

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL Revision No.606 of 2022

Arising Out of PS. Case No.-185 Year-2017 Thana- HARLAKHI District- Madhubani

Gunjan Devi, Wife of Rajeev Choudhary Resident of village - Gamharia, P.S.-
Harlakhi, District - Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar
2. Digambar Choudhary, Son of Sanjeev Choudhary Resident of village -
Gamharia, P.S.- Harlakhi, District - Madhubani

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ravi Ranjan

For the Respondent/s : Mr. Mohammad Sufyan

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 10-04-2024 1. The instant Revision is directed against an order, dated 16th of July, 2022, passed by the learned Additional Sessions Judge, 3rd Court at Madhubani in Cr. Appeal No. 6 of 2020, whereby and whereunder, the learned Appellate Court has set aside the order, dated 5th of December, 2019, passed by the Juvenile Justice Board (JJB), Madhubani, in Enquiry No. 551 of 2019, corresponding to G.R. No. 72 of 2017, arising out of Harlakhi P. S. Case No. 185 of 2017 on the ground that a Criminal Court cannot review or set aside its own order.

2. Factual matrix for the purpose of adjudication of the instant Revision is narrated below:

“On 15th of October, 2017, the Petitioner lodged a

fardbeyan, alleging, *inter alia*, that on 14th of October, 2017, at about 07.00 P.M., her minor daughter, aged about 7 years had gone to watch play of Mahaviri Jhanda. When she did not return to her home at about 09.00 P.M., the informant and her husband conducted search and their was found in unconscious condition lying on the land, situated behind the house of one Surendra Pandey. She was found bleeding from her private part. The informant took her to Primary Health Centre. After medical treatment, the minor girl of the Informant gain consciousness and disclosed that the co-villagers, namely, Digambar Choudhary and Rishi Kumar lifted her and took her to a lonely lane. Digambar Choudhary committed illicit act with her and when she cried out, the offenders pressed her mouth and she became unconscious. On the basis of the said fardbeyan, Police registered Harlakhi P. S. Case No. 185 of 2017, dated 15th of October, 2017, under Sections 376/34 of the Indian Penal Code and Section 4 of the POCSO Act, 2012. On completion of investigation, charge-sheet has been submitted by the Police on 30th of November, 2017.”

3. The Opposite Party No. 2, namely, Digambar Choudhary, was arrested by the Police and he was produced before the JJB. He claimed that his date of birth was 15th of July,

2003 and on the date of the alleged offence, he was aged about 14 years, 2 months and 29 days. Subsequently, the Petitioner came to know that the date of birth of the Opposite Party No. 2 was 15th of July, 2001, because the Opposite Party No. 2 first was admitted in the village school, namely, Primary School, Gamharia and his date of birth was recorded as on 15th of July, 2001. The JJB then summoned the Headmaster of the said school. Pursuance to the summon, the Headmaster Incharge, namely, Singheshwar Sharma appeared before the JJB and produced the original Admission Register, where the date of birth of the Opposite Party No. 2 was mentioned as on 15th of July, 2001. Upon inquiry, the JJB held that the date of birth of the Opposite Party No. 2 was 16 years, 2 months and 29 days on the date of commission of offence and the case of the Opposite Party No. 2 was sent to the Sessions Court (Children Court) for trial.

4. Against the said order, the Opposite Party No. 2 filed Cr. Appeal No. 553 of 2020 before this Court. The said appeal is still pending. During the trial of the aforesaid appeal, the Opposite Party No. 2 again filed Cr. Appeal No. 6 of 2020 before the learned Sessions Judge, Madhubani. The said appeal was allowed on the ground that a Criminal Court cannot review

or set aside its own order and the Appellate Court has also not considered the fact that the date of birth which the Opposite Party No. 2 produced, was neither the Matriculation Certificate nor issued by any authority under the Municipality or local Panchayat.

5. It is also contended on behalf of the Petitioner that the learned Sessions Judge cannot hear an appeal against the order passed by the JJB when a Special Children Court has been constituted under Section 19 of the Act and as per Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Thus, the Petitioner has challenged the legality, validity and propriety of the impugned order, dated 16th of July, 2022, passed by the learned Additional Sessions Judge, 3rd Court at Madhubani.

6. On perusal of the impugned order, it is ascertained that *vide* order, dated 15th of December, 2017, the JJB passed an order and decided, on the basis of Admission Register, the date of birth of the Opposite Party No. 2 as on 15th of July, 2003. Thus, the Opposite Party No. 2 was found to be aged about 14 years, 2 months and 29 days.

7. Subsequently, a petition was filed on behalf of the Informant, alleging, *inter alia*, that the date of birth of the

Opposite Party No. 2 was 15th of July, 2001, as per the School Admission Register, where he first admitted. The said application was decided and the JJB inquired into the matter afresh and found that the Opposite Party No. 2 was aged about 16 years, 2 months and 29 days. Then, the JJB initiated an enquiry under Section 15 of the said Act and came to a finding that the Opposite Party No. 2 had mental and physical capacity to commit such offence, the ability to understand the consequence of the offence and, therefore, he was directed to be tried by the Children's Court.

8. According to the Appellate Court, the said order, dated 5th of December, 2019, is illegal in view of the fact that the JJB sat on its own order, dated 15th of October, 2017 and reviewed its decision that Opposite Party No. 2 was aged about 14 years, 2 months and 29 days on the date of commission of alleged offence.

9. It is not in dispute that in all the districts of the State of Bihar, Children's Court has been established for trial of the child as an adult as per the provisions of the Code of Criminal Procedure and to pass appropriate orders after trial, subject to the provisions of Section 19 and 21, considering the special needs of the child, the tenets of fair trial and maintaining

a child friendly atmosphere.

10. It is laid down in Section 15 of the said Act that in case of a heinous offence alleged to have been committed by a child who has completed or above the age of 16 years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence and may pass an order in accordance with the provisions of subsection 3 of Section 18.

11. It is on record that Juvenile Justice Board on preliminary assessment found the Opposite Party No. 2 aged about 14 years, 2 months and 29 days on the basis of school Admission Register filed by the Opposite Party No. 2. Subsequently, the Informant challenged the order on the basis of School Leaving Certificate of the Primary School where he first admitted. In the said School Register, the date of birth of the Opposite Party No. 2 was recorded as on 15th of July, 2001. The Headmaster, Incharge of the said School has proved the entry made in the said School Register.

12. The Opposite Party No. 2 through his guardian filed an appeal under Section 101 of the said Act. According to

the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Rules made thereunder, an appeal under Section 101 of the said Act shall be heard only by the Children's Court being a Special Court under the provisions of Section 19 of the said Act.

13. It was the duty of the Children's Court in appeal to consider and assess on the materials on record, the age of the Opposite Party No. 2 on the date of commission of offence. Under the provisions of Section 94(2) of the said Act, the Appellate Court is under obligation to form its opinion on due consideration of all the materials on record afresh as the appeal is the continuation of the proceed before the JJB. On the other hand, the appeal was heard by the learned Additional Sessions Judge, 3rd Court at Madhubani who has no power of hearing of the appeal under Section 101 of the said Act.

14. Moreover, conducting enquiry and assessment of age on the basis of paper document by the JJB upon application filed by the Informant is not review of its own order. The learned Appellate Court has completely misdirected himself and passed a patently wrong order which cannot be sustained.

15. Accordingly, the impugned order, dated 16th of July, 2002, passed in Cr. Appeal No. 6 of 2020 is set aside.

16. The Juvenile Justice Board is directed to send the case record of G. R. Case No. 72 of 2017 along with the record of Cr. Appeal No. 06 of 2020 to the Children’s Court, Madhubani and the Children’s Court, Madhubani shall cause enquiry while hearing the appeal afresh under Section 94 (2) of the said Act and shall come to an independent finding with regard to the ability to understand the consequence of the offence and mental and physical capacity of committing such offence by the Opposite Party No. 2 and dispose of the appeal afresh within a period of four months from the date of communication of this order.

17. The instant Revision is accordingly allowed.

(Bibek Chaudhuri, J)

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