

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.128 of 2017

Arising Out of PS. Case No.-166 Year-1999 Thana- JAMALPUR District- Munger

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1. Pankaj Kumar @ Pankaj Yadav
 2. Ugal Yadav @ Birendra Kumar @ Ugan Yadav
 3. Dhirendra Kumar @ Dhirendra Yadav All sons of Bechan Yadav @ Bechan Kumar Yadav residents of Village Fulka, P.O. and P.S. Jamalpur, District Munger.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ram Prakash Yadav Son of late Jang Bahadur Yadav residents of Village Fulka , P.O. and P.S. Jamalpur, District Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Praveen Kumar, Advocate
For the Respondent/s	:	Mr.Brajendra Nath Pandey,APP
		Mr.Alok Kumar Sinha, Sr.Adv.
		Mr.Bhola Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5. 23-02-2023 This criminal revision application is directed against impugned order dated 07.01.2017 passed in Sessions Trial No. 101/2003 (arising out of Jamalpur P.S. Case No. 166/1999) by learned 5th Additional Sessions Judge, Munger, whereby the plea of juvenility raised by the petitioners has been rejected on the ground that the same has been taken belatedly.

2. Learned counsel appearing on behalf of petitioner submits that the impugned order has been passed without appreciating the scope and provision contained in Section 7-A of the Juvenile Justice (Care and Protection of Children) Act,



2000 (for short “J.J.Act”) and as such, the impugned order is unjust, illegal and contrary to law. He next submits that the claim of juvenility can be raised before any court and it should be recognized at any stage. Court below has committed an error by dismissing the claim of the petitioner on the ground that the same has been raised after delay and the case is running at the stage of final argument. It would be better to quote Section 7-A of the J.J.Act, which is as follows:

“7-A. Procedure to be followed when claim of juvenility is raised before any court. - (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the Rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.



(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders, and the sentence if any, passed by a court shall be deemed to have no effect.”

3. However, learned counsel for the opposite parties vehemently opposed the prayer and submitted that the learned Court below has rightly passed the order, which does not require any interference by this Court.

4. From bare perusal of the provision contained in Section 7-A of the J.J.Act, it is apparent that the claim of juvenility can be raised at any stage irrespective of delay in raising the claim. It can be raised in appeal even if not pressed before the trial court. It can also be raised for the first time before the High Court even if it is not pressed before the trial court and in appellate court. It can also be raised before Supreme Court even after disposal of the case.

5. Legal position, in this regard, has already been summarized by the Apex Court in the case of **Abuzar Hossain @ Gulam Hossain vs. State of West Bengal**, as reported in **(2012) 10 Supreme Court Cases 489** in which following has been observed:



“A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before the Supreme Court as well after the final disposal of the case. The expression “any court” in Section 7-A is too wide and comprehensive; it includes the Supreme Court. The Supreme Court Rules, despite absence of any provision therein to reopen concluded appeals or SLPs, surely do not limit the operation of Section 7-A to the courts other than the Supreme Court. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before the Supreme Court though not pressed before the trial court and in the appellate court.”

6. In this case, the claim of juvenility, raised by the petitioners, has been rejected on the ground that the same has been taken after inordinate delay, since the case is running at the stage of final argument.

7. Considering the aforesaid facts and circumstances as well as proposition of settled law, the impugned order dated 07.01.2017 passed in Sessions Trial No. 101/2003 (arising out of Jamalpur P.S. Case No. 166/1999) by learned 5th Addl.



Sessions Judge, Munger is, hereby, set aside and quashed. The learned Court below is directed to consider the case of juvenility of the petitioners in accordance with law within a period of six months from the date of receipt/production of copy of this order.

8. With above observation and direction, this criminal revision application stands allowed.

(Prabhat Kumar Singh, J)

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