

(2022) 12 CHH CK 0034
In the Chhattisgarh High Court
Case No : Criminal Revision No. 697 Of 2022

A (Juvenile In Conflict With Law)

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 13-12-2022

Acts Referred:

Indian Penal Code, 1860 — Section 376(2)(n), 376(3)
Protection of Children from Sexual Offences Act, 2012 — Section 4, 6, 34, 34(2)
Juvenile Justice (Care and Protection of Children) Act, 2015 — Section 9, 94
Evidence Act, 1872 — Section 35

Citation : (2022) 12 CHH CK 0034

Hon'ble Judges : Deepak Kumar Tiwari, J

Bench : Single Bench

Advocate : Dharmesh Shrivastava, Sushil Sahu

Final Decision : Allowed

Judgement

1. The petitioner is challenging the impugned order dated 21.6.2022 passed by the learned Additional Sessions Judge, FTSC (POCSO), Kawardha, District Kabirdham in Special Sessions Case No.68/2022 whereby the learned trial Court has rejected the application of the petitioner for sending the case to the Juvenile Justice Board, Kawardha, District Kabirdham.

2. Facts of the case, in brief, are that the victim (a minor girl aged below 16 years) has lodged a report stating that in the intervening night of 31st January, 2022 & 1st February, 2022, when she was sleeping in her house, the applicant entered her room and committed forcible sexual intercourse with her. Based on which Crime No.51/2022 has been registered at Police Outpost Dashranpur, District Kawardha for offence under Sections 376 (3) & 376 (2)(n) of the IPC and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the Act, 2012').

3. During investigation, mark-sheet of class-10th of the petitioner was seized in which his date of birth was recorded as 15.4.2003. In the mark-sheet of Middle

School also, his date of birth is mentioned as 15.4.2003, which was later on corrected as 15.4.2004. Learned Special Court under the POCSO Act, without making any enquiry or obtaining other evidence regarding the date of birth of the accused, has rejected the application of the petitioner, as during investigation, mark-sheet of class-10th has been filed wherein the date of birth of the petitioner was mentioned as 15.4.2003.

4. Learned counsel for the petitioner would submit that the trial Court has ignored the School Certificate which was the very first document. In the School Admission Register, correct date of birth is mentioned as 15.4.2004, according to which, the petitioner was juvenile on the date of the incident. The petitioner has also filed School Entry Register of Primary School Bhudkuda, Block Kawardha, however, the trial Court without making any enquiry as to the juvenility of the petitioner, which was raised by him, and without following the procedure envisaged under Sections 9 and 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act, 2015') and Section 34 of the Act, 2012, passed the impugned order, which is not sustainable. Reliance is placed in the matter of Shriram Rawat Vs. State of Madhya Pradesh, Thr. P.S. Sitamau {2022 SCC OnLine MP 1995} wherein when any issue is raised about the juvenility, proper procedure has been laid down by the Hon'ble Supreme Court in the matters of Rishipal Singh Solanki Vs. State of Uttar Pradesh {2021 SCC OnLine SC 1079} and XYZ Vs. Abhishek and Another {2022 SCC OnLine SC 1200}.

5. On the other hand, learned State Counsel would submit that after lodging of the report, father of the petitioner has filed an application for correction of date of birth of the petitioner in the Class-10th mark-sheet before the Chhattisgarh Education Board. Therefore, taking plea of juvenility is an afterthought to come out from the clutches of trial as major. He would further submit that the birth certificate was also obtained by the petitioner and got registered after lodging of the report on 24th June, 2022. The trial Court has rightly rejected the application of the petitioner. So, learned State Counsel prays to dismiss the Revision.

6. Heard learned counsel for the parties and perused the documents annexed with the petition.

7. Section 34 of the Act, 2012 prescribes the procedure in case of commission of offence by child and determination of age by Special Court, which reads as under:-

34.Procedure in case of commission of offence by child and determination of age by Special Court. - (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person."

8. In the matter of Siddu Vs. State, {2016 SCC OnLine Kar 8347}, the following was observed:

"Section 34 of the POCSO Act is the substantive provision which empowers the Special Judge to determine the age of the person whether he is a Juvenile or an adult person and that particular person has to be tried before the Juvenile Justice Board or before the Special Court. Sub-clause (2) of Section 34 clearly indicates that if any question arises in a proceeding before the Special Court, whether the person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person. In this provision stress has to be given to the words - "for satisfying itself" and how this satisfaction can be arrived at by the court has to be tested by other surrounding circumstances like oral and documentary evidence placed before the court and also the relevant rules under the law for the time being in force."

9. The Hon'ble Supreme Court in its recent judgment in the matter of Rishipal Singh Solanki (Supra) has considered the relevant judgments on the question of determination of age and broadly laid down the principles in para-29 of the judgment. The relevant clauses are as under:—

"(iii) That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

(iv) The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

(vi) That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

(ix) That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents."

10. As per the ratio decidendi of Rishipal Singh Solanki (supra), it is clear that it is neither proper nor justifiable to apply any strict or abstract formula for determination of age of a person. The Court must examine the material available before it and on appreciation of evidence adduced by the parties in each case, should determine the age of victim/accused. It was further made clear that

determination of age when based on evidence, such as school record, the necessary requirement of Section 35 of Indian Evidence Act must be complied with.

11. Considering the aforesaid principles, presumption envisages under sub-section (2) of Section 94 of the Act, 2015 shall be sufficient for prima facie satisfaction of the Court and on such basis, presumption of juvenility may be raised, but the said presumption is not conclusive proof of age of the juvenile and the same may be rebutted by leading evidence by the opposite side.

12. In the present case, no enquiry has been made with regard to the age determination and no evidence has been obtained as per the provisions stipulated in the Act, 2015 and Section 34 of the Act, 2012.

13. For the foregoing, the impugned order dated 21.6.2022 passed by the Additional Sessions Judge, FTSC (POCSO), Kawardha deserves to be and is hereby set aside. However, the said Court is directed to decide the issue of age of the petitioner strictly in accordance with law. During the pendency of enquiry, the petitioner, in terms of the provisions of Section 9(4) of the Act, 2015, be placed, in the intervening period in a place of safety, for which immediate compliance be made.

14. The Revision is accordingly allowed.

15. Registry is directed to send a copy of this order to the concerned Court immediately and to also ensure compliance.