
(2010) 11 AHC CK 0109
In the Allahabad High Court
Case No : Criminal Revision No. 73 of 2009

Mohd. Faijan @ Fazzoo

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(1), 401
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 52
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12, 12(3)

Citation : (2010) 11 AHC CK 0109

Hon'ble Judges : Raj Mani Chauhan, J

Bench : Single Bench

Judgement

Raj Mani Chauhan, J.—Heard the learned Counsel for the revisionist and learned A.G.A. as well as perused the documents available on record.

2. This Criminal Revision u/s 397(1)/401 of the Code of Criminal Procedure (hereinafter referred to as "Code") has been filed by the accused-revisionist against the judgment and order dated 28.1.2009, passed by the learned Special Judge, E.C. Act, Lucknow in Criminal Appeal No. 272 of 2008 Mohd. Faijan alias Fazzoo v. State of U.P. and Ors., whereby the learned Special Judge had dismissed the appeal filed by the accused revisionist u/s 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "Act") against the order dated 6.2.2007, passed by the Juvenile Justice Board (hereinafter referred to as "Board") whereby the Board had declined to declare the accused revisionist as juvenile on the date of occurrence.

3. From a perusal of the impugned order dated 28.1.2009, passed by the learned Special Judge, E.C. Act as well as the order dated 6.2.2007, passed by the Board, it appears that the accused revisionist Mohd. Faijan alias Fazzoo moved an application before the Board that he be declared juvenile. The accused revisionist had filed school leaving certificate before the Board. The Board examined Farid Ahmad, the clerk in Florance Nightingale Academy to prove the copy of the

school record showing the date of birth of the accused revisionist. As per medical examination report of the accused revisionist, the age of accused was about 19 years as all the joints of his bones had already fused. The Board did not accept the school leaving certificate on the ground that the above school was not recognized at the time the accused revisionist had taken admission. More over, there was no basis of information before the institution about the date of birth of the accused. The Board, therefore, accepted the opinion of medical board and treated the accused to be major at the time of occurrence.

4. The accused being aggrieved by the order passed by the Board had filed appeal before the learned Sessions Judge which was transferred to the court of learned Special Judge, E.C. Act, Lucknow. The learned Special Judge after hearing the learned Counsel for the accused and the learned Counsel for the State found no illegality in the finding of the Board, consequently, he by impugned judgment and order dated 28.1.2009 dismissed the appeal which has given rise to the present criminal revision.

5. The submission of the learned Counsel for the accused revisionist is that the finding of the Board as well as the appellate court is against the evidence on record and is perverse. Learned Counsel submitted that the accused had filed copy of the school leaving certificate which was proved by Farid Ahmad, the clerk of the institution and copy of the form of Madhyamik Shiksha Parisad for appearing in the high school examination. These documents were sufficient to prove the age of the accused but these documents were wrongly discarded by the Board as well as the learned Special Judge. Therefore, the finding of the Board as well as the learned Special Judge is perverse and is liable to be set aside.

6. Learned A.G.A. opposed the revision and supported the impugned orders passed by the Board and the learned Special Judge and argued that the aforesaid School, at the time the accused had taken admission in School, was not recognized and moreover no reliable source about the date of birth was furnished by the father of the accused before the institution. Therefore, the Board as well as the appellate court had declined to accept the date of birth recorded in the school leaving certificate. The Board as well as the appellate court relied upon the opinion of the medical board in view of the procedure as laid down In Sub-rule (3) of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules. Therefore, the finding of the Board as well as the appellate court does not suffer from any illegality and as such the same does not call for any interference.

7. I have considered the submissions of the learned Counsel for the accused revisionist and learned A.G.A.

8. From a perusal of the impugned orders, passed by the Board as well as by the learned Special Judge, it appears that the Board by a detailed and reasoned order has accepted the opinion of the medical board regarding the age of the accused which is as per procedure laid down under Rule 12 of the Rules framed

under the Act. The impugned order passed by the Board as well as the impugned order passed by the learned Special Judge, in my opinion, does not suffer from any illegality and as such the same does not call for any interference by this Court.

9. The criminal revision is, therefore, dismissed.