

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.292 of 2019

Arising Out of PS. Case No.-195 Year-2010 Thana- GHOSI District- Jehanabad

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BHUSHAN KUMAR @ BHUSHAN KUMAR SINHA @ SHASHI
BHUSHAN KR., Son of Krishna Prasad @ Krishna Kumar, Resident of
Village- Palipar @ Palipur, Police Station- Anugari in the District- of Nalanda

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Shiv Kumar Yadav, Son of Sri Indradev Yadav Resident of Village- Palipar
@ Palipur, P.S.- Aungari in the district of Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar
For the Respondent/s : Mr.Pradeep Narain Kumar

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

12 27-02-2024 The instant revision is directed against an order passed in Criminal Appeal No. 16 of 2011 on 29th September 2018 by the learned Additional Sessions Judge Fast Track Court-I at Jehanabad whereby and whereunder, the learned Judge in the appellate court reversed the finding of the Juvenile Justice Board (hereafter described as the JJB). The Juvenile Justice Board holds the accused a juvenile on the date of commission of offence.

2. Indisputably, Ghoshi P.S. Case No. 195 of 2010 dated 20th September 2010 was registered against the petitioner and others under Section 366A/34 of the IPC. The name of the petitioner is sighted in the FIR as accused no. 01 and his date of



birth was mentioned by the police as 20 years and the name of his father was stated as Shri Krishna Prasad.

3. It is submitted by the learned advocate for the petitioner that the JJB, on due appreciation of the certificate and marksheet issued by the Bihar Vidyalay Pariksha Samiti, held that the date of birth of the opposite party was 12th January 1994. The alleged incident took place on 28th September 2010, when the victim was aged about 17 years. So, the JJB held that the accused was a juvenile on the date of commission of offence.

4. The said order was challenged in appeal at the instance of the informant. During hearing, the informant produced the school admission register of the said accused, where his date of birth was recorded as 14th October 1991 and the said date of birth was duly countersigned by his father. Thus, on the date of occurrence, the petitioner was more than 18 years. Therefore, he is required to be tried by the Court of Sessions as a major.

5. It is pointed out by the learned advocate for the petitioner that in the admission register, father's name of Bhushan Kumar is stated as Ram Kishun Prasad. However, the name of the father is Krishna Prasad, therefore, the admission



register of the school cannot be looked into and it may be of some Bhushan Kumar having separate identity.

6. In such circumstances, the certificate issued by the Bihar Vidyalay Pariksha Samiti should be taken into consideration by the appellate court and there was no reason to reverse the finding of the Juvenile Justice Board.

7. Where the issue of determination of age is in question, Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 permits the Court to draw presumptions with regard to determination of age of a CCIL. When there is a doubt, the Committee of the Board shall undertake the process of age determination by seeking evidence by obtaining (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available and in the absence thereof (ii) the birth certificate given by a Corporation or a municipal authority or a panchayat; (iii) and, only in the absence of (i) and (ii) above, age shall be determined on an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

8. A plain reading of the provision contained in sub-Section 2 of Section 94 shows that the date of birth recorded in



the school is the primary document which can be taken into consideration for drawing up of revertible presumption. In the absence of date of birth certificate, the matriculation or equivalent certificate from the concerned examination board can be looked into.

9. In the instant case, the petitioner is claiming his juvenility on the ground of matriculation certificate. On the other hand, the opposite party has brought the date of birth certificate from the school where he was first admitted. There is of course, a discrepancy between the names of the father of the petitioner. The Juvenile Justice Board ought to have considered such discrepancy and take a final decision as to whether Bhushan Kumar, who is implicated in connection with Ghosi P.S. Case No. 195 of 2010, is the son of Shri Krishna Prasad or the son of Ram Krishna Prasad. In other words, the identity of Bhushan Kumar is to be established by the JJ Board. Then only, the JJ Board shall come to a finding as to whether the petitioner is a juvenile or not.

10. In view of the above discussion, this Court disposed of the instant revision application directing the JJ Board to inquire into the matter. If no positive inquiry could be made, the JJ Board is at liberty to take recourse of the



provision contained in Section 94(2)(iii) for determination of age of the petitioner.

11. In view of the above order, both the orders passed by the JJB dated 23rd November 2010, passed in Trial No. 195 of 2010 and the order dated 29th September 2018 passed in Criminal Appeal No. 16 of 2010 are hereby set aside. The JJB is directed to inquire the age of the petitioner within three months from the date of communication of the order and accordingly, proceed with the case.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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