

23-03-2022
Subha
Item no. 08
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 629 of 2018

In the matter of : Bhusan Kumar Chohan.

.....petitioner.

In Re : An application under Section 397/401 read with Section 482 of the Code of Criminal Procedure.

Mr. Uday Sankar Chattopadhyay
Mr. Santanau Maji
Ms. Snigdha Saha

...for the petitioner.

Mr. Sudip Ghosh
Mr. Apurba Kumar Datta
Mr. Bitasok Banerjee

...for the State.

The subject-matter of the present revisional application relate to an order dated 29.01.2018 in Sessions (POCSO) case No. 82 of 2016 arising out of Salanpur P. S. Case No. 119 of 2016 dated 26.07.2016 presently pending before the learned Additional Sessions Judge, 2nd court, Burdwan, wherein the learned trial court was pleased to dismiss the plea of juvenility.

Mr. Chattopadhaya, learned advocate has criticized the order passed by the learned trial court while arriving at his own conclusion as the learned trial court ignored the document relied upon by the petitioner.

In the alternative, the learned trial court, according to the learned advocate, accepted the document produced by the prosecution which is a cause of grievance of the petitioner.

The revisional application was taken up on different occasions and pursuant to the order passed by this court, ossification test was conducted through a medical team of Burdwan Medical College. Accordingly, the report so submitted by the Authorities on the basis of their findings, the age of the petitioner was found to be within 22 years to 25 years on 28.09.2021.

Subsequently, when the matter came up, learned advocate for the State was repeatedly directed to produce the particular document on which the learned trial court has relied to arrive at his finding thereby rejecting the plea of juvenility.

Today, the learned advocate for the State has produced the original document collected from the learned trial court, which has been certified by the school authorities and reflects the date of birth to be 21.06.1994.

In view of the issues so raised by the learned advocate for the petitioner, I am of the opinion that the learned trial court in course of enquiry, before accepting the document produced by the State to be sacrosanct, should have granted an opportunity of cross-examination in course of enquiry to the petitioner.

Accordingly, the learned trial court will conduct an enquiry afresh, affording an opportunity to the petitioner to cross-examine the authorities regarding the authenticity of the document so produced before the court, to the extent the original record from which the present copy has been prepared and produced before the court.

If the court after such enquiry is satisfied, the court would accept the age of the petitioner as it is calculated from the said

document/register of the school and thereafter come to a finding regarding the issue of juvenility.

If the court is not satisfied, the court will take a reference from the ossification test which was conducted pursuant to the direction passed by this court and will also at the same time take into account the document so produced by the petitioner before the trial court.

The trial court is directed to commence such exercise on and from 28th April, 2022 and conclude the same by 31st July, 2022. The trial court would, thereafter, proceed in accordance with law.

In view of the ossification test being conducted pursuant to the direction of the court, the original test report may be tagged with the original case diary of this case.

With the aforesaid observations, the revisional application being CRR 629 of 2018 is disposed of.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

Interim order, if any, is hereby vacated.

The original document (relating to the register) produced by the State is returned to the learned advocate appearing for the State.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]

