

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1267 of 2019

Arising Out of PS. Case No.-57 Year-1981 Thana- RAMGARH District- Kaimur (Bhabua)

RAJ NARAYAN SINGH Son of Late Balrup Singh R/o Village- Panjarawan,
P.S.- Nuaon (Ramgarh), District- Kaimur at Bhabua.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Surendra Singh S/o Bhagat Singh R/o Village- Panjarawan, P.S.- Nuaon
(Ramgarh), District- Kaimur at Bhabua.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Tribhuwan Narayan, Advocate
For the Respondent/s	:	Mr. Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 09-02-2024

The instant Revision is directed against the order dated 29th July, 2019, passed by the learned Additional Sessions Judge VII, Kaimur at Bhabhua in Criminal Appeal (Juvenile) No. 46 of 2017 whereby and whereunder the learned Appellate Court dismissed the Appeal filed by the petitioner against the order dated 25th July, 2017 passed by the Juvenile Justice Board Kaimur in Juvenile Trial No. 501 of 2017 declaring the opposite party no.2 as a juvenile in Ramgarh P.S. Case No. 57 of 1981 under Section 148/149/325/323/307/324 of the Indian Penal Code.

2. I have heard the learned Advocate for the petitioner and the opposite party no.2. I have also perused the entire materials on record as well as the judgment passed by the Juvenile Justice Board and the court of Appeal.



3. It is pertinent to mention at the outset that on the basis of an incident dated 26th June, 1981, the opposite party no.2 was booked for committing an offence under Sections 148/149/325/323/307/324 of the Indian Penal Code along with another person. After conclusion of trial, both the persons were convicted on 16th May, 1990. The opposite party no.2 preferred Appeal before the 1st Appellate Court, 7th Additional Sessions Judge, Kaimur at Bhabhua. During pendency of the Appeal, the opposite party no.2 filed an application stating, inter alia, that he was juvenile on the date of commission of offence. The said application was filed on 15th February, 2017 and it was referred to the Juvenile Justice Board for adjudication. The Juvenile Justice Board declared the opposite party no.2 as a juvenile on the date of commission of offence. The defacto complainant filed an Appeal against the said order passed by the Juvenile Justice Board on 25th July, 2017. In the Appeal, it is held by the appellate court that in the year 1980, Bihar Children Act was in operation. The incident took place in 1981. Under the Bihar Children Act, a person up to the age of 16 years was considered as a minor. The opposite party no.2 on the dated of commission of offence was aged about 17 years 5 months and 22 days. However, the court of Appeal held that under the Prevailing Act,



the opposite party no.2 was a juvenile and dismissed the Appeal.

4. Learned Advocate for the petitioner submits that at the relevant point of time, Bihar Children Act 1982 was enforced. The petitioner claiming benefit of 1982 Act on the ground that on the date of occurrence, he was less than 18 years of age and minor and also claiming that he should be tried by the Juvenile Justice Board.

5. In order to find out, the reply to the issue, it is required to state the brief history of the development of Children Act in Bihar. Initially, there was Bihar Children Act, 1970 which was repealed by Bihar Children Ordinance, 1973. The said ordinance was re-promulgated one after another in series, the last being Bihar Children Ordinance 1982 which was then repealed and replaced by Bihar Children Act, 1982. The material provisions of Bihar Children Ordinance, 1973 are the same as the Bihar Children Act, 1982. This act and the predecessor ordinances changed the definition of a child. Section 2(d) of the Ordinance of 1973 repealing the Bihar Children Act, 1970 reduced the age of a boy to qualify as a child to 16 years, thus, depriving the petitioner of the privilege of being a child on the date when the occurrence took place on 26th June, 1981. On that date, admittedly his age was 17 years and 5 months and 22 days



thus, he would not get any benefit from either the Bihar Children Act, 1970 or the Bihar Children Ordinance, 1973 and successive ordinances thereafter till the Bihar Children Act, 1982.

6. The decision of the Division Bench of this court in the case of *Kamta Mahto @ Kamta Singh vs. State of Bihar* reported in *2011 (4) PLJR 259* supports the view taken by this court.

7. For the reasons stated above, the order passed by the learned court below in Criminal Appeal (Juvenile) 46 of 2017 dated 29th July, 2019 is liable to be quashed and set aside. Accordingly, the above mentioned judgment is quashed and set aside and the instant Revision is allowed.

8. The opposite party no.2 is liable to be prosecuted by the ordinary criminal court.

(Bibek Chaudhuri, J)

Guddu/-

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