

(2002) 10 JH CK 0047

In the Jharkhand High Court

Case No : Criminal Revision No. 181 of 2002

Prem Chand Sao @ Jhari Sao

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-10-2002

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 32, 53
Penal Code, 1860 (IPC) — Section 34, 366A, 376(2)

Citation : (2002) 10 JH CK 0047

Hon'ble Judges : Deoki Nandan Prasad, J

Bench : Single Bench

Advocate : P.A. Khan, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Deoki Nandan Prasad, J.—The petitioner has filed this application u/s 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 against the order dated 20.3.2002 whereby the learned Sessions Judge, Giridih passed the order by affirming the order dated 14.2.2002 passed by the learned Chief Judicial Magistrate u/s 32 of the Juvenile Justice Act by which the learned Chief Judicial Magistrate held the age of the petitioner (Prem Chand Sao) between 19-20 years and the petitioner was not found to be a Juvenile under the Juvenile Justice Act in connection with Nimiyaghat PS Case No. 66 of 2001 vide T.R. No. 1134 of 2002 registered under Sections 366A and 376(2)(G)/34, IPC.

2. Short facts giving rise to this application is that the father of the victim Bansi Murmu lodged a First Information Report alleging therein that his daughter came to Isri Bazar and thereafter she went to Parasnath Railway Station from where she went for easing near the water tank but thereafter she did not come back. The accused persons including the petitioner also went to that side at that relevant time. The informant started searching his daughter but she could not be traced and thereafter the first information was lodged against unknown. The

petitioner was arrested and remanded to judicial custody on 8.9.2001. The petitioner had filed a petition under Juvenile Justice Act on the ground that the petitioner has been a juvenile. The learned Chief Judicial Magistrate, Giridih made an enquiry and held by the order that he is aged 19-20 years and he is not juvenile.

3. On being aggrieved by and dissatisfied with the said order, the petitioner preferred an appeal before the Sessions Judge who also disposed of the appeal by affirming the order of the learned Chief Judicial Magistrate, hence this application.

4. Learned counsel appearing on behalf of the petitioner submitted that the Court below committed an error in passing the order without applying their judicial mind as both Courts did not consider the birth certificate granted by the school where the petitioner was admitted and his date of birth is 10.3.1986 and the petitioner was a regular student of Class Xth and his serial No. in the admission register is 42 but even then the Court below did not appreciate the school certificate and the learned Court below passed the order on the basis of the report of Medical Board which is highly presumptive and without any basis. It is further submitted that during enquiry, two witnesses including the father of the petitioner was examined but without examining the evidence of doctor/civil surgeon, the Court below passed the order on presumption about the age of the petitioner is between 19-20 years.

5. On the other hand learned APP contended before me that the petitioner was also examined by the Medical Board by which the age of the petitioner was assessed to be 20 years.

6. The occurrence took place on 6.9.2001 and admittedly the petitioner was remanded in this case on 8.9.2001. It is also admitted position that the petitioner had filed school leaving certificate granted by Parasnath Digambar Jain High School, Isri, Giridih on 10.1.2001 from which it is clear that his date of birth is 10.3.1986. The photo-copy of the admission register has also been filed (Annexure 4) of the supplementary affidavit and it is evident that the name of the petitioner has been mentioned in Serial No. 42 and his date of birth has been described as 10.3.1986. Both Courts rejected the prayer of the petitioner and doubted about the genuineness of the certificate only on the ground that there is no signature of father/guardian in column No. 10 of the admission register but they have failed to appreciate the same. It is mentioned in column No. 10 that signature of father/guardian is required only if it is the first admission and admittedly the admission of the petitioner in the said school does not appear to be the first admission rather he has been shown to have admitted in Parasnath Digambar Jain High School after passing from Rajkiya Madhya Vidhyalaya Choudhary Bandh. Bagodar and he was admitted in Class VIIth, So the petitioner's admission in Parasnath Digambar Jain High School Isri cannot be said to be the first admission. Therefore, the signature of the father/guardian in column No. 10 was not essential.

7. Both witnesses examined on behalf of the petitioner during enquiry have consistently supported the case of the petitioner. The father of the petitioner (PW 1) clearly stated that the date of birth of the petitioner, Prem Chand Sao is 3.10.1986. No any witness has been examined from other side to controvert the version or pleading of the petitioner. The doctor said to have examined the petitioner has not been examined by the Court. What was the procedure adopted during examination of the petitioner by Medical Board has also not been brought in the record nor it has been discussed by either Courts. It is held that the school leaving certificate is the best evidence of date of birth.

8. In the case of Bhoop Ram v. State of U.P., reported in 1991 (1) BLJR 62. It is held that the medical opinion regarding age being based on estimate will not prevail over evidence of age as per entry in school certificate. Same view has been reiterated in the case of Rajinder Chandra Vs. State of Chhattisgarh and Another, and held that in stead of adopting a hyper-technical approach, the Court should lean in favour of holding the accused to be a juvenile as well as if two views are possible on the basis of evidence, the views in favour of the juvenile-accused should be adopted.

9. It is clear that two witnesses including the father of the petitioner was examined during enquiry and they have supported the averment as claimed as well as in support of the averment, school leaving certificate was also produced showing the date of birth 10.3.1986. No any doctor has been examined during enquiry to explain about the mode of test/examination of the petitioner for ascertainment of age and it appears that the report was submitted by way of the opinion of the doctor and nothing else. There is no material to hold that the school leaving certificate does not relate to the petitioner or that entries therein are not correct in their particulars. The Sessions Judge also failed to notice the proviso as mentioned in column No. 10 itself that the signature of the father/guardian is only required if it is a case of first admission but the admission of the petitioner cannot be said to be the first admission as apparently he has come from Rajkiya Madhya Vidhyalaya Choudhary Bandh, Bayodar and admitted to Class VIIIth in the said school Ishri. The copy of the Admission Register dated 29.9.1999 (Annexure A) to the supplementary affidavit further proves that the other students were also admitted in Class VIIIth as they had come from different schools after passing Class VIIth and so both the lower Courts committed error in doubting the correctness of the school leaving certificate rather the report of the doctor is itself assumptive and the possibility of an error of estimate creeping into the opinion cannot be ruled out as well as the evidence adduced on behalf of the petitioner/accused has not been controverted by the informant. The date of occurrence is 6.9.2001 whereas accused was remanded in custody on 8.9.2001 and the date of birth showing in the school leaving certificate is 10.3.1986 and so he was aged about 15 year, 5 months on the date, the offence was committed and so definitely the petitioner was juvenile at the relevant time.

10. Having regard to the above facts and circumstances, coupled with the discussions made here in above, this Court finds that both lower Courts committed error in passing the order impugned which are fit to be set aside.

11. In the result I find merit in this application which is accordingly allowed. The order impugned dated 20.3.2002 passed by the learned Sessions Judge, Giridih in Cr. Appeal No. 7/2002 affirming the order dated 14.2.2002 passed by the learned Chief Judicial Magistrate, Giridih is set aside. The Court below is directed to proceed with the case in accordance with law.