

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.611 of 2018

Arising Out of PS. Case No.-67 Year-2014 Thana- NAWADA MUFFASIL District- Nawada

Archana Kumari Wife of Ranjan Kumar, Daughter of Kamta Singh, Resident of Village Pakariya, P.S.- Mufasil, District- Nawadah, at present Dariyapur, P.S. Rajauli, District- Nawadah.

... .. Petitioner/s

Versus

1. State of Bihar
2. Ranjan Kumar, Son of Rambalak Singh, Resident of Village Pakariya, P.S. Mufashil, District- Nawadah.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sidhendra Narayan Singh Mr. Kumar Lalit
For the State	:	Mr. Sri Anil Kumar Singh 1
For the O.P. No. 2	:	Mr. Deepak Kumar

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 05-03-2021

This revision application has been filed against the judgment and order dated 12.02.2018 passed in Criminal Appeal No. 62 of 2016 (arising out of Nawada Muffasil P.S. Case No. 67 of 2014, G.R. No. 1570 of 2014, Trial No. 476 of 2016) by 1st Additional Sessions Judge-cum-Special Judge (Children Court, Nawada) whereby and whereunder the learned Court below has dismissed the appeal preferred by the petitioner against the order dated 17.09.2016 passed by the learned Principal Magistrate of Juvenile Justice Board, Nawada, in Nawada Muffasil P.S. Case No. 67 of 2014, G.R. No. 1570 of 2014, Trial No. 476 of 2016 by which the opposite party No. 2



was declared Juvenile.

2. Brief fact of the case is that writ petitioner was married with opposite party No. 2 on 09.06.2014 and, thereafter, she was assaulted and ousted from the matrimonial home snatching her ornaments and a demand of rupees five lac was made. A written information was given to Nawada Muffasil police station and on the basis of said information, Nawada Muffasil P.S. Case No. 67 of 2014 was lodged against the five accused persons including opposite party No. 2. (Ranjan Kumar). It further appears from the record that opposite party No. 2 claimed to be minor and thereafter, the matter was referred to Juvenile Justice Board, Nawada.

3. It appears that on 23.06.2016, opposite party No. 2 took the plea of juvenility before the Court of learned S.D.J.M., Nawada, who split up the records and sent it to Juvenile Justice Board, Nawada, for enquiry on the point of juvenility of opposite party No. 2. After hearing the parties and calculating the date of birth as 02.02.1999, mentioned in provisional certificate produced by opposite party No. 2 issued by the Bihar School Examination Board, Patna, the Juvenile Justice Board, Nawada, declared the opposite party No. 2 as juvenile on the date of occurrence i.e., 09.06.2014. Aggrieved



by the aforesaid order dated 17.09.2016 passed by Juvenile Justice Board, Nawada, the petitioner preferred an appeal (Criminal Appeal No. 62/16) before the 1st Additional Sessions Judge,-cum-Special Judge (Children Court), Nawada and the learned appellate Court dismissed the appeal on the ground that the court also do not find any illegality in the judgment of Juvenile Justice Board, Nawada.

4. It is the contention of the petitioner that in terms of Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, only the office / institution/ persons which has issued the aforesaid certificate can say as to whether the document is genuine or not. In this case, it is submitted that opposite party No. 2 has been declared juvenile only on the basis of provisional certificate which was produced by the opposite party No. 2.

5. It is further contended on behalf of the petitioner that opposite party No. 2 has been declared juvenile on the basis of provisional certificate which is not one of the documents enumerated to be considered at the time of determination of age in terms of Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and in this connection, he has placed reliance upon a decision of this Court



reported in *[2017(3) East Cr. C 655 (Pat)]* in the case of *Mukesh Yadav@ Mukesh Kumar Vs. State of Bihar*. It is further contended on behalf of the petitioner that without verifying the genuineness and comparing it with the original records, opposite party No. 2 has been declared juvenile straightway on the basis of provisional certificate produced by opposite party No. 2. Law requires that only the office/agency/institution/person can say as to whether the document is genuine or not. In this context, reliance has been placed upon the decision of this court reported in *2020 (1) PLJR 91* passed in the case of *Suresh Rai Vs. State of Bihar*.

6. On the other hand, learned counsel for the opposite party No. 2 appeared and filed counter affidavit and submitted that impugned order is a reasoned order and have been passed on the basis of the provisional certificate issued by Bihar School Examination Board, Patna. It is further submitted that according to the provisional certificate issued by the Bihar School Examination Board, the date of birth of the petitioner is 02.02.1999 and on the date of occurrence, he was only 15 years 4 months and 7 days and, thus, rightly declared juvenile by the learned Juvenile Justice Board, Nawada. It is further submitted in terms of Section 94(2) of the Juvenile Justice (Care and



Protection of Children) Act, 2015 that once, the same is produced, there is no need to look for other documents as far as determination of age of a juvenile is concerned. As such, the impugned order is quite legal, reasonable and in accordance with law.

7. It is useful to quote Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 which reads as follows:-

*“94. **Title:** 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.”

8. This clause provides that 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 the Act that the said person is a child, the Committee or the Board shall record its observation stating the age of the child. Further, in case, the Committee or Board has reasonable grounds for doubt regarding the person brought before it is a child or not, the Committee or Board shall take 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 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.

9. In this case, opposite party No. 2 has been declared juvenile by the Juvenile Justice Board, Nawada, simply on the basis of provisional certificate issued by Bihar School



Examination Board. This Court finds that the contention of the petitioner to be correct that the provisional certificate of the Bihar School Examination Board is not one of the documents which is required to be taken into consideration for determination of age in terms of Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015. The impugned order also reveals that the Juvenile Justice Board, Nawada, has acted upon the provisional certificate without verifying the genuineness or comparing it with the original documents. This court also finds that the appellate court without going into these infirmities committed by the Juvenile Justice Board, Nawada has affirmed the order dated 17.09.2016.

10. Thus, keeping in view the submissions made on behalf of the parties and materials available on records, this Court is of the considered opinion that the impugned order dated 17.09.2016 passed by the Juvenile Justice Board, Nawada and the order dated 12.02.2018 passed by the Appellate Court are in gross violation of Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015. As such, the same cannot be sustained and are hereby quashed and the matter is remanded to the Juvenile Justice Board, Nawada to conduct a fresh enquiry after hearing all the parties strictly in terms with



Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

11. The present writ application is allowed in the aforesaid terms.

12. However, it is made clear that this Court has not expressed any opinion with regard to merit of the matter.

(Prabhat Kumar Singh, J)

Saif/-

AFR/NAFR	
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