

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.381 of 2022 &
CRLA No.711 of 2022

Application under Section 401 read with Section 397(1) of Cr.P.C. and Appeal under Section 372 of Cr.P.C. read with Section 101(5) of Juvenile Justice (Care and Protection of Children) Act, 2015 against the judgment dated 19.07.2022 passed by the learned 3rd Additional District & Sessions Judge, Berhampur in S.T. Case No. 82 of 2021.

CRLREV No.381 of 2022

V. Vinay

.....

Petitioner

-Versus-

Srinu Patro and another

.....

Opp.Parties

CRLA No.711 of 2022

Jagdish Kumar Muni

.....

Appellant

Versus-

State of Odisha and another

.....

Respondents

Advocate(s) appeared in this case:-

**For Petitioner/
Appellant**

: M/s. P.K. Das & D. Sahoo,
Advocates.

[In CRLREV No. 381 of 2022]

M/s. Satyabrata Panda,
S. Suman, M. Kumar,
S. Tibrewal, A. Khandelwal,
P. Khandelwal & P. Dutta.

[In CRLA No. 711 of 2022]

**For Opp. Parties/
Respondents**

: Mr. P. Tripathy,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

16th December, 2022

SASHIKANTA MISHRA, J. Both, the petitioner in CRLREV No. 381 of 2022 and the appellant in CRLA No. 711 of 2002 challenge the order dated 19.07.2022 passed by learned 3rd Addl. District & Sessions Judge, Berhampur in S.T. No.82 of 2021, whereby, the claim of juvenility raised by the accused, Srinibas Patro was allowed. The petitioner in CRLREV No. 381 of 2022 is the informant while the appellant in CRLA No. 711 of 2022 is the son of the deceased and has filed the appeal under the provisions of Section 372 of Cr.P.C.

2. In view of the order proposed to be passed it is deemed proper not to refer to the facts of the case in detail save and except that the case was registered on the basis of an F.I.R. lodged by V. Vinay (petitioner in

CRLREV No. 381 of 2022) before the IIC, Gosaninuagaon Police Station, Berhampur on 14.06.2020 leading to registration of P.S. Case No.87 of 2020 under Sections 458/394/302 of IPC. The FIR was against unknown persons, but in course of investigation, the complicity of some persons having come to light, charge sheet was submitted against them including one Srinibas Patro. Cognizance was taken and the matter was committed to the Court of Sessions for trial. Before the Sessions Court, accused, Srinibas Patro filed an application under Section 2(35) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short “Juvenile Justice Act”) with prayer to treat him as Juvenile. Such prayer was made on the basis of the date of birth mentioned in the School Leaving Certificate issued by the Headmaster, Government Upper Primary School, Hilpatna, Berhampur. The application was objected to by the prosecution on the ground that law does not permit the School Leaving Certificate to be considered as per Section 94(2) of the Juvenile Justice Act.

3. Learned court below however found no reason to disbelieve the certificate and relied upon the same observing that there was no challenge to the authority of the School record. It was further held that when two views are possible on the same evidence, the court shall lean in favour of holding the accused to be a juvenile in borderline cases. Learned court below also referred to the provisions under Section 35 of the Indian Evidence Act to rely upon the School Leaving Certificate.

4. Heard Mr. P.K. Das, learned counsel for the petitioner in CRLREV No. 381 of 2022; Mr. Satyabrata Panda, learned counsel for the appellant in CRLA No. 711 of 2022 and Mr. P. Tripathy, learned Addl. Standing Counsel for the State.

5. Both Mr. Das and Mr. Panda have referred to the provision under Section 9 of the Juvenile Justice Act, particularly to Sub-Section (2) thereof to contend that the court below not being the Juvenile Justice Board, ought to have followed the procedure laid down in the said provision. It is further contended that the certificate was

produced belatedly and in all probability was manufactured only for the purpose of claiming juvenility. It is also contended that the learned court below should have conducted an enquiry and decided the issue basing on the evidence adduced by the parties to determine the age of the accused as required by the Statute.

6. Mr. P. Tripathy while opposing the contentions raised by learned counsel referred above however fairly submits that the procedure prescribed in Sub-Section (2) of Section 9 of the Juvenile Justice Act is required to be followed if the issue of age of the accused is raised. Since the Court below is not the Juvenile Justice Board, the provision under Sub-Section (2) of Section 9 of Juvenile Justice Act should have been followed.

7. I have considered the rival submissions and have also gone through the impugned order and the relevant statutory provisions. Admittedly, the impugned order was passed by a Court other than the Juvenile Justice Board. Section 9(2) of the Juvenile Justice Act is as follows:

9. xx

xx

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(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act."

8. Therefore, primarily, when such a claim is raised before a court not being a Juvenile Justice Board, it is for the said court to make an enquiry, take such evidence as may be necessary to determine the age and to record a finding in the matter basing thereon. Of course, in doing so, the provisions under Section 94 of the Act can also be considered but the Statute requires that an enquiry should be made and if necessary, evidence may also be taken. Learned court below does not appear to have considered the provision under Section 9(2) of the Juvenile Justice Act, for which the impugned order

becomes vulnerable. In such view of the matter, the impugned order is set aside. The matter is remitted to the court below to decide the application of the accused to treat him as a juvenile afresh by following the provisions under Section 9(2) of the Juvenile Justice Act. It is made clear that this Court has not expressed any opinion on the merits of the case.

9. It is stated at the bar that the accused has, in the meantime, been transferred to the observation home. Till the issue of age is determined, he shall continue to remain in the observation home.

10. The CRLREV and CRLA are disposed of accordingly.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 16th December, 2022/ A.K. Rana, P.A.