
(2007) 05 PAT CK 0137

In the Patna High Court

Case No : Criminal Revision No. 778 of 2005

Jyoti Prakash Rai @ Jyoti Prakash

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 04-05-2007

Acts Referred:

Citation : (2007) PLJR 33

Hon'ble Judges : Syed Md. Mahfooz Alam, J

Bench : Single Bench

Advocate : Devendra Kr. Sinha and Narendra Kumar Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Syed Md. Mahfooz Alam, J.—This Criminal Revision application was finally disposed of by me vide order dated 7.12.2005 but the same is again before me as the Hon''ble Apex Court in Criminal Appeal No. 445 of 2007 has been pleased to set aside the said order and has remitted back the matter for fresh consideration in the light of the decision given in the case of Pratap Singh Vs. State of Jharkhand and Another, . From perusal of the order of the Apex Court, it appears that the Hon''ble Apex Court was of the view that the matter was not considered in the light of the judgment of the Apex Court given in the case of Pratap Singh Vs. State of Jharkhand and Another, . and, as such the matter was remitted back to this court for fresh consideration in the light of the decision given in the above mentioned case.

2. According to the decision of the Apex Court given in the case of Pratap Singh vs. State of Jharkhand and Anr. (supra), the decision of the Apex Court given in the case of Arnit Das Vs. State of Bihar, was reversed and it was held that reckoning date for the determination of the age of juvenile is the date of the offence and not the date when he is produced before the authority or in the court as laid down in the case of Arnit Das (supra). It was also held in the case of Pratap Singh (supra) that the Juvenile Justice (Care and Protection of Children)

Act, 2000, would be applicable in a pending proceeding in any court/authority initiated under the Juvenile Justice Act, 1986 and is pending when the 2000 Act came in force and the person had not completed 18 years of age on 1.4.2001. Thus, the only point for consideration before me is that whether the appellant had not completed 18 years of age on 1.4.2001 and, if so, whether he is entitled to be declared as juvenile?

3. During the course of argument, learned Advocate of the petitioner submitted that the learned Additional Sessions Judge (F.T.C.), Buxar while passing the order on 24.4.2005 on the petition of the petitioner for declaring him to be juvenile under the Juvenile Justice (Care and Protection of Children) Act, 2000, did not consider this fact that in view of the school certificates and the horoscope produced on behalf of the petitioner, the petitioner, Jyoti Prakash Raj @ Jyoti Prakash, was below 18 years of age on 1.4.2001. Learned Advocate further submitted that for assessing the age of a person entries of his date of birth in the school certificates are more reliable than the report of the medical board. In support of his argument, he has placed reliance upon the decision reported in the case of Bhoop Ram vs. State of U.P. (1991 (1) PLJR SC 62). He further submitted that since the court below did not place reliance upon the horoscope and school certificates produced on behalf of the petitioner, the order passed by the learned court below is wrong.

4. From perusal of the impugned order dated 21.4.2005 passed by the learned Additional Sessions Judge (F.T.C. IV), Buxar, it appears that while passing the said order he had considered the order dated 23.3.2001 passed by the learned A.C.J.M., Buxar, which speaks that school certificates produced on behalf of the petitioner were found forged and fabricated and for issuing such forged and fabricated certificates he (A.C.J.M.) had ordered to institute a criminal case against the Head Master of the concerned School, I am of the view that in the light of the order of the learned A.C.J.M., the learned Additional Sessions Judge (F.T.C. IV) has rightly not placed reliance upon the school certificate and other documents produced on behalf of the petitioner for ascertaining the age of the petitioner.

5. It further transpires that for ascertaining the age of the petitioner two medical boards were constituted; one on 24.4.2001 and another on 29.6.2001 and both the medical boards reported that on the date of examination the petitioner, Jyoti Prakash Rai @ Jyoti Prakash, was aged about 18-19 years old. Thus, before me the authentic paper on the point of age of the petitioner are the reports of two medical boards, according to which, the petitioner was above 18 years and below 19 years of age on the date of medical examination. As per the direction and as per the guidelines given in the case of Pratap Singh, the cut-off date is 1.4.2001 meaning thereby that if any accused had not completed 18 years of age on 1.4.2001 then in that case the accused will be entitled to get the benefit of Juvenile justice (Care and Protection of Children) Act, 2000.

6. According to the submission of learned Advocate of the petitioner, the first

medical board was constituted on 24.4.2001 and on that date the board was of the opinion that the petitioner was aged between 18-19 years. He submitted that if the age of the petitioner is taken as 18 years on 24.4.2001 then on 1.4.2001, he was definitely below 18 years (i.e. 23 days less in 18 years). Likewise, the second medical board was constituted on 29.6.2001 and on that date also the board assessed his age as 18-19 years and, therefore, if the minimum age of the petitioner is taken as 18 years on 29.6.2001, the net result will be that the petitioner was less than 18 years on 1.4.2001 i.e. (two months twenty eight days less in attaining eighteen years).

7. I am of the view that this will not be the proper way of computing the age of petitioner and the proper way to assess the age of the petitioner will be that his age should be fixed in between 18-19 years on the date of examination, according to which the age of the petitioner comes to 18 years 5 months 8 days on 1.4.2001 when he for the first time appeared before the medical board and he will be of 18 years 3 months 3 days on 1.4.2001 when he appeared second time before the medical board on 29.6.2001. Thus, the net result is that on 1.4.2001 the petitioner was definitely above 18 years of age and not below 18 years of age.

8. I am, therefore of the view that even on the basis of the guidelines given in the case of Pratap Singh (*supra*), the petitioner is not entitled to be declared as juvenile offender.

9. Before I part with the order, I would like to point out that this case is of the year 2000 (date of occurrence is 12.5.2000) and we have entered in the seventh year from the date of occurrence but it appears that no substantial progress has been made in the trial due to filing of several frivolous petition by this petitioner. It should be pointed out at this stage that in spite of the fact that his previous petitions for declaring him juvenile were rejected by order dated 23.3.2001 and 14.9.2001 by the learned A.C.J.M., Buxar, against which no revision was preferred but even then the petitioner very cunningly has also challenged the said two orders in the revision application along with the order dated 21.4.2005 passed by the Additional Sessions Judge (F.T.C. IV). Buxar. This shows the maneuvering of the petitioner and capacity to install the trial for a considerable long period. In the result, I do not find any merit in this application and the same is hereby again dismissed with direction to the trial court to conclude the trial of the petitioner positively within a period of three months from the date of receipt/production of a copy of this order.