on the alleged date of occurrence. It is his submission that in view of the observations of the Hon'ble Supreme Court in the case of **Jabar Singh vs. Dinesh and Anr.** reported in **(2010) 3 SCC 757**, the date of birth of the petitioner recorded in the school admission register could not satisfy the condition laid down in Section 35 of the Evidence Act inasmuch as the date of birth entered in the said register was not in any public or official register and was not made at all by a public servant or in discharge of his official duty.

5. Initially, learned counsel for the petitioner had also taken a plea that even if the medical examination report determining the age of the petitioner is taken into consideration, the petitioner is



liable to be declared juvenile. According to him, the medical examination report shows that the petitioner was aged between 20-22 years.

6. Learned counsel sought to reduce two years from the lower limit of age i.e. 20 years and then further applying the provision of Rule 12(3)(b) of the Juvenile Justice Rules, 2007, he argued that further one year will be liable to be reduced and thereby the petitioner would come within the ambit of the age which will make him a juvenile but immediately after going through the judgment of the Hon'ble Supreme Court in the case of **Darga Ram @ Gunga vs. State of Rajasthan** reported in (2015) 2 SCC 775, the learned counsel understood that the age of plus minus 2 years was reduced in the said case from the upper extreme limit and not from the lower limit. This argument has, thus, been abandoned at the threshold.

7. Learned counsel submits that the Juvenile Justice Board had no reason to disbelieve the matriculation certificate of the CBSE showing the date of birth of the petitioner as 30.06.2003. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ashwani Kumar Saxena vs. State of Madhya Pradesh** reported in (2012) 9 SCC 750 (paragraphs 20 and 21) and the judgment in the case of **Rishipal Singh Solanki vs. State of**



Uttar Pradesh and Ors. reported in **AIR 2022 SC 630** {paragraph 29, sub-paragraph (ix)}.

8. On the other hand, learned APP for the State has opposed this application. Learned counsel submits that the petitioner in the present case was admitted in Don Bosco School at Darbhanga. His date of birth recorded in the school is 12.01.2000 but the date of birth of the petitioner mentioned in the registration card of the same class and school has been later on showing his date of birth as 30.06.2003 and the same date of birth is contained in the registration card, marksheet and admit card of class 10th. Learned APP submits that the petitioner had concealed his earlier date of birth mentioned in the school admission register and by changing the date of birth, he had taken the benefit of lower age at the stage of matriculation examination. It is submitted that in this case, the alleged date of occurrence is 19.11.2020, therefore, on the said date of occurrence, the petitioner could have been more than 20 years of age. It is further submitted that the Juvenile Justice Board inquired into the matter considering the gravity of the offence, the Board called for the admission register of the 9th class from the said school and recorded the statement of the teacher on 11.01.2021 who stated on oath that the date of birth of the petitioner is 12.01.2000 and the same is clearly exhibited on the record which is mentioned at serial no. 65 at page 07.



9. The Juvenile Justice Board, therefore, having doubted the correctness of the date of birth entered in the CBSE marksheet and certificates thought it just and proper to constitute a medical board for age determination. A detailed and reasoned order was passed on 23.01.2021. This order has not been challenged by the petitioner.

10. Learned APP further submits that the Medical Board constituted by virtue of the order dated 23.01.2021 has assessed the age of the petitioner between 20 and 22 years. It is, thus, submitted that the Medical Examiner's report corroborates the entry made in the admission register, therefore, no infirmity may be found in the order of the learned Juvenile Justice Board.

11. Learned APP for the State has drawn the attention of this Court towards the judgment cited by and on behalf of the petitioner. It is submitted that in paragraph '21' of the judgment in the case of **Ashwani Kumar Saxena (Supra)**, the Hon'ble Bench had doubted the correctness of the views taken in **Jabar Singh** case (**Supra**). It is further submitted that in the case **Rishipal Singh Solanki (Supra)**, the Hon'ble Supreme Court has, after discussing the case laws on the subject, concluded in paragraph '29' the law which had emerged on cumulative consideration of the catena of judgments on the subjects. Sub-paragraph (ix) of paragraph 29 clearly states 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 the official duty would have greater credibility than private documents.”

12. Learned counsel submits that even under the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015, Section 94 deals with the presumption and determination of age and Sub-Section (2) of Section 94 clause (i) stipulates that the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination board, if available is to be taken into consideration in the process of age determination.

13. Learned counsel submits that in this case there is no denial of the fact that the petitioner was admitted in Don Bosco School, Darbhanga in class 9th. There is no dispute with regard to the school admission register which was produced before the Juvenile Justice Board. Under these circumstances, the impugned judgment and orders need no interference by this Court in its revisional jurisdiction.

14. I have heard learned counsel for the petitioner and learned APP for the State and perused the records. The perusal of the order dated 23.01.2021 passed by the learned Juvenile Justice Board,



Darbhanga would show that on the said date, the Board heard both the sides on the question of determination of age of the petitioner.

15. Learned counsel for the petitioner argued before the Board that the date of birth of the petitioner mentioned in the admission register of 9th class of Don Bosco School is 12.01.2000 but the date of birth of the petitioner mentioned in the registration card of the same class and school is 30.06.2003. The argument was that due to clerical mistake wrong date of birth was mentioned in the admission register and on this ground, the prayer was to declare the age of the petitioner on the basis of registration card, marksheet and admit card of 10th class. It is in this background of the submission on behalf of the petitioner that the Board called for the admission register of the 9th class from the concerned school and relied upon the statement of the teacher who testified on oath that the date of birth of the petitioner is 12.01.2000. It is not the case of the petitioner that the school admitted any entry made by mistake in the school admission register.

16. This Court also finds that the petitioner never challenged the order dated 23.01.2021 and waited for the consideration of the Medical Board and result of the examination and assessment of age by the Medical Board. The Medical Board assessed the age of the petitioner between 20-22 years which only corroborate the likely age of the petitioner as per date of birth in the



school admission register. The submission of learned counsel for the petitioner is that the entry made in the school admission register could not have been relied upon by the learned Juvenile Justice Board is devoid of any merit.

17. In the case of **Ashwani Kumar Saxena (Supra)**, the Hon'ble Supreme Court has in paragraphs 20 and 21 recorded as under:

“20. The Court in *Jabar Singh case*⁷ further stated that the entry of date of birth of Respondent 1 in the admission form, the school records and transfer certificates did not satisfy the condition laid down in Section 35 of the Evidence Act inasmuch as the entry was not in any public or official register and was not made either by a public servant in the discharge of his official duty or by any person in performance of a duty specially enjoined by the law of the country and therefore, the entry was not relevant under Section 35 of the Evidence Act for the purpose of determining the age of Respondent 1 at the time of commission of the alleged offence. We have our own reservations on the view expressed by the Bench in *Jabar Singh case*⁷ (supra).

21. In *Daya Nand v. State of Haryana*⁸ this Court considered the scope of Sections 2(k), 2(l), 7-A, 20 and 64 (as amended by Act 33 of 2006 w.e.f. 22-8-2006). This Court dealt with a case where the appellant was aged 16 years 5 months and 19 days on the date of occurrence, the Court held that he was a juvenile and thus could not be compelled to undergo the rigorous imprisonment as imposed by the trial court and affirmed by the High Court. This Court set aside the sentence and ordered that the appellant be produced before the Juvenile Justice Board for passing appropriate sentence in accordance with the 2000 Act.”

7. (2010) 3 SCC 757 : (2010) 2 SCC (Cri) 484
8. (2011) 2 SCC 224 : (2011) 1 SCC (Cri) 666



18. It is evident from the last lines in paragraph 21 that in this judgment earlier views expressed in **Jabar Singh (Supra)** case has been doubted. Again, the Hon'ble Supreme Court has, in the case of **Rishipal Singh Solanki (Supra)** taken a categorical view with regard to the legal position showing from a cumulative consideration of catena of judgments on the subject, this Court has reproduced paragraph 29 of the judgment in case of **Rishipal Singh Solanki (Supra)** hereunder:

“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.”



19. Having discussed the legal position in the background of the factual matrix of this case and being conscious of the scope of interference by this Court in its revisional jurisdiction to unsettle the two concurrent findings of the learned Juvenile Justice Board and the learned Special Judge (Children’s Court), Darbhanga, this Court is of the considered opinion that no illegality or infirmity much less any perversity may be found in the order of the learned Juvenile Justice Board or the Appellate Court. There is no error in application of law in the given facts of this case. Thus, the concurrent findings of the learned Juvenile Justice Board and the Appellate Court are not required to be interfered with.

20. This revision application is, thus, dismissed.

(Rajeev Ranjan Prasad, J.)

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AFR/NAFR	AFR
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