

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1263 of 2018

Arising Out of PS. Case No.-331 Year-2016 Thana- NAUBATPUR District- Patna

Shiv Kumar Singh @ Sew Kumar Singh Son of Late Ramashray Singh,
Resident of Village Bari Tengraila, P.S. Naubatpur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Nandan Mahto, Son of Suresh Mahto, father and legal guardian Of Opp. Party No. 2.
3. Suresh Mahto, Son of Butan Mahto, Both resident of Village Amarpura P.S. Naubatpur District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dhananjay Kumar, Advocate
For the Respondent/s	:	Mr. Satya Nand Shukla, APP
		Mr. Raj Shekhar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 10-10-2023

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Opposite Party No. 2 and 3.

2. This revision application has been preferred for setting aside the order dated 08.08.2018 passed in Sessions Trial No. 209 of 2018 (arising out of Naubatpur P.S. Case No. 331 of 2016 registered under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act) passed by the learned A.D.J-II, Danapur.

3. By the impugned order, the learned A.D.J.-II,



Danapur has declared the Opposite Party No.2 a juvenile aged between 16 and 17 years on the basis of the opinion of the Medical Board. The learned court further directed to separate the case of Opposite Party No.2 from the records of the session trial and send it to the Juvenile Justice Board, Gaighat, Patna City.

Submissions of the Petitioner

4. Learned counsel for the petitioner submits that with regard to the alleged occurrence which took place on 14.11.2016 at about 3:30 pm in which the son of this petitioner was killed, the petitioner lodged a First Information Report giving rise to Naubatpur P.S. Case No. 331 of 2016 registered under Sections 302 and 34 of the Indian Penal Code and Section 27 of the Arms Act. It is alleged in the FIR that one accused Deepu Kumar was driving motorcycle whereas two others, namely, Satish Kumar and Nandan Mahto (O.P. No.2) resorted to indiscriminate firing which hit on the head of the deceased and another bullet hit his shoulder.

5. Learned counsel submits that at the stage of hearing of his bail application being Cr. Misc. No. 53408 of 2017, the Opposite Party No. 2 withdrew his application and filed a petition dated 12.04.2018 in the court of learned A.D.J.-II,



Danapur to declare him a juvenile. The Opposite Party No.2 produced an admit card of his matriculation practical examination. He did not disclose in his application that he was a regular student of school and when did he take his first admission in the school. Taking note of the fact that the Opposite Party No. 2 had not disclosed about his first admission in a school, the learned A.D.J.-II, Danapur decided to get an opinion from the Medical Board as regards his age. Accordingly, the learned court directed the Civil Surgeon, Patna to constitute a Medical Board to determine the age of Opposite Party No. 2 and submit a report in this regard to the court.

6. Learned counsel for the petitioner submits that the petitioner appeared before the learned court below and disputed the age of the Opposite Party No.2 by filing a petition annexing therewith the copy of the school admission register of Amarpura Middle School in which the Opposite Party No.2 was first admitted. The petitioner asserted that the date of birth of Opposite Party No.2 finds mention as 27.11.1996. He had obtained the copy of the school admission register under the Right to Information Act (hereinafter referred to as the 'RTI'). A copy of the admission register of Opposite Party No.2 obtained under RTI has been enclosed as Annexure '3' to the present



application.

7. Learned counsel submits that as per Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, the court was obliged to consider the date of birth recorded in the school register which the Opposite Party No.2 had first attended but in this case the learned court did not appreciate the materials available on the record and the law on subject. It is submitted that the learned court has rejected the petition which is Annexure '3' to the present application and declared the Opposite Party No. 2 juvenile on the basis of the Medical Board report.

8. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ashwani Kumar Saxena vs. State of M.P.** reported in **(2012) 9 SCC 750**.

9. Learned counsel further relies upon the judgment of the Hon'ble Apex Court in the case of **Manoj @ Monu @ Vishal Chaudhary Vs. The State of Haryana and Anr.** reported in **(2022) 6 SCC 187** in which the Hon'ble Apex Court has referred its earlier judgment in the case of **Babloo Pasi Vs. State of Jharkhand and Anr.** reported in **2008 13 SCC 133** wherein it has been held that it is neither feasible nor desirable to lay down an abstract formula to determine the age of the



person.

10. Learned counsel further submits that the learned court below has failed to appreciate the ratio of the judgment of the learned co-ordinate Bench of this Court in the case of **Anjani Devi & Anr. Vs. The State of Bihar and Anr.** reported in (2017) 2 PLJR 697.

Stand of the Opposite Party Nos. 2 and 3

11. The revision application has been opposed by learned counsel for the Opposite Party Nos. 2 and 3. It is submitted that the learned court below has rightly rejected the petition filed on behalf of the present petitioner. The Court noticed that the school admission register was not fit to be considered for purpose of determination of the juvenility of the Opposite Party No.2. It is, thus, submitted that the learned court has rightly relied upon the judgment of this Court in the case of **Anjani Devi (supra)**. Learned counsel has taken a plea that from the school admission register, copy of which is available on the record, it would appear that the Opposite Party No.2 was admitted in the said school in the year 2004 in Class-IV and his date of birth as disclosed in the admission register is showing 27.11.1996, therefore he was little above seven years on the date of admission in Class-IV. Learned counsel submits that if this



document is believed then the petitioner was admitted in Class-I at the age of three years which could not have been possible and as per the norms, a child aged about five years would go to Class-I. It is, thus the submission that the impugned order needs no interference.

Consideration

12. This Court has heard learned counsel for the parties and perused the records. On going through the impugned order dated 08.08.2018 passed by the learned A.D.J.-II, Danapur it appears that the learned court has though taken up the petition dated 19.06.2018 filed on behalf of the informant for consideration, the entire discussion has been closed saying that the admission register cannot be a relevant consideration for determining the juvenility of an accused under Rule 11 of the Bihar J.J. Rules. The court has not conducted any inquiry into the matter which is evident on a bare perusal of the impugned order. Sub-section 2 of Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'The Act of 2015') provides that "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....”.

13. From the order impugned in the revision application, it nowhere appears that the court has conducted any inquiry into the matter. All that has been done is that initially the court directed the Civil Surgeon, Patna for constitution of a medical board and then when a petition was filed on behalf of the informant, the same has been rejected by observing that the admission register cannot be relevant consideration for determining the juvenility of an accused.

14. This Court finds that the learned A.D.J.-II, Danapur has completely erred in appreciating the judgment of the learned coordinate Bench of this Court in the case of **Anjani**



Devi (supra). The court could not appreciate that in the said case, the order passed by the Juvenile Justice Board did not show that any of the three certificates which are mentioned under Rule 11 (3)(a)(i), (ii) and (iii) of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012 (hereinafter referred to as 'Rules of 2012') was produced. In absence of either of the three certificates, this Hon'ble Court justified the order of the Juvenile Justice Board to refer the claim of juvenility before the medical board.

15. Anjani Devi (supra) was the case in which the age determination was being done by the Juvenile Justice Board, therefore, the Board was obliged to follow the then existing Rule 11 of the Rules of 2012. For the sake of completion of records, it is worth mentioning that Rules of 2012 were repealed by the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2015 (hereinafter referred to as 'Rules of 2015') and again the Rules of 2015 have been repealed by the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2017. In any view of the matter, the present case stands on a different footing inasmuch as in this case, the petitioner claimed his juvenility before a court other than a Board. Therefore, the case of the petitioner would be covered by sub-Section (2) of Section 9 of



the Act of 2015.

16. In the present case, the informant-petitioner had obtained a copy of the school admission register of the Opposite Party No.2. He had produced the same with a petition and it is his specific case that this is the school which the Opposite Party No.2 had first attended. In course of hearing of this case also, learned counsel for the petitioner has taken this Court through the school admission register only to *prima-facie* impress upon this Court that the school admission register contains declaration in different columns showing that the Opposite Party No.2 was admitted in the school on 16.01.2004 and he was admitted in Class-IV as an independent candidate. In front of his name, no name of any prior school is mentioned, therefore, this was the first school which the Opposite Party No.2 had attended. The school admission register has also a column showing the signature of the father of the Opposite Party No.2 who is Opposite Party No.3 in this case. Learned counsel for the Opposite Party No.3 does not dispute this signature which is present in the admission register and the date of birth of the Opposite Party No.2 is mentioned therein as 27.11.1996.

17. It is in this background that the learned counsel for the petitioner has contended that the learned court below was



obliged to conduct an inquiry in terms of sub-section (2) of Section 9 of the Act of 2015 but that has not been done and the petition filed on behalf of the informant has been rejected.

18. This Court finds substance in the submissions of learned counsel for the petitioner. To this Court, it appears that the learned A.D.J.-II, Danapur has not followed the procedures prescribed under sub-section (2) of Section 9 of the Act of 2015. The learned court was required to conduct an inquiry into the matter on the basis of the materials which were placed before the court and only after giving an ample opportunity to the parties to adduce their respective evidences, an appropriate decision could have been taken on the petition filed by the informant.

19. For the aforementioned reasons, the impugned order dated 08.08.2018 passed in Sessions Trial No. 209 of 2018 cannot sustain the test of law. It is hereby set aside. The matter is remitted to the court of learned A.D.J.-II, Danapur for conducting an inquiry in terms of sub-section (2) of Section 9 of the Act of 2015, give an appropriate opportunity to the parties to adduce their respective evidences and then take an appropriate decision preferably within a period of four months from the date of receipt/communication of a copy of this order.



20. This revision application is allowed to the extent indicated hereinabove.

21. Let the records be sent back by the Juvenile Justice Board to the court of learned A.D.J.-II, Danapur for consideration and appropriate order.

(Rajeev Ranjan Prasad, J)

Rishi/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.10.2023
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