

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.711 of 2019

Arising Out of PS. Case No.-244 Year-2018 Thana- GOGRI District- Khagaria

ABROON NISHA @ ABROON PRAVEEN D/o- Mosim Uddin @ Mosin Uddin Under guardianship of elder brother Saif Ali, Resident of Muskipur, P.S.- Gogri, District- Khagaria (Bihar)

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Md. Shahid Son of Md. Jahangir Resident of Muskipur, P.S.- Gogri, District- Khagaria

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs. Leelawati Kumari, Adv., Mr. Aman Vishal, Adv.
For the Respondent/s	:	Mr. Sunil Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 16-01-2024 An order dated 26th October, 2018, passed by the learned Juvenile Justice Board at Khagaria in G.R. Case No. 1995(A) of 2018 is under challenge in the instant revision at the instance of the informant/petitioner.

2. On the basis of a complaint Gogri P.S. Case No. 244 of 2018, dated 19th July, 2018 was instituted against the accused persons for the offences punishable under Sections 341/323/504/506/376 read with section 34 of the I.P.C. and Sections 5(1)/6 of the POCSO Act.

3. When the charge-sheet was filed in the said case, the opposite party no. 2 was declared as minor. The learned Special Judge under the POCSO Act sent the case record to the



jurisdictional Juvenile Justice Board to enquire and report about the juvenility of Md. Shahid/opposite party no. 2. In order to prove that at the time of alleged offence, the opposite party no 2 was a minor, the prosecution filed the marks-sheet issued by the Bihar School Examination Board, Patna of Madhyamik Vidyalaya Pariksha, wherein the date of birth of opposite party no. 2 was recorded as on 15th January, 2003. The informant prayed before the trial court as well as before the Board that the age of the opposite party no. 2 may be decided on the basis of ossification test report to be done by some Multi Speciality Hospital. Apart from the certificate issued by the Bihar School Examination Board, Patna, the mother of the opposite party no. 2 filed an affidavit stating, inter alia, that the date of birth of Md. Shahid is on 15th January, 2003.

4. The informant has challenged the impugned order by filing series of documents. The learned Advocate for the petitioner first takes me to the marks-sheet of one Md. Shajjid, who happens to be the younger brother of Md. Shahid/opposite party no. 2, issued by the Bihar School Examination Board, Patna. Date of Birth in the said marks-sheet of Md. Shajjid was recorded as on 22nd February, 2002. In the census report, the age of Md. Shahid/opposite party no. 2 was shown as 10 years



and the age of Md. Shajjid was shown as 8 years.

5. Learned Advocate for the petitioner tried to impress upon this Court that Md. Shahid was two years older than his brother Md. Shajjid. If the date of birth of Md. Shajjid is stated to be in the year 2002, the date of birth of Md. Shahid, opposite party no. 2 herein, cannot be held to be in the year 2003. In support of his contention he also refers to the Ration Card and a letter issued by the Sarpanch and Mukhiya of the village stating that opposite party no. 2 was elder than his brother Md. Shajjid by two years. If the date of birth of Md. Shajjid is recorded in the year 2002, Md. Shahid ought to be held to be born sometimes in 2000 or even prior to that.

6. It is contended by the learned Advocate for the petitioner that when there is a discrepancy in the marks-sheet issued by the Board with regard to the age of two brothers, it was incumbent upon the Board to enquire into the matter as per the provision of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

7. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2005 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.”

8. It prima facie appears that the marks-sheet of the



opposite party no.2, wherein his date of birth is recorded, cannot be regarded as conclusive proof of his date of birth, in view of the fact that the date of birth of his younger brother is recorded by the same Board earlier than the date of birth of the opposite party no.2. On the same ground the affidavit filed by the mother can also not be relied upon. The learned Juvenile Justice Board did not consider the above mentioned documents to come to a finding as to whether ossification test is necessary to determine the age of opposite party no. 2.

9. In view of such circumstances, while quashing the order dated 26th October, 2018, this Court directs the Juvenile Justice Board, Khagaria to take into consideration the marks-sheet issued in the name of Md. Shajjid, the younger brother of opposite party no.2 and other documents filed by the petitioner along with the instant revision and come to specific finding as to whether ossification test report is required as per Clause-(iii) of Section 94 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

10. Considering all the documents, the Juvenile Justice Board is directed to take its decision within two months from the date of communication of the order.

11. The petitioner is directed to act upon the server



copy of this order.

12. The instant revision is accordingly allowed.

(Bibek Chaudhuri, J)

pravinkumar/-

U		T	
---	--	---	--

