
(2013) 05 JH CK 0047

In the Jharkhand High Court

Case No : Criminal Rev. No. 48 of 2013

Sanjay Kumar Mandal @ Sanjay Mandal

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 49, 64, 7(A), 7A
Penal Code, 1860 (IPC) — Section 302, 328, 34

Citation : (2014) 1 AJR 97 : (2013) 3 JLJR 77

Hon'ble Judges : H.C. Mishra, J

Bench : Single Bench

Advocate : Rajeeva Sharma, Miss Rita Kumari and Mr. Manoj Kumar, for the Appellant; Hemant Kumar Shikarwar, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

H.C. Mishra, J.—Heard learned counsel for the petitioner as also learned counsel for the State. The petitioner is aggrieved by the Judgment dated 29.11.2012 passed by the learned Sessions Judge, Sahibganj, in Criminal Appeal No. 78 of 2012, whereby the appeal filed against the order dated 27.8.2012, passed by the Juvenile Justice Board, Sahibganj, in G.R. No. 115 of 2004, E. No. 11 of 2012, has been dismissed by the Appellate Court below.

2. It may be stated that upon an application filed by the prosecution, the Juvenile Justice Board, which had earlier declared the petitioner to be a juvenile, held that the petitioner was not a juvenile and had returned the record back to the Court of the Sessions Judge, Sahibganj, for trial in accordance with law. The appeal filed against the said order was also dismissed by the Appellate Court below.

3. It appears from the impugned Judgment that the petitioner has been made accused in Borio (J) Police Station Case No. 43 of 2004, corresponding to G.R. No. 115 of 2004, for the offence under sections 302, 328/34 of the Indian Penal

Code, in which the petitioner was facing the trial in Sessions Case No. 204 A of 2005. In the course of trial the petitioner raised the plea of juvenility and had produced a matriculation certificate in support of his claim. The matter was sent for enquiry before the Juvenile Justice Board, Sahibganj, where the petitioner produced his matriculation certificate issued by the Jharkhand Academic Council, Ranchi, for the annual examination of 2006, showing his date of birth to be 8.6.1990. The date of occurrence being 22.3.2004, the petitioner claimed to be a juvenile on the date of occurrence. Since the said certificate was issued after the date of occurrence, the Juvenile Justice Board did not place any reliance on the same and ordered for constituting a Medical Board for assessing the age of the petitioner. On the basis of the report of the Medical Board, the petitioner was declared to be a juvenile vide order dated 13.6.2008.

4. Subsequently, it was found by the prosecution that the petitioner had appeared in the matriculation examination in the year 2002 itself, and he had passed the same in 3rd Division. In his matriculation certificate issued by the Jharkhand Academic Council, Ranchi, for the annual examination of 2002, the date of birth of the petitioner was mentioned as 25.9.1984, and he had already attained majority on the date of occurrence i.e., 22.3.2004. Accordingly, the enquiry was conducted by the Juvenile Justice Board in which the Juvenile Justice Board examined the Principal of the Eastern Railway High School, Sahibganj, from where the petitioner had appeared in the matriculation examination in the year 2002, as also the Principal of Adivashi High School, Mangrotiker, Borio, Sahibganj, from where he had appeared in the matriculation examination for the year 2006. The admission registers and the school leaving certificates issued by both these schools and the tabulation charts prepared by the Jharkhand Academic Council, Ranchi, in the years 2002 and 2006 were also proved and it was found by the Juvenile Justice Board that the petitioner had actually appeared in the matriculation examination in the year 2002 itself and had passed the same in 3rd division and the matriculation certificate issued by the Jharkhand Academic Council in the year 2002 clearly showed his date of birth to be 25.9.1984.

5. The Juvenile Justice Board also took into consideration Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, which prescribes that the opinion of the Medical Board was to be sought only in case there was no matriculation or equivalent certificate available. The Juvenile Justice Board found that Rule 12 of the said Rules clearly gave priority to the matriculation certificate and the opinion of the Medical Board was to be sought for only in absence of any such certificate. The Juvenile Justice Board accordingly, taking into consideration the matriculation certificate issued by the Jharkhand Academic Council in the year 2002 held that the petitioner was not a juvenile on the date of occurrence. The appeal filed against the said order was also dismissed by the learned Appellate Court by the impugned Judgment dated 29.11.2012, in which the Appellate Court below also directed to take appropriate action and to lodge F.I.R. against the wrong doer.

6. Learned counsel for the petitioner has submitted that the impugned orders passed by the Courts below are absolutely illegal, in as much as, after the due enquiry the petitioner was held to be a juvenile by the Juvenile Justice Board. It is submitted by the learned counsel that the certificate issued by the Jharkhand Academic Council in the year 2006 fully corroborated the findings of the Medical Board, which also had opined that on the date of occurrence the petitioner was a juvenile and accordingly, the petitioner was held to be a juvenile. It is submitted that once the petitioner was held to be a juvenile on the basis of his assessment of the age by the Medical Board, there was no occasion for any further enquiry about the juvenility of the petitioner and accordingly, the impugned orders passed by the Courts below are absolutely illegal and the same cannot be sustained in the eyes of law.

7. It is further submitted by the learned counsel for the petitioner that the direction given by the Appellate Court below for lodging the F.I.R. against the wrongdoer is absolutely uncalled for and unwarranted. Learned counsel also submitted that such roving enquiry has been decried by the Supreme Court of India, in *Ashwani Kumar Saxena Vs. State of M.P.*, wherein where, the certificate issued by the Board of Secondary Education, Madhya Pradesh, Bhopal and other documents and the witnesses examined on behalf of the juvenile, proved that the petitioner was a juvenile, but the Court made roving enquiry and also constituted a Medical Board for assessing the age of the petitioner, on the basis whereof it was held that the petitioner was not a juvenile, the Supreme Court of India had decried the procedure adopted by the Courts below. Learned counsel has placed reliance on the following paragraphs of the said decision:-

34. "Age determination inquiry" contemplated u/s 7A of the Act r/w Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

35. Once the court, following the abovementioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after

referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the juvenility on its determination

36. Age determination inquiry contemplated under the J.J. Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination.

(Emphasis supplied)

Placing reliance on this decision learned counsel has submitted that any further enquiry opposing the claim of juvenility is barred under Rule 12 (5) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, as also no roving enquiry into the juvenility of the petitioner was required to be done once the petitioner was held to be a juvenile after due enquiry by the Juvenile Justice Board. Learned counsel accordingly, submitted that the impugned judgment and order passed by the Appellate Court and the Juvenile Justice Board, respectively, cannot be sustained in the eyes of law.

8. Learned counsel for the State on the other hand had submitted that the petitioner had appeared in the matriculation examination in the year 2002 itself and the certificate issued by the Jharkhand Academic Council clearly showed the date of birth of the petitioner to be 25.9.1984 and as such the petitioner was not a juvenile on the date of occurrence, i.e., 22.3.2004. This certificate was clandestinely concealed by the petitioner and not produced before the Court and actually he committed a fraud upon the Court by producing another certificate, which he had obtained after the occurrence, in order to claim juvenility, again appearing in the same examination in the year 2006 which he had already passed in the year 2002, deliberately showing his date of birth to be 8.6.1990 in order to claim juvenility. It is submitted that in view of the earlier matriculation certificate of the petitioner which was issued in the year 2002 itself, the opinion of the Medical Board was not at all required to be obtained in terms of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Learned counsel accordingly, submitted that in the backdrop of these facts the further enquiry was rightly conducted, which was not at all barred under the Juvenile Justice (Care and Protection of Children) Act, 2000 or the Rules of 2007 framed there under. Learned counsel for the State accordingly, submitted that there is no illegality in the impugned orders passed by the Courts below.

9. After having heard learned counsels for both the sides and upon going through the record, I find that the petitioner had appeared in the matriculation examination conducted by the Jharkhand Academic Council in the year 2002 itself in which the date of birth of the petitioner was mentioned as 25.9.1984. The date of occurrence being 22.3.2004, the petitioner was clearly not a juvenile on the said date. The petitioner clandestinely concealed the said certificate from the Court and in order to claim juvenility he again appeared in the matriculation examination in the year 2006 showing him to be minor on the date of occurrence.

10. The procedure to be followed for determining the age of the juvenile is laid down in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Rule 12(3) of the said Rules reads as follows:-

12 (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available, and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a Panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by, considering his/her age on lower side within the margin of one year, and, while 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 and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

11. Thus a plain reading of Rule 12(3) clearly shows that the opinion of the Medical Board is to be sought only in absence of any matriculation or other such certificates detailed in the Rule. As such, in view of the fact that there was already a matriculation certificate showing the date of birth of the petitioner issued in the year 2002 itself, there was no requirement at all for constituting a Medical Board for getting the age of the petitioner determined. That action was taken by the Juvenile Justice Board only because the matriculation certificate issued in the year 2002 was clandestinely concealed by the petitioner and the petitioner had produced a matriculation certificate of the year 2006, which was

issued after the date of occurrence, upon which no reliance was placed by the Juvenile Justice Board, and rightly so, and ordered for constituting a Medical Board for determining the age of the petitioner. Had the matriculation certificate of the year 2002 been produced before the Juvenile Justice Board, the said step would not have been taken by the Juvenile Justice Board. In that view of the matter the opinion of the Medical Board with respect to the age of the petitioner cannot be taken into consideration, as the same is absolutely non est in the eyes of law.

12. Now coming to the next question, whether the second enquiry was barred in the case, as claimed by the petitioner. Rule 12(5) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 reads as follows:-

12(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

Thus, a plain reading of this Rule clearly shows that where a further enquiry or otherwise is required, the same can be done. Any such enquiry is barred only when it is not required in the eyes of law. The expression "enquiry in terms of section 7(A), section 64 of the Act and the Rules" is qualified by the words "inter alia", which clearly shows that the enquiry u/s 7(A) and Section 64 of the Act, and the Rules are not exclusive, rather they are inclusive in nature, and if the Court feels that the further enquiry is required in a given case the said further enquiry can certainly be done and the same is not barred under sub-rule 5 of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. In the given situation of the present case where it was brought to the notice of the Juvenile Justice Board that the petitioner had committed fraud by withholding the earlier matriculation certificate issued in his favour in the year 2002 itself, the further enquiry was certainly required to be done and it was rightly conducted by the Juvenile Justice Board.

13. In Ashwani Kumar Saxena's case (supra), relied upon by the learned counsel for the petitioner, the Supreme Court has held that the Court has to obtain the matriculation certificate or other such certificates detailed in the Rules, if available, and only in absence of any matriculation or such certificates, the question of obtaining the medical opinion from a duly constituted Medical Board arises. In the said case the Court, in spite of the availability of these documents had not placed reliance on the same and had obtained the opinion of the Medical Board, which was decried by the Apex Court. That is not the situation in the present case. Rather, to the contrary, in the present case the matriculation certificate was available and that was clandestinely withheld by the petitioner.

14. Learned counsel for the petitioner has also submitted that the father of the petitioner had died in childhood and the age of the petitioner might have been wrongly given by someone who had got the petitioner admitted in the school in

his childhood. This submission of the learned counsel for the petitioner cannot be accepted and has been taken care of even in Ashwani Kumar Saxena's case (supra), as relied upon by the learned counsel for the petitioner, wherein it has been held as follows:-

36. ---There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, ?...

45. We are of the view that admission register in the school in which the candidate first attended is a relevant piece of evidence of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility.

15. In the backdrop of the aforementioned discussions, I find that in view the fact that the matriculation certificate of the petitioner was available showing his date of birth, there was no occasion for constituting the Medical Board for determining the age of the petitioner and this was done only because the matriculation certificate was clandestinely withheld and concealed by the petitioner. In that view of the matter the findings of the Medical Board are absolutely non est and cannot be taken into consideration. I also find that in the given case when there was a clear cut fraud played by the petitioner upon the Court, and the further enquiry was not at all barred under sub-rule 5 of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. In the given facts and circumstance, the Juvenile Justice Board has rightly entered into the fresh enquiry and has found the petitioner to be a major on the date of occurrence, on the basis of the matriculation certificate issued by the Jharkhand Academic Council in the year 2002 itself. I do not find any fault even in the order of the Appellate Court below, directing action against the wrong doers. Accordingly, I do not find any illegality and/or irregularity in the impugned order passed by the Juvenile Justice Board, Sahibganj, or in the impugned Judgment passed by the Appellate Court below, worth interference in the revisional jurisdiction. There is no merit in this application, and the same is accordingly, dismissed.