

(2009) 11 PAT CK 0006

In the Patna High Court

Case No : Criminal Revision No. 35 of 2009

Chandan Kumar Gandhi @ Ganna

APPELLANT

Vs

State of Bihar and Subodh Kumar Singh

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Bihar Juvenile Justice (Care and Protection of Children) Rules, 2003 — Rule 22(5)
Evidence Act, 1872 — Section 112, 113, 35, 4, 41
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 49, 49(2)
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12(3)

Citation : (2010) 58 BLJR 357 : (2010) CriLJ 1814 : (2010) 1 PLJR 533 : (2009) 3 PLJR 745

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Ajay Kumar Thakur, for the Appellant; Rana Pratap Singh and Radha Mohan Singh, for Opposite Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioner-accused and the opposite party No. 2.

2. Petitioner-accused is assailing the order dated 10.12.2008 passed by the Additional Sessions Judge, F.T.C.-IV, Begusarai in Sessions Trial No. 350 (S) of 2008, whereunder the court below has held that there is controversy in regard to the date of birth of the petitioner-accused which is evident from the matriculation and the School Leaving Certificate filed on behalf of the accused and the prosecution, in the circumstances, the report of the Medical Board becomes relevant material to be taken into consideration for assessing the age of the accused and from the report of the Medical Board it is evident that the petitioner was more than 18 years of age on the date of occurrence i.e. 25.07.2004.

3. Counsel for the petitioner-accused has assailed the aforesaid order with reference to the provisions contained in Section 49 of the Juvenile Justice (Care

and Protection of Children) Act, 2000 (hereinafter referred to as the "Act") read with Sub-rule (5) of Rule 22 of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2003 (hereinafter referred to as the "Bihar Rules" and Sub-rule (3) of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the "Central Rules") and with reference to the aforesaid provisions it is submitted that the court below while passing the impugned order erred in law in relying on the report of the Medical Board ignoring the matriculation certificate as while conducting the enquiry in terms of Section 49 of the Act, the Juvenile Justice Board (hereinafter referred to as the "Board") and the court below in view of the provisions contained in Sub-rule (5) of Rule 22 of the Bihar Rules and Sub-rule (3) of Rule 12 of the Central Rules was obliged to rely on the date of birth entry in the matriculation or equivalent certificate, if available. In absence thereof to obtain the date of birth certificate from the school first attended and in absence of the matriculation, certificate from the school first attended, birth certificate obtained from the Corporation/ Municipality/Panchayat should have been relied upon. Only in absence of the certificates aforementioned the medical opinion can be sought from a duly constituted Medical Board and not otherwise.

4. Learned Counsel with reference to the aforesaid provisions submitted that as the matriculation certificate of the petitioner-accused dated 16th September, 2002, Annexure-3 and School Leaving Certificate from the school first attended annexed at page 34 of the brief was produced before the Board and the court below which indicated the date of birth of the petitioner-accused as 03.08.1986, the court below should have relied on the certificate and without referring to the report of the Medical Board should have held the petitioner-accused to be a juvenile on the date of occurrence i.e. 25.07.2004. In support of his aforementioned submission learned Counsel for the petitioner-accused has relied on the judgment of this Court in the case of Sachin Kumar Gupta @ Sachin Kumar Vs. The State of Bihar and Another, , relevant portion whereof is reproduced hereinbelow.:

In my view, once either of the three documents that is matriculation certificate or date of birth certificate from the school first attended or the birth certificate granted by the Corporation or Municipality are produced, the genuineness whereof is not in dispute then the Court, the Board or the competent authority is left with no discretion in the matter and it cannot even call for report of Medical Board. A certificate of the nature mentioned above is genuine if it is issued by the authorities as designated in their regular course, in terms of Section 35 of the Evidence Act. There should not be fraudulent interpolations therein. They are held to be conclusive proof of the fact mentioned therein. Conclusive proof is defined by Section 4 of the Evidence Act to mean a fact which is declared to be conclusive proof of another. The Court shall on proof of one fact record the other as proved and shall not allow evidence to be given for the purpose of disapproving it. It is this last line which is important and is also recognized by Section 49(2) of the Juvenile Act apart from the scheme of Rule 22(5) of the

Bihar Rules and the specific declaration in this regard as contained in Rule 12(3) of the Central Rules. The effect is that on proof of the specified documents having been issued by the respective authorities mentioned therein the date of birth as mentioned in the documentary evidence is deemed to be proved conclusively and cannot be rebutted.

5. Counsel for the opposite parties while supporting the impugned order has submitted that the date of birth recorded in the matriculation certificate as also in the School Leaving Certificate from the school first attended by the petitioner-accused i.e. 03.08.1986 appears to have been recorded without there being any basis for such entry which is evident from the School Leaving Certificate of the petitioner-accused dated 03.02.1997 granted by the Principal, Govt. B.S.S. Collegiate Middle School, Begusarai dated 03.02.1997, annexed at page 36 of the brief in which his date of birth has been recorded as 04.01.1986 and petitioner attended Govt. B.S.S. Collegiate Middle School, Begusarai after obtaining transfer certificate from the school first attended with effect from 01.03.1996 and continued in Govt. B.S.S. Collegiate Middle School, Begusarai until 31.12.1996 whereafter he was admitted in Ayodhya High School, Begusarai in Class-IX on 20.05.1999 and passed the matriculation examination in the year 2002, as is evident from his certificate dated 16.09.2002. Learned Counsel for the opposite parties further submitted that the court below having noticed the different date of birth of the petitioner-accused recorded in the different school certificate chose not to rely on the date of birth recorded in the matriculation/school certificates and relying on the findings of the Medical Board passed the impugned order. In this connection, learned Counsel for the opposite party No. 2 further pointed out that the presumption about the correctness of the entries made in the matriculation certificate and the certificate from the school first attended can always be rebutted with reference to the entries made in other school certificate/registers. In the instant case as the date of birth entry recorded in the matriculation certificate and the certificate issued from the school first attended by the petitioner-accused were disputed on the basis of another School Leaving Certificate of the petitioner-accused himself, the court below while determining the age of the petitioner-accused chose to rely on the opinion of the Medical Board. In this connection, learned Counsel further submitted that the date of birth entry as recorded in the matriculation and School Leaving Certificate is not conclusive proof of the factum of date of birth which can always be disputed with reference to better evidence as presumption of its correctness is rebuttable. In this connection he further pointed out that conclusive presumptions of law can only be drawn with regard to the matters covered by Sections 41, 112 and 113 of the Evidence Act and not about the correctness of the date of birth in the matriculation or other certificates. No sooner dispute about the correctness of the date of birth of the petitioner-accused as recorded in the matriculation and the School Leaving Certificate from the school first attended by the petitioner-accused was raised with reference to the School Leaving Certificate granted by the Principal, Govt. B.S.S. Collegiate Middle

School, Begusarai dated 03.02.1997 it was within the discretion of the trial court to rely on either of the two certificates or to rely on the report of the Medical Board and in the circumstances if the court below has chosen to rely on the opinion of the Medical Board then this Court should not interfere in the matter as the court below has in its discretion chosen to ignore the school certificates containing contradictory date of births and has relied on the report of the Medical Board.

6. Learned Counsel for the opposite party No. 2 further pointed out with reference to Sub-rule (5) of Rule 22 of the Bihar Rules that the entries in the birth certificate made by the municipal authority, date of birth certificate from the school first attended or the matriculation/equivalent certificate is not conclusive proof of the age recorded in the certificates and appreciating such legal position the presumption of correctness of the date of birth recorded in the matriculation and other certificates can always be rebutted. The Board under order dated 30.11.2006 rightly rejected the date of birth entry of the petitioner-accused in the matriculation certificate and the certificate from the school first attended and referred to the Medical Board and concluded that he was not a juvenile on the date of occurrence i.e. 25.07.2004.

7. Learned Counsel for opposite party No. 2 with reference to Sub-rule (3) of Rule 12 of the Central Rules submitted that thereunder the contents of the certificates referred to in the said Sub-Rule has been made conclusive proof of the age of the juvenile and thereby the discretion of the Board/court below u/s 49 of the Act to enquire into the age of the person/juvenile produced before it by taking such evidence, as may be necessary excluding the evidence on affidavit and record a finding about the age of the person/juvenile produced is eroded and restricted as while ascertaining the age the Board/court below should be allowed complete discretion to entertain such evidence excluding the evidence on affidavit which may be necessary in its opinion for the purpose of determining the age of the child/juvenile produced before it.

8. In order to appreciate the submission of the parties it is necessary to peruse the three school certificates relied on by the parties in the proceedings before the Board as also the trial court. From the School Leaving Certificate granted by the Principal Government Harijan Primary School, Mohanpur Jamalpur, kept at page-34 of the brief, it is evident that the petitioner entered the Government Harijan Primary School, Mohanpur Jamalpur on 04.03.1991 and continued in the said school until 30.12.1995 and his date of birth entered in the records of the said school is 03.08.1986. Having obtained transfer certificate from Government Harijan Primary School, Mohanpur, Jamalpur petitioner was admitted in Government B.S.S. Collegiate Middle School, Begusarai on 01.03.1996 and continued there until 31.12.1996 and thereafter obtained transfer certificate dated 03.02.1997 in which his date of birth as per the date of birth recorded in the School Admission Register of Government B.S.S. Collegiate Middle School, Begusarai is 04.01.1986. Having obtained transfer certificate from Government

B.S.S. Collegiate Middle School, Begusarai on 03.02.1997 he took admission in Ayodhya High School, Begusarai on 20.05.1999 in Class-IX, wherefrom he passed matriculation examination in the year 2002 and on the basis of his date of birth recorded in the Admission Register of Ayodhya High School, Begusarai as 03.08.1986 his date of birth in the matriculation certificate has been recorded as 03.08.1986. In the instant case the Board as also the trial court is not satisfied about the date of birth entry in the matriculation certificate from the school first attended by the petitioner-accused as the date of birth entry in the two certificates is disputed on the basis of the School Leaving Certificate granted by the Principal Govt. B.S.S. Collegiate Middle School, Begusarai where petitioner got himself admitted after obtaining transfer certificate from the school first attended and after obtaining transfer certificate from Govt. B.S.S. Collegiate Middle School, Begusarai he got himself admitted in Ayodhya High School from where he passed matriculation examination in the year 2002. Had the three certificates been issued one after the other and relied upon for the purposes of admission in the school, the date of birth of the petitioner-accused in the three certificates would have been the same. The date of birth recorded in the matriculation certificate as also in the Admission Register of Ayodhya High School from where petitioner passed matriculation examination did not match the date of birth recorded in the transfer certificate granted by the Govt. B.S.S. Collegiate Middle School, Begusarai on the basis of which petitioner was admitted in the Ayodhya High School. Appreciating inconsistency in recording the date of birth in the three certificates, the Board and the trial court has chosen to ignore the certificates and has relied upon the opinion of the Medical Board.

9. Having perused the aforesaid three certificates it is evident that petitioner-accused has been recording inconsistent date of birth while entering different schools and the Board as also the trial court having noticed such inconsistency has chosen to ignore the two contradictory entries in regard to the date of birth of the petitioner-accused in the certificates and placed reliance on the opinion of the Medical Board. Such approach on the part of the court below does not appear to be erroneous and misplaced.

10. In this connection I may point out that Section 49 of the Act grants the competent authority, namely, the Board/court below absolute discretion to call for such evidence as may be necessary (excluding the evidence on affidavit) while conducting the enquiry to determine the age of the juvenile/person produced before it and record finding about the age of the person/juvenile produced before it considering the value of the evidence so produced. Such absolute discretion vested in the competent authority/Board/court below appears to have been eroded and restricted by providing in Sub-rule (3) of Rule 12 of the Central Rules that the date of birth entry in the matriculation or equivalent certificate, if available, in absence thereof such entry in the birth certificate from the school first attended and in absence thereof the date of birth entry in the birth certificate given by the Corporation or municipal authority or Panchayat shall be conclusive. It is thus evident that the discretion granted to the

competent authority/Board/court below to take such evidence as may be necessary in its opinion to determine the age of the juvenile u/s 49 of the Act is eroded and restricted as no sooner either of the aforesaid three certificates is produced the date of birth entry recorded therein is taken as conclusive proof of the age of the person produced and thereby the discretion of the competent authority/Board/court below to take such evidence as may be necessary and to consider its value and to record a finding on the basis of the value of the evidence produced is eroded and restricted. It is thus obvious that the provisions contained in Sub-rule (3) of Rule 12 of the Central Rules override, erode/restrict and denude the discretion of the competent authority u/s 49 of the Act to take such evidence which may be necessary to determine the age of the juvenile, in the circumstances, Sub-rule (3) of Rule 12 of the Central Rules, whereunder the date of birth entry in either of the three certificates is made conclusive has to be read down so as to make Sub-rule (3) of Rule 12 of the Central Rules in tune with Section 49 of the Act whereunder the age of the juvenile/person produced has to be determined with reference to the evidence taken by the competent authority/Board/court below as per its absolute discretion applying the norms of Section 4 of the Evidence Act which inter alia provides that presumption about correctness of fact in issue can always be rebutted by producing evidence in rebuttal. Conclusive presumption of law can only be drawn with regard to the matters covered by Sections 41, 112 and 113 of the Evidence Act and not with regard to questions of fact. Any entry in public or other official book, register or record about the fact in issue is a relevant fact as per Section 35 of the Evidence Act which can always be rebutted by producing evidence in rebuttal. No sooner evidence in rebuttal disputing the date of birth entry in the certificate is produced, it is within the discretion of the Board/Court concerned to weigh the date of birth entry in the certificate with the evidence produced in rebuttal disputing such entry and to place reliance on either of the two certificates or to place reliance on the report of the Medical Board or any other evidence produced in rebuttal.

11. In view of my discussion above, the Board and the court below by ignoring the contradictory date of birth entry in the certificates has rightly relied on the opinion of the Medical Board and I do not see any merit in the revision application.

12. The Revision Application is, accordingly, dismissed.