

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.103 of 2019

Arising Out of PS. Case No.-117 Year-2014 Thana- MUFFASIL District- West Champaran

Rajdev Prasad Late Ramdhari Prasad Resident of village Baritola Police
Station Bettiah Muffasil District West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar And Anr.
2. Sheikh Faiyazul @ Faizan Aslam Mian Resident of Manshatola POLice
Station Bettiah Muffasil District West Champaran

... .. Respondent/s

with

CRIMINAL REVISION No. 1259 of 2018

Arising Out of PS. Case No.-117 Year-2014 Thana- MUFFASIL District- West Champaran

Rajdev Prasad Son of Late Ramdhari Prasad, Resident of Village- Baritola,
Police Station- Bettiah Muffasil, District- West Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr.
2. Shekh Faiyazul @ Faizan, Son of Aslam Mian, Resident of Manshatola,
Police Station- Bettiah Muffasil, District- West Champaran.

... .. Respondent/s

Appearance :

(In CRIMINAL REVISION No. 103 of 2019)

For the Petitioner/s : Mr. Arbind Kumar Singh, Advocate
Mr. Prashant Kr. Singh, Advocate
Mr. Manaur Alam, Advocate

For the Respondent/s : Mr. Anita Kumari Singh, APP

(In CRIMINAL REVISION No. 1259 of 2018)

For the Petitioner/s : Mr. Arbind Kumar Singh, Advocate

For the Respondent/s : Sri Prem Kumar Jha

For the State : Mr. Sunil Kr. Pandey, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

5 15-01-2024 Both the above numbered Cr. Revisions are taken

up for hearing on the point of admission as both the Revisions

arose out of the same case.

2. It is pertinent to mention at the outset that in



connection with Bettiah Mufassil P.S. Case No. 117 of 2014 under Sections 147/148/149/341/323/324/307/302/448/447/380/427/504/506, the Opposite party no.2, Sheikh Faiyazul @ Faizan was made an accused along with others. It is also pertinent to note that the said case was initiated on the basis of a report submitted by the defacto complainant/petitioner. After filing of the chargesheet, an application was filed on behalf of the accused/opposite party no.2. On 3rd December, 2015 stating inter alia that on the date of the alleged occurrence, the opposite party no.2 was a minor and he should be tried by the Juvenile Justice Board. A learned Chief Judicial Magistrate held an inquiry regarding the age of the opposite party no.2 on the alleged date of commission of offence and came to a finding that the petitioner was a minor on the date of the incident. Therefore, the petitioner was directed to be tried by the learned Juvenile Justice Board by an order dated 5th February, 2016. The said order was challenged by the defacto complainant/petitioner in Cr. Revision No. 1259 of 2018.

3. During pendency of the above mentioned writ petition, the Juvenile Justice Board concluded the trial of the opposite party no.2 on the basis of the finding made by the learned Chief Judicial Magistrate with regard to his age. He was



convicted for committing the offence charged and directed to give social service in Bettiah Primary Health Centre for period of two years and six months by filing a subsequent Revision bearing no. 103 of 2019, the petitioner has challenged the said order also.

4. I have heard the learned Advocate for the petitioner and the learned APP. It is submitted by the learned APP that the lower court record may be called for proper adjudication of the instant Revision.

5. On careful consideration of the materials on record, the impugned order and the provision contained in the Juvenile Justice (Care and Protection of Children) Act, 2015, this court is of the view that both the revisional application can be disposed of on the basis of the materials on record only. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter described as the said Act) speaks about presumption and determination of age. The said provisions runs thus:

Presumption and determination of age.-(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be,



without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, 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 by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

6. Reading of the above provision suggests that Sub-Section 2 of Section 94 empowers the Committee or the Board to undertake the process of age determination by seeking evidence by obtained that; (i) date of birth certificates of the school or the matriculation or equivalent certificates 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 by an ossification



test or any other latest medical age determination test conducted on the orders of the Committee or the Board. Thus, it is clearly provided in the said Act that the Chief Judicial Magistrate has no authority to determine the age of the accused to come to a decision as to his juvenility. The power exclusively rests with the Committee or the Board created under the said Act since the order taken 5th February, 2016 was not passed by the Committee or the Board in compliance of Section 94 of the said Act. The order dated 5th February, 2016 is illegal, invalid and improper as the learned Chief Judicial Magistrate is not empowered by the statute to determine the age of any accused who has claimed to be juvenile during trial of the case. As the order dated 5th February, 2016 suffers from patent illegality, all subsequent proceeding conducted by the Juvenile Justice Board treating the opposite party no.2 as juvenile on the basis of the finding of the learned Chief Judicial Magistrate, Bettiah becomes illegal and inoperative.

7. In view of the above discussions, both the impugned orders dated 5th February, 2016 and 12th October, 2018 are set aside and quashed.

8. The Juvenile Justice Board, Bettiah is directed to make an inquiry afresh under Section 94 of the said Act for



determination of age of the opposite party no.2 at the time of commission of offence. On the basis of such inquiry, the Board shall take decision as to whether the Board is empowered to proceed with the case or not.

9. With the above order and direction, both the revisional applications are disposed of.

(Bibek Chaudhuri, J)

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