

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.414 of 2024

Arising Out of PS. Case No.-372 Year-2020 Thana- BANIAPUR District- Saran

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Deepu Kumar @ Dipu Ray, S/o Uttamk Ray, Resident of Village - Baraitha Kanhauli Manohar, P.S. - Baniyapur, District-Saran. Petitioner under guardianship of his elder brother Chiku Ray, Male Aged about 29 years, S/o Uttam Ray, R/o village - Baraitha Kanhauli Manohar, P.S.-Baniyapur, District-Saran.

... .. Petitioner

Versus

1. The State of Bihar.
2. Matia Devi @ Mati Devi W/o late Gautam Rai R/o village - Baraitha Kanhauli Manohar, P.S.-Baniyapur, District-Saran

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Anant Kumar Bhaskar, Advocate Mr. Sanjay Kumar Jha, Advocate
For the Respondent	:	Mr. Jharkhandi Upadhyay, APP
For the Opp. Party No.2	:	Mr. Jeetendra Narayan, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 18-07-2024

In this criminal revision, the petitioner is challenging the judgment and order dated 13.02.2024 passed by the learned 1st Additional Sessions Judge-cum-Children Court, Saran at Chapra in Criminal (Juvenile) Appeal No.01 of 2024, by which he has allowed the appeal filed by the opposite party no.2 and set aside the order dated 10.11.2023 passed by the learned Juvenile Justice Board, Saran at Chapra, in Juvenile Justice Board Inquiry No.2197 of 2022 whereby and where-under the Juvenile Justice Board has declared the petitioner as juvenile on the date of alleged offence.



2. The facts of the present case are that the petitioner is an accused of Baniyapur P.S. Case No.372 of 2020 registered for the offence under sections 341, 342, 323, 324, 307, 302, 506/34 of the Indian Penal Code. In the aforesaid F.I.R. allegation against the petitioner and other accused persons is that they have killed the husband of the informant.

3. During the pendency of the case, the petitioner filed an application claiming to be a juvenile on the date of the alleged incident under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Juvenile Justice Board, Saran at Chapra vide order dated 04.08.2022 passed in Juvenile Inquiry No.2197 of 2022 has declared the petitioner as juvenile on the date of alleged offence on the basis of his matriculation certificate wherein the date of birth of the petitioner is recorded as 07.07.2003 whereas, the offence is said to have been committed on 15.12.2020. Against the order dated 04.08.2022, the opposite party no.2 filed an appeal vide Criminal (Juvenile) Appeal No.36 of 2022 before the 1st Additional Sessions Judge-cum-Children Court, Saran at Chapra bringing the fact that the date of birth of the petitioner recorded in the admission register of the school in which he was studying is 07.07.2002 and the alleged offence has taken place



on 15.12.2020 and therefore, at the time of alleged offence the petitioner was aged about 18 years 5 months and 8 days.

4. The learned 1st Additional Sessions Judge-cum-Children Court, vide order dated 11.07.2023 quashed the order of the Juvenile Justice Board and remanded back the matter to the Juvenile Justice Board to consider the plea of juvenility afresh in accordance with law.

5. On remand, the matter was again considered by the Juvenile Justice Board, Saran at Chapra and by order dated 10.11.2023 the petitioner was declared juvenile by the non-judicial Members of the Juvenile Justice Board although the Judicial Member of the said Board held the petitioner as major on the date of alleged offence. Against the order of the Juvenile Justice Board, the opposite party no.2 filed Criminal (Juvenile) Appeal No.01 of 2024 before the learned 1st Additional Sessions Judge-cum-Children Court, Saran at Chapra, who vide judgment and order dated 13.02.2024 quashed the order dated 10.11.2023 passed by the Juvenile Justice Board and held the petitioner as major on the date of alleged offence. Being aggrieved by the judgment and order dated 13.02.2024, the petitioner has moved before this Court.

6. Learned counsel for the petitioner submits



that the appellate Court has filed to take note of the settled law that the date of birth mentioned in the matriculation certificate has to be treated as conclusive proof of the date of birth of the accused. He further submits that the appellate Court has also failed to take note of the settled law that if two views are possible on the same evidence, the Court should take the view in favour of holding the accused to be a juvenile in borderline cases.

7. Learned counsel for the petitioner also submits that the appellate Court has filed to appreciate the law that no enquiry against the correctness of the date of birth mentioned on matriculation certificate can be initiated at the instance of any person other than the accused.

8. By making the aforesaid submissions, learned counsel for the petitioner submits that the impugned order of the appellate Court suffers from illegality and therefore, the same may be quashed.

9. I have considered the submissions of the parties and perused the materials on record.

10. From the record, it appears that while ascertaining the age of the petitioner, the non-judicial Members of the Juvenile Justice Board have taken into consideration the



matriculation certificate of the petitioner wherein his date of birth is mentioned as 07.07.2003 and on the basis of the said certificate, they held the petitioner to be juvenile on the date of alleged offence whereas, the Judicial Member of the said Juvenile Justice Board by relying upon the admission register of the school where the petitioner was studying has declared the petitioner as major on the date of the alleged occurrence as in the admission register the date of birth of the petitioner is mentioned as 07.07.2002 and the date of occurrence is said to be 15.12.2020 meaning thereby, on the date of alleged offence the petitioner was 18 years 5 months and 8 days. It also appears from the judgment and order of the appellate Court that the xerox copy of the school leaving certificate of the petitioner was available on record which shows that his date of birth is 07.07.2003 but it appears that the year 2002 which has been mentioned in the school leaving certificate has been over written and made as year 2003.

11. The Hon'ble Supreme Court in the case of ***Rishipal Singh Solanki vs. State of Uttar pradesh & Ors.*** reported as ***(2022) 8 SCC 602*** has held in paragraph nos. 33.2.3 and 33.8 has held as under:-

“(33.2.3.)When an application claiming juvenility is made under section 94 of the JJ Act, 2015



before the JJ Board when the matter regarding the alleged commission of offence is pending before a Court, then the procedure contemplated under section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the concerned criminal court, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide section 9 of the JJ Act, 2015).

(33.8) If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.”

12. In *Sanjeev Kumar Gupta vs. The State of*



Uttar Pradesh and Anr. reported as ***AIR 2019 Supreme Court 4364*** the Hon'ble Supreme Court has held in paragraph nos. 11 to 13 as under:-

*“11. The decision in **Ashwani Kumar Saxena** (supra) was rendered on 13 September 2012. Soon thereafter, a three judge Bench of this Court considered the provisions of Section 7A and Rule 12 in **Abuzar Hossain alias Gulam Hossain** (supra). Justice RM Lodha (as the learned Chief Justice then was), speaking for himself and Justice Anil R Dave observed:*

“39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a) (i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained



after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431] and Pawan [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] these documents were not found prima facie credible while in Jitendra Singh [(2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857] the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.”

*The above decision in **Abuzar Hossain alias Gulam Hossain** (supra) was rendered on 10 October 2012. Though the earlier decision in **Ashwani Kumar Saxena** (supra) was not cited before the Court, it appears from the above extract that the three judge Bench observed that the credibility and acceptability of the documents, including the school leaving certificate, would depend on the facts and circumstances of each case and no hard and fast rule as such could be laid down. Concurring with the judgment of Justice RM Lodha, Justice*



TS Thakur (as the learned Chief Justice then was) observed that directing an inquiry is not the same thing as declaring the accused to be a juvenile. In the former the Court simply records a prima facie conclusion while in the latter a declaration is made on the basis of evidence. Hence the approach at the stage of directing the inquiry has to be more liberal:

“48. If one were to adopt a wooden approach, one could say nothing short of a certificate, whether from the school or a municipal authority would satisfy the court's conscience, before directing an enquiry. But, then directing an enquiry is not the same thing as declaring the accused to be a juvenile. The standard of proof required is different for both. In the former, the court simply records a prima facie conclusion. In the latter, the court makes a declaration on evidence, that it scrutinises and accepts only if it is worthy of such acceptance. The approach at the stage of directing the enquiry has of necessity to be more liberal, lest, there is avoidable miscarriage of justice. Suffice it to say that while affidavits may not be generally accepted as a good enough basis for directing an enquiry, that they are not so accepted is not a rule of law but a rule of prudence. The Court would, therefore, in each case weigh the relevant factors, insist upon filing of



better affidavits if the need so arises, and even direct, any additional information considered relevant including the information regarding the age of the parents, the age of siblings and the like, to be furnished before it decides on a case to case basis whether or not an enquiry under Section 7-A ought to be conducted. It will eventually depend on how the court evaluates such material for a prima facie conclusion that the court may or may not direct an enquiry.”

*Both these judgments have since been considered by a two judge Bench of this Court in **Prag Bhati** (supra), where it was observed:*

“36. It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in Abuzar Hossain [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83], an enquiry for determination of the age of the accused is



permissible which has been done in the present case.”

12. The Act of 2015 came into force on 15 January 2016. Section 111 repeals the earlier Act of 2000 but stipulates that despite the repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of the new legislation. Section 94 contains provisions in regard to the determination of age, is in the following terms:

“94. 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.”

Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the



concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a) (i) indicates a significant change over the provisions which were contained in Rule 12(3) (a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

13. *Ms Jaiswal submitted that Section 94 deals with a matter of procedure. Hence, it was urged that though the incident in the present case is alleged to have taken place on 18 August 2015 and the application claiming the benefit of juvenility was submitted on 9 December 2015, the application should be governed by the provisions of Section 94 and not by Section 12(3) of the Rules of 2007. For the purpose of the present case, we have proceeded to analyse the facts on the basis of the provisions of Rule 12(3) of the Rules of 2007 (as was urged on behalf of the second respondent). We have, as*



will be analysed hereafter, come to the conclusion that even on that basis, the second respondent was not a juvenile on the date of the incident. In other words, whether the case is approached from the stand point of Rule 12(3) of the Rules of 2007 or Section 94(2) of the 2015 Act does not ultimately make any difference to the conclusion.”

13. In the present case also, it is clear that there are two different dates of birth of the petitioner are available on record. As per the matriculation certificate, the age of the petitioner was 17 years 5 months and 8 days on the date of alleged offence whereas, as per the admission register of the school where the petitioner was studying, his age has been found to be 18 years 5 months and 8 days on the date of alleged offence. There is gap of one year between two dates of birth of the petitioner. Moreover, section 94 (2(1) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination Board in the same category.

14. Upon relying upon the decision of the ***Rishipal Singh Solanki*** (supra) and ***Sanjeev Kumar Gupta*** (supra) and considering the facts of this case, there is a clear and unimpeachable evidence in the form of the date of birth which has been recorded in the records of the school that the petitioner



is not a juvenile on the date of the alleged offence. Hence, the petitioner is held not to be juvenile on the date of the alleged offence under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.

15. For the foregoing reasons, I do not find any illegality in the judgment and order of the appellate Court holding the petitioner not juvenile on the date of alleged offence. Accordingly, this criminal revision petition is dismissed.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
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