
(2012) 04 PAT CK 0039
In the Patna High Court
Case No : Criminal Rev. No. 1295 of 2010

Sri Chandrika Sao

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 12-04-2012

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 68

Citation : (2012) 3 PLJR 890

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Madan Prasad Singh No. 2, for the Appellant; Parmanand Kumar, for the Respondent

Judgement

Ahsanuddin Amanullah, J.—Learned counsel for the petitioner and learned A.P.P. for the State are present. The present application is directed against the order dated 24.7.2010 passed in Cr. (Juvenile) Appeal No. 14/2010 by the Sessions Judge, Jamui by which he has declared the opposite party no. 2 as Juvenile setting aside the order dated 10.5.2010 passed by the Principal Magistrate, Juvenile Justice Board, Jamui in connection with Barhat (Malaypur) P.S. Case No. 92/2009, G.R. No. 1687/2009.

2. Learned counsel for the petitioner has assailed the order basically on the ground that the Sessions Judge has erroneously based his order on the ground that the recorded date in the matriculation certificate with regard to opposite party no. 2 was 6.2.1992. It is submitted that the date of birth as entered in the school first attended by the opposite party no. 2 is 10.4.1989. It is thus submitted that in view of the conflict between two recorded date of birth, primacy has to be given to a date of birth which is entered prior in time, since it is presumed that the first entry is the genuine entry and reflects the true picture. The ground given in the order impugned that Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 made by the Central Government makes it mandatory that matriculation or equivalent certificate, if available, is to

be accepted and only in the absence thereof rest of the evidence or documents can be taken into consideration. This, according to learned counsel for the petitioner, is erroneous in view of the fact that as per Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000 it is primarily the State Government which is empowered to make Rules to carry out the purposes of the Act. In the present case, it is submitted that the State of Bihar came out with the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2001 which was subsequently superseded and repealed by the Rules in the year 2003 and as per Rule 22(5) of the said Rules, the birth certificate given by a Corporation or Municipal Authority, birth certificate from the School first attended and matriculation or equivalent certificate stand on equal footing. In view of the fact that in criminal matters the State has overriding authority to make laws, it is submitted that the Rules made by the State of Bihar have to be interpreted in a wider sense since they are not in conflict with the Central Rules. Further it is argued that the Central Rules may have given priority to the matriculation certificate but it has not excluded consideration of the birth certificate from the school first attended. A harmonious reading of both the Central as well as the Bihar Rules would clearly indicate that when both certificates are available, it has to be enquired as to which is genuine and also which is prior in time. According to him the words from the "School first attended" is very relevant as it discloses the mind of the rule making body. In view of the aforesaid, it can safely be inferred that the intention behind the Rule is that authentic and reliable documents, which come into existence at the first point of time with regard to entering of the date of birth of the person, should be taken into consideration. In the present case, it is a fact that as per the entry in the school first attended by the petitioner, his date of birth has been recorded as 10.4.1989. This fact was verified by the Juvenile Justice Board by calling for the original school register and also taking evidence of the headmaster of the school. In view of the aforesaid, it is submitted that the law cannot be so absurd so as to shut its eyes to a modification by an accused later on to derive any benefit since in the school first attended the date of birth was 10.4.1989, accordingly the opposite party no. 2 was a major on the day the crime was committed and subsequently a document which is later in time, that is, the matriculation certificate, would not come to the aid of the opposite party no. 2 to be declared a Juvenile. According to him, the logic behind this is that when there is no other reliable or unimpeachable evidence with regard to date of birth, then the matriculation certificate has to be given primacy as far as the date of birth of the person is concerned. However, when there are two records, both of which are recognized as one of the admissible documents which could be relied upon while deciding juvenility, it is an issue to be decided as well as the requirement of the circumstances as to upon which the Court should rely. According to learned counsel, in the present case, since the recorded date of birth in the school first attended, that is, class 1st by the opposite party no. 2 which has been proved before the Court from the original matriculation register as well as the deposition of the headmaster of the school, the entry with regard to the date of birth in this

regard has to be given preference and priority over the record of matriculation certificate which is of a later date, especially in the facts, circumstances and background of the present case. It is also submitted that the Courts have recognized that at the time of the school leaving examination, that is, matriculation etc., it is commonly found that entries are made with regard to the date of birth so as to give benefit to the person at a later stage especially in matters of employment when there is a particular date of entry and exit from service.

3. This Court finds substance in the contention of learned counsel for the petitioner. The issue raised by him has not yet been effectively or conclusively decided by a Court of law. This Court, therefore, feels that the matter be decided by a Division Bench.

4. This Court would thus formulate the following point for consideration by the Division Bench:--

Faced with different entries regarding the date of birth relating to the same individual in more than one document, all being admissible for the purposes of declaring a person juvenile, how the same should be done in light of the provisions of Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 read with Rule 22(5) of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2003?

5. Accordingly, let the matter be placed before Hon"ble the Chief Justice for being considered by a Division Bench.

6. In the meantime, issue notice to opposite party no. 2 both under registered cover with A/D as well as under ordinary process for which requisites etc. must be filed within two weeks from today. In view of the fact that the petitioner has been able to satisfy the Court that he does have merit in his contention, this Court deems it expedient for the ends of justice to stay further proceeding which are going on against the opposite party no. 2 before the Juvenile Justice Board, Jamui in connection with Barhat (Malaypur) P.S. Case No. 92/2009, G.R. No. 1687/ 2009.