

(2012) 03 JH CK 0069
In the Jharkhand High Court
Case No : Criminal Revision No. 184 of 2012

Matias Minz @ Mati

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Arms Act, 1959 — Section 25(1B), 26, 27, 35
Explosive Substances Act, 1908 — Section 3, 4
Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003 — Rule 22, 22(5)
Penal Code, 1860 (IPC) — Section 121A, 147, 148, 149, 307
Unlawful Activities (Prevention) Act, 1967 — Section 13

Citation : (2012) 03 JH CK 0069

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Mohit Prakash, for the Appellant;

Final Decision : Allowed

Judgement

H.C. Mishra, J.—Heard learned counsel for the petitioner and learned counsel for the State. The petitioner has challenged the order dated 3.11.2010 passed by the learned Sessions Judge, Simdega in S.T. No.193 of 2009, whereby the plea taken by the petitioner being a juvenile has been rejected by the learned court below after making an inquiry.

2. It appears that the petitioner is an accused for the offence under Sections 147/148/149/353/307/121A IPC, u/s 25(1-B)(a)/26/27/35 of Arms Act, u/s 13 of U.A.P. Act, u/s 17 CLA act and 3 / 4 of Explosive Substance Act in connection with Kolebira P.S. Case No.29 of 2009 corresponding to G.R. No. 218 of 2009 and facing the trial before the learned Sessions Judge, Simdega in Sessions Trial No.193 of 2010. At the time of trial, the petitioner has taken plea that he was juvenile at the date of occurrence and produced the documents in support of his claim, which appear to have been disbelieved by the Court below. Further, taking into consideration the physical built up of the petitioner, as also due to the fact

that the plea of being juvenile was taken at a belated stage in order to lingering the case, the learned Sessions Judge has rejected the plea of the petitioner.

3. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal and the inquiry has not been conducted in the manner provided under Rule 22 of the Jharkhand Juvenile Justice (Care and Protection of Child) Rules, 2003 which provides that in such cases the opinion of Medical Board should also have been obtained and considered by the Court below. It is submitted that if the Court below disbelieved the documents produced by the petitioner in support of his age, at least the opinion of the Medical Board ought to have been taken by the learned Sessions Judge and the same ought to have been considered by the Sessions Judge. Learned counsel accordingly, submitted that the impugned order cannot be sustained in the eyes of law.

4. Learned APP on the other hand has submitted that there is no illegality in the impugned order worth interference in the revisional jurisdiction in as much as after an enquiry it was found that the petitioner was not a juvenile and at the time of his remand he had given his age to be 19 years. The Court below has also taken in to consideration the physical built of the accused in the Court and found that he is not a juvenile.

5. After hearing learned counsel for both the sides and upon going through the record, I find force in submission of the learned counsel for the petitioner. Rule 22(5) of Jharkhand Juvenile Justice (Care and Protection of Child) Rules, 2003 provides as follows:-

22. Procedure to be followed by a Board in holding inquiries and the determination of age -

(1) ***

(4) ***

(5) 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;

(iii) matriculation or equivalent certificates, 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, when (regarding his age and, 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).

(6) ***

(14) ***

6. Thus, from a bare perusal of the said Rule, it appears that, in case the Court below disbelieved the documents produced by the petitioner in support of his age, the Court below ought to have taken into consideration the opinion of the Medical Board, which has not been done in the present case. Accordingly, the impugned order, cannot be sustained in the eyes of law.

7. In view of the aforesaid discussions, the impugned order dated 3.11.2010 passed by learned Session Judge, Simdega in S.T. No.193 of 2009 is hereby set aside. The learned Sessions Judge, Simdega is directed to pass a fresh order in accordance with law. Accordingly, this revision application is allowed.