
(2012) 04 UK CK 0123
In the Uttarakhand High Court
Case No : Criminal Revision No. 107 of 2010

Amit Thapar

APPELLANT

Vs

State of Uttarakhand and Mohit Rawat

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 49, 68, 68(1)
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12, 12(3)
Penal Code, 1860 (IPC) — Section 120B, 193, 420
Uttaranchal Juvenile Justice (Care and Protection of Children) Rules, 2002 — Rule 22(5)

Citation : (2012) 2 NCC 194 : (2013) 1 UC 760

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Arvind Vashisth, present for the revisionist, for the Appellant; M.A. Khan, Brief Holder, present for the State and Mr. R.S. Sammal, Advocate, present for the respondent no. 2, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Heard. This revision is directed against the judgement and order dated 24.05.2010, passed by Additional Sessions Judge/Fast Track Court, Vth, Dehradun, in Criminal Appeal no. 78 of 2009, whereby said court allowed the appeal and declared respondent no. 2 Mohit Rawat as Juvenile in conflict with law and declared that date of birth of Mohit Rawat is 3.12.1989.

2. Heard learned counsel for the parties, and perused the papers on record.

3. This case has a chequered history. It appears that in respect of an incident dated 29.06.2007, a crime no. 257 of 2007 was registered relating to offence punishable under 147, 307/34 of I.P.C., at police station, Kotwali, Dehradun against the certain accused including respondent no. 2 Mohit Rawat. An application was moved before Juvenile Justice Board, Dehradun, respondent no. 2 Mohit Rawat, and it was claimed that he was a Juvenile on the basis of a mark sheet of class Vth purporting to have been issued by Mother Land Primary

School, Raipur showing date of birth in respect of the respondent no. 2 Mohit Rawat as 3.12.1989. Relying on said document vide order dated 13.07.2007, Juvenile Justice Board, Dehradun, declared respondent no. 2 as Juvenile and granted him bail.

4. However, it appears that complainant raised an objection before the Juvenile Justice Board, Dehradun for cancellation of the bail on the ground that on the basis of a forged document of respondent no. 2 got himself declared Juvenile. After hearing the parties vide order dated 26.05.2008, the Board withdrew its earlier order declaring the respondent no. 2 as Juvenile and cancelled his bail. Also, the crime no. 405 of 2007 was registered at police station Kotwali, Dehradun, on 29.09.2007, against respondent no. 2 Mohit Rawat, in respect of offences punishable u/s 420, 193 I.P.C., for using the forged documents, for the purpose of seeking bail.

5. It appears that appeal no. 22 of 2008 was filed by respondent no. 2 before the Sessions Judge, Dehradun, but the same was dismissed, after hearing the parties, vide order dated 04.06.2008. Thereafter, respondent no. 2 appears to have approached to this court and filed criminal Revision no. 110 of 2008 and 112 of 2008, challenged the order dated 26.05.2008, passed by the Board and order dated 04.06.2008, passed by the appellate court. Said revisions were disposed of vide order dated 19.06.2009, directing the Juvenile Justice Board to reconsider the matter to take fresh decision.

6. The Juvenile Justice Board on reconsideration again took the view that respondent no. 2 Mohit Rawat is not a Juvenile and accordingly passed the order on dated 1.09.2009. Meanwhile, it appears that charge sheet was filed against the respondent no. 2 also in connection with crime no. 405 of 2007, relating to offences punishable u/s 120-B, 420, and 193 of I.P.C. However, the appeal filed by respondent no. 2 against the order dated 1.09.2009, passed by the Board, was decided vide impugned order dated 24.05.2010, by Additional Sessions Judge/Fast Track Court, Vth, Dehradun in criminal appeal no. 78 of 2009, declaring the respondent no. 2 as Juvenile in conflict with law. Hence this revision.

7. Before further discussion it is relevant to mention here the relevant provision of law relating to procedure for declaring a person Juvenile, as the parties before this court relied on different set of rules for declaring Juvenility of the accused. Section 49 of Juvenile Justice Board (Care and Protection of children) Act, 2000, reads as under :-

Presumption and determination of age : (1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child

or not, stating his age as nearly as may be. (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority, to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.

8. Section 68 of the aforesaid Act empowers the State Government to make the rules to carry out the purposes of the Act. Sub section (1) of section 68 is reproduced below :

Power to make rules : (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act:

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rule have been framed in respect of any such matter, they shall apply to the State until the rule in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they conform to such model rules.

9. After Juvenile Justice (Care and Protection of Children) Act 2000, came into force on 1.04.2001, State of Uttaranchal framed Juvenile Justice (Care and Protection of Children) rules 2002, vide notification dated 08.11.2002. Sub rule (5) of rule 22 relating to procedure to be followed by Board in holding enquiry and determination of age, reads as under :

In every case concerning a Juvenile or a child, the Board shall either obtain:-

- (i) A birth certificate given by a corporation or a municipal authority, or
- (ii) A date of birth certificate from the school first attended, or
- (iii) Matriculation or equivalent certificate, if available; and
- (iv) In the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board.

Regarding his age and, when passing orders in such case shall, after taking into consideration such evidence as may be available or the medical opinion, as the case may be, record a finding in respect of his age.

10. The proviso to section 68 in sub section (1) of the Act quoted earlier in this judgement was inserted vide Act no. 33 of 2006 with effect from 22.08.2006. That means before the proviso was inserted in sub section (1) of section 68, Rules of 2002 were already in existence in the State of Uttarakhand. Language of the proviso of Sub section (1) of Section 68 makes it clear that wherever the State has made no rules, the model rules framed by the Central Government would apply and that the State Governments would make endeavor to make

rules in conformity to such model rules. In other words the Rules of 2002 remained undisturbed by the model rules contained in Juvenile Justice (Care and Protection of Children) rules 2007.

11. What the appellate court in its impugned order, while setting aside the order passed by the Juvenile Justice has done, is that it has followed sub rule (3) of rule 12 of the model rules of 2007 which is quoted below :

In every case concerning a child or Juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the Juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

12. Learned counsel for the revisionist argued before this court that the appellate court has erred in law in following in sub rule (3) of rule 12 of model rules of 2007 as against the sub-rule (5) of rule 22 of Uttaranchal Juvenile Justice (Care and Protection of Children) Rules 2002. I agree with the contention of learned counsel for the revisionist that where the State has framed its rules, the model rules framed by the Central Government in 2007 were not to be followed. But since in the present case even in the mark-sheet issued by Central Board of Secondary Education (C.B.S.E.), in respect of respondent no. 2 Mohit Rawat it is shown that his date of birth was 3.12.1989 (copy of which is annexed as a part of annexure 1 of the affidavit filed by the revisionist), this court is of the view that the appellate court has committed no error of law in declaring the date of birth of the accused as 03.12.1989. Assuming for a moment that it cannot be taken conclusive proof as provided in the model rules 12 of 2007, still even

under sub rule (5) of rules 22 of Uttarakhand Rules 2002, the matriculation certificate is required to be given due importance. As against the documents relating to birth obtained from other sources mentioned in the sub rule (5) in rule 22 it could be safely said that the date of birth in High School/Matriculation Certificate is more authentic as it is more difficult to get a wrong date of birth made in the High School/Matriculation Marks-sheet/Certificate. Therefore, the copy of marks-sheet of the respondent no. 2 relating to Secondary Examination 2003 cannot be ignored lightly by this court. For the reasons as discussed above, this revision is dismissed. Interim order dated 3.6.2010 is hereby vacated. The record of the pending case shall be sent to the Juvenile Justice Board as directed by the appellate court.