

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No 16 of 2024

Arising Out of PS. Case No.-558 Year-2016 Thana- ARA NAGAR District- Bhojpur

Manish Kumar Son of Birjan Sah R/o vill - Mirganj, P.S. - Ara Town, Distt - Bhojpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr Manoj Kumar, Advocate
For the S t a t e	:	Mr Kumar Veerendra Narayan, APP
For the I n f o r m a n t	:	Mr Rajendra Nath Sinha, Advocate

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 04-10-2024

This revision petition has been preferred by the petitioner being aggrieved with the order dated 15.03.2022 and subsequent order dated 30.11.2022 passed in ST No 3 of 2022 arising out of Ara Town PS Case No 558 of 2016 by Additional Sessions Judge III, Bhojpur at Ara whereby and where under the learned Sessions Court has refused to determine the age of the petitioner as nearly may be (as provided under Section 9 (2) of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter referred to as the Act).

2 The petitioner was made accused in Ara Town PS Case No 558 of 2016 registered for the offence punishable under



Sections 302/34, 379 of the IPC. Charge sheet has been filed against the petitioner and other persons and trial is going on being ST No 125 of 2017. During pendency of the said trial, the petitioner initially filed application on 18.06.2018 and 02.07.2018 claiming himself to be juvenile on the basis of school transfer certificate. According to that certificate, the date of birth of the petitioner is 03.01.2001, alleged date of occurrence, i.e., 16.11.2016, accordingly, as per the claim of the petitioner on the date of incident, the petitioner was 15 years and 9 months old and, thus, he was juvenile.

3 Both the applications, as stated above, filed by the petitioner were rejected by the learned Sessions Judge vide order dated 30.08.2018 and 08.01.2020.

4 Both the orders were challenged by the petitioner before this Court being Cr Misc No 11286 of 2021. The above petition was allowed by this Court vide order dated 26.11.2021 (Annexure P/4) and the orders dated 30.08.2018 and 08.01.2020 were set aside and the matter was remitted back to the trial Court to proceed with the enquiry and to determine the age of the petitioner on the date of commission of the offence in view of the plea of juvenility raised by him. Thereafter, after taking some evidence and after hearing the parties, the learned trial Court



passed the impugned order dated 15.03.2022 and rejected the claim of the petitioner and refused to determine the age of the petitioner, as sought by him. Hence, this revision petition has been preferred.

5 Learned counsel for the petitioner would submit that by order dated 26.11.2021, this Court clearly directed the learned trial Court to conduct enquiry as required under Section 9 (2) and Section 94 (2) of the Act and determine the age of the petitioner as nearby as possible from the date of commission of offence but according to the counsel, the learned trial Court once again rejected the claim of the petitioner without determining the age of the petitioner, as directed by this Court. Therefore, according to the counsel, on this ground only, the impugned order is liable to be set aside.

6 Learned counsel for the State as well as learned counsel for the informant oppose the argument raised by the learned counsel for the petitioner and submit that during course of the enquiry, the petitioner was unable to establish the fact that at the time of incident, he was juvenile as in support of his contention, he was unable to produce the evidence before the learned trial Court. Therefore, the learned trial Court has rightly rejected the claim of the petitioner.



7 I have heard learned counsel for the parties. Perused the impugned order as well as the documents annexed with the petition and the counter affidavit submitted by the respondents.

8 Undisputedly, during the course of trial, the petitioner is claiming his juvenility since 2018. He had relied on school transfer certificate, i e, Exhibit E/1, mentioned in the impugned order dated 15.03.2022. In the previous round of litigation also, the above document was referred to by the petitioner in support of his claim of juvenility. The earlier applications submitted by the petitioner were rejected by the learned trial Court vide order dated 30.08.2018 and 08.01.2020. when the petitioner challenged both the orders before this Court then a coordinate Bench of this Court in Cr Misc No 11286 of 2021 passed the order on 26.11.2021, i e, Annexure P/4. It would be appropriate to reproduce the relevant observations made by this Court in the said order:

“Section 9 (2) of the Act quoted herein above is very clear when it states that in case a person alleged to have committed an offence claims to be a child on the date of commission of the offence, the Court shall make an enquiry and determine the age of such person stating the age of the person as nearly as may be. The learned Court below although proceeded with the enquiry but did not proceed “to determine the age of such person” nor did it proceed to state “...the age of the person as nearly as may be.”



Even if the learned trial Court is of the opinion that the school leaving certificate being relied on by the petitioner in his claim for being declared a juvenile was not reliable, still the Court should have proceeded with the enquiry, keeping in mind the provision of section 94 (2) of the Act and should have determined the age of the petitioner on the date of commission of the offence, as contemplated under section 9 (2) of the Act.”

9 With the aforesaid observations, the coordinate Bench of this Court has set aside the order dated 30.08.2018 and 08.01.2020 and remitted back the matter to the concerned trial Court directing it to proceed with the enquiry and to determine the age of the petitioner on the date of commission of the offence in view of the plea of juvenility raised by him.

10 The learned trial Court, though conducted the enquiry, but again did not determine the age of the petitioner on the date of commission of offence as contemplated under Section 9 (2) of the Act inspite of the clear cut direction given by this Court.

11 Thus, on this ground only, the impugned order dated 15.03.2022 cannot be sustained and is hereby set aside.

12 The matter is again remitted back to the learned trial Court to proceed with the enquiry and determine the age of the petitioner on the date of commission of offence in view of the plea



of juvenility raised by him, as directed by this Court by order dated 26.11.2021 passed in Cr Misc No 11286 of 2021.

13 This revision petition is allowed.

14 Let the lower Court records be immediately sent back to the learned trial Court to do the needful along with a copy of this order.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.10.2024
Transmission Date	08.10.2024

