

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.11 of 2023

Arising Out of PS. Case No.-72 Year-2022 Thana- KOPA District- Saran

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Anita Devi, Wife of Shyam Babu Sharma, Resident of Village- Bhatwalia,
P.S.- Kopa, District- Saran. Petitioner

Versus

1. The State of Bihar
 2. Sahil Sharma, Son of Nitai Sharma, R/o vill - Bhatwalia, P.S. - Kopa, Distt. - Saran.
- Opposite Parties
- =====

Appearance :

For the Petitioner	:	Mr. Bishwajeet Singh, Advocate Mr. Kundan Kumar Singh, Advocate
For the State	:	Mr. Akhileshwar Dayal, APP
For the O.P. No. 2	:	Mr. Udit Narayan Singh, Advocate Mr. Gajendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 01-12-2023

Heard learned counsel for the petitioner and learned counsel for the opposite party no. 2.

2. This revision application has been preferred for setting aside the judgment dated 27th September, 2022 passed by learned 1st Additional Sessions Judge-cum-Children Court, Saran at Chapra in Criminal (Juvenile) Appeal No. 24 of 2022 arising out of the order dated 10.05.2022 passed by learned Juvenile Justice Board, Saran at Chapra (hereinafter referred to as the ‘Board’) in Juvenile Inquiry Case No. 1838 of 2022. The Juvenile Inquiry arose out of Kopa P.S. Case No. 72 of 2022 registered for the offences alleged under Sections 302, 201 and 34 of the Indian Penal Code (hereinafter referred to as the ‘IPC’). The learned Appellate Court has refused to

interfere with the order dated 10.05.2022 passed by the Board determining the age of the opposite party no. 2 as 16 years 4 months on the alleged date of occurrence.

3. It appears from the pleadings available on the record that the opposite party no. 2 has been apprehended on 03.05.2022 for his alleged involvement in the commission of murder of one Aman Sharma. The opposite party no. 2 was produced before the Board where the Board took upon an exercise to determine the age of the opposite party no. 2.

4. On behalf of the opposite party no. 2, a provisional matriculation certificate and marksheet issued by the Bihar School Examination Board (hereinafter referred to as the 'BSEB') showing him to have passed his secondary school examination held in the year 2020 by the BSEB were produced to prove his date of birth being 02.01.2006 as recorded in the said certificates.

5. Learned counsel for the petitioner submits that the Board considered the provisional certificate issued by the BSEB and accepted the plea of juvenility of the opposite party no. 2. Learned counsel for the petitioner submits that the petitioner having been aggrieved by the order determining the juvenility of the O.P. No. 2 filed an appeal before the Children Court. He had obtained an information under the Right to Information Act (in short 'RTI Act') from the concerned school, namely Utkramit Middle School,

Bhatwalia where the opposite party no. 2 had been first admitted. The information received would show that there was a clear cut tampering in the date of birth mentioned in the admission register as respect the O.P. No. 2. The petitioner pleaded that the other students who were in the same class were much lower in age as per their date of birth recorded in the register and the date of birth of the opposite party no. 2 can at the best be taken to be of the year 2004 and not above in any circumstance. With this plea, it was submitted before the learned Appellate court that the Board has completely erred in not calling the admission register of the school first attended by the opposite party no. 2 and by solely relying upon the provisional matriculation certificate and marksheet of the opposite party no. 2 issued by the BSEB.

6. Learned 1st Additional Sessions Judge-cum-Children Court, however, refused to accept the submissions made on behalf of the petitioner. It has been held that there has been cutting over the date of birth mentioned in the admission record but there is no cutting or overwriting in date of birth mentioned as '02.01.2006'. The learned Appellate Court, therefore, held that the document filed by the petitioner rather corroborates the basis on which the opposite party no. 2 has been declared juvenile.

7. Learned counsel for the petitioner has assailed the impugned order on the solitary ground that learned Board as well as

learned Appellate Court could not appreciate the material which was collected by the petitioner under the RTI Act. The copy of the page of the school admission register which has been brought on record is of class I and the date of admission thereon is shown as that of 02.09.2010. There has been cutting in the column showing date of birth and it is the submission of learned counsel for the petitioner that this cutting in the column of date of birth would lead to an inference that the date of birth of the opposite party no. 2 has been changed. It is, however, not the case of the petitioner that there was any particular date of birth mentioned in the register which has been changed to 02.01.2006.

8. Learned counsel for the petitioner submits that no doubt the matriculation certificate is showing the date of birth of the opposite party no. 2 as '02.01.2006' and it is of the year 2020 which is at least two years prior to the alleged date of occurrence but in the given circumstance, the Appellate Court was required to interfere with the order of the learned Board and afresh age determination process should have been conducted.

9. On the other hand, learned counsel for the opposite party no. 2 has contested this application on the grounds inter-alia that on the face of the two concurrent findings with respect to the date of birth of the opposite party no. 2, this Court sitting in its

revisional jurisdiction may not interfere with the findings unless it is found to be perverse.

10. Learned counsel submits that under the scheme of Section 94(2)(i) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'JJ Act'), the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available, are required to be accepted as evidence for purpose of age determination. In this case, the petitioner has not produced any date of birth certificate of a school showing that this opposite party no. 2 had a different date of birth in the school. It is submitted that the kind of plea which is being taken on the strength of an information gathered under the RTI Act is not a clinching piece of evidence. The entry made in the school admission register has been duly counter signed and the date of birth mentioned therein is of 02.01.2006. It will further appear that just above the name of the petitioner, the candidate who has been admitted was even younger to the petitioner and this would be evident from the entry made at Sr. No. 63 of one Pramod Kumar Yadav whose date of birth has been shown of the year 2007, it is submitted that in the right hand side of the document, it is stated that "TC issued on 08.05.2018", therefore, this opposite party no. 2 was a student of the school from 2010 to 2018 and thereafter, he had been admitted to Gandhi Smarak High School

Kopa, Saran from where he appeared as a regular student in the matriculation examination conducted by the BSEB in the year 2020. By saying that there is a cutting in the column of date of birth alone, the petitioner cannot make out a case for interference with the impugned order as there is no reliable piece of evidence brought by him on the record.

11. Learned counsel has further relied upon a judgment of the Hon'ble Supreme Court rendered in the case of **Rishipal Singh Solanki versus the State of Uttar Pradesh** reported in (2022) 8 SCC 602. Paragraph '46' of the judgment has been relied upon to submit that in the present case, there being no other document indicating the date of birth of opposite party no. 2 contrary to what has been indicated in the matriculation certificate and there being no contra-evidence to the document produced by the opposite party no. 2, the impugned orders need not be interfered with.

Consideration

12. Having heard learned counsel for the petitioner and the opposite party no. 2 as also on perusal of the records, this Court is of the considered opinion that the present case does not call for any interference with the impugned orders. As a matter of fact, the provisional matriculation certificate and the marksheet issued by the BSEB containing the date of birth of the O.P. No. 2 are not in dispute. Those certificates are of the year 2020 i.e. at least two years

prior to the date of the alleged occurrence. The only submission on behalf of the petitioner is that there is an interpolation in the column of the date of birth in the school admission register but there is no definite argument or pleading as to what is the date of birth of the opposite party no. 2. In other words, there is no contra-evidence by way of any other date of birth certificate of the opposite party no. 2. All that the petitioner is submitting that this Court should draw an adverse inference from the cutting over the date of birth recorded in front of the name of the opposite party no. 2 in the school admission register. There is no dispute that the date of birth i.e. 02.01.2006 is duly mentioned after cutting, the same is legible and counter-signed, the same date of birth is present in the matriculation certificate.

13. In the line of cases where the Hon'ble Supreme Court has reversed the findings as to age determination, it would appear that there were clinching documents on the record which clearly demonstrated that the date of birth mentioned in the matriculation certificate was not correct. In the case of **Rishipal Singh Solanki** (supra), the Hon'ble Supreme Court has taken note of the judgment of the Hon'ble Apex Court in the case of **Sanjeev Kumar Gupta versus the State of U.P.** reported in **(2019) 12 SCC 370** and distinguished all facts of the two cases. In the opinion of this Court, in absence of any contra-evidence, the petitioner is unable to make out a case for interference.

14. In the case of **Rishipal Singh Solanki** (supra), the Hon’ble Supreme Court has discussed the scheme of Section 94 of the JJ Act in paragraph ‘47’ of the judgment which reads as under:-

“47. There are two considerations which would distinguish the judgment in Sanjeev Kumar Gupta³. Firstly, in Sanjeev Kumar Gupta³, this Court held that, though, there was no underlying document corroborating the CBSE record maintained on the basis of final list of the document forwarded by the secondary school, there was clear and unimpeachable evidence of date of birth which had been recorded in the records of the school which the second respondent therein had attended till Class 4 and which was supported by voluntary disclosure made by the accused therein while obtaining both Aadhaar card and driving licence.”

15. In the light of the discussions made hereinabove, this Court finds no reason to interfere with the impugned orders.

16. This revision application has no merit, thus, it is dismissed accordingly.

(**Rajeev Ranjan Prasad, J**)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
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3. *Sanjeev Kumar Gupta v. State of U.P.*, (2019) 12 SCC 370 : (2019) 4 SCC (Cri) 379