

A.F.R.

Reserved on 15.9.2022

Delivered on 22.9.2022

Court No. - 91

Case :- CRIMINAL REVISION No. - 568 of 2022

Revisionist :- Kalim

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Santosh Kumar Chaubey

Counsel for Opposite Party :- G.A.,J.B. Singh

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Santosh Kumar Chaubey, learned counsel for the revisionist, Sri J.B. Singh, learned counsel for the respondent no. 2 and learned A.G.A. for the State.
2. This criminal revision has been filed under Section 102 of the Juvenile Justice Act, 2015 with a prayer to set aside the order of the Juvenile Justice Board dated 26.03.2021 passed in age determination inquiry in Misc. Application No. 43 of 2020 arising out of Crime No. 439 of 2020 under Sections 302, 120-B IPC, Police Station Hasanpur, District-Amroha (J.P. Nagar) with a further prayer to set aside the order passed in criminal appeal affirming the order of the Juvenile Justice Board and to declare the revisionist a juvenile under the Juvenile Justice Act, 2015.
3. The submission of the revisionist are that the learned courts below have committed a manifest error of law in passing the impugned orders; in the school certificate the date of birth was shown as 10.08.2006, which clearly established the age of the revisionist as 14 years and 12 days on the date of the occurrence; the courts below ignored the school certificate thereby flouting the provisions of law; the school certificate was proved by the evidence of the teacher of the concerned primary school and by the Ex-Principal of the same institution examined as CW2 and CW3; the learned courts below instead of relying upon the original and the documentary evidence took into consideration the report of the Medical Board and disbelieved the date of birth, as shown in the certificate; the impugned order is illegal because it is founded on the fact that the copy of the pariwar register was not produced by the revisionist at the right time; at the same time, the age of the juvenile, as shown in the driving licence was accepted against the provisions of law, hence, the impugned orders are liable to be set aside and the revisionist deserves to be declared a juvenile.

4. The revisionist has relied on *Ajay Kumar Singh @ Babloo Singh vs. State of U.P. and Uday Pratap Singh; 2022 (6) ADJ 85 (LB)*, wherein the Court observed that the matriculation certificate was available, therefore, there was no occasion to have gone for other documents, such as birth certificate issued by the local bodies. In the above case before the court the arguments of the revisionist that the Juvenile Justice Board should have gone for ossification test, was discarded as misconceived in the light of specific provisions given in clause (iii) of Section 94 of the Juvenile Justice Act, 2015 which said that only in the absence of document mentioned in clause (i) and (ii), age shall be determined by an ossification test. The Court discarded the plea that the original document of the school first attended should have been summoned and held that the court below rightly determined the age of the juvenile on the basis of the matriculation certificate and it was opined that unless some documentary proof or evidence is produced before the Board or the lower appellate court, which may negate the correctness of the high school certificate, the order cannot be faulted.

5. The revisionist also relied upon the judgment of this Court in *Buddhu vs. State of U.P.; (2021) 12 ILR A144*, to stress the point that the educational certificate is to be preferred over any other evidence and the judgment of the Hon'ble Supreme Court of India in *Ashwani Kumar Saxena vs. State of Madhya Pradesh; (2012) 9 SCC 750*, wherein the Court stated its opinion in the following words:

“34.....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, Juvenile Justice Board or a committee functioning under the JJ 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 Juvenile Justice Board or the committee need to go for medical report for age determination.”

6. The Hon'ble Court in *Ashwani Kumar Saxena (supra)*, then proceeded to examine the essential difference between the words 'inquiry, investigation and trial' as we find in the Cr.P.C. Thereafter held that the procedure to be followed under the Juvenile Justice Act in conducting the inquiry is the procedure as laid down in that statute itself i.e., Rule 12 of 2007 Rules and held that the age determination inquiry contemplated under the Juvenile Justice Act and Rules had nothing to do with the inquiry under other

legislations like entry in service, retirement and promotion. The Court observed that where the entry made in the school certificates is available, the Court or the Juvenile Justice Board is not expected to conduct a roving inquiry and go beyond those certificates to examine their correctness when those documents have been kept during the normal course of business. The Hon'ble Court held that the credibility and acceptability of the documents, including the school leaving certificate, would depend on the facts and circumstances of each case and no hard and fast rule as such could be laid down in that regard. The Hon'ble Court also held that the certificates shall not be viewed as doubtful on a notion that the parents usually get entered a wrong date of birth in the admission registers.

7. On the other hand, the dictum of Hon'ble Apex Court in **Rashipal Singh Solanki vs. State of U.P. and Others**; 2021 (11) ADJ 489 decided on 18.11.2021 has been presented before me wherein the Hon'ble Apex Court had considered the judgments given in *Parag Bhati vs. State of U.P.*; (2016) 12 SCC 744, *Sanjeev Kumar Gupta vs. State of U.P. and Another*; (2019) 12 SCC 370 and *Abuzar Hossain vs. State of West Bengal*; (2012) 10 SCC 489, *Ashwani Kumar Saxena vs. State of M.P.*; (2012) 9 SCC 750, *Babloo Pasi vs. State of Jharkhand*; (2008) 13 SCC 133, *Arnit Das vs. State of Bihar*; (2000) 5 SCC 488, *Jitendra Ram vs. State of Jharkhand*; (2006) 9 SCC 428 and several others.

8. In Para-25 of the above judgment (**Rashipal Singh Solanki**), the Hon'ble Apex Court has pointed out **the difference** in the procedure under the two enactments i.e., the Juvenile Justice Act, 2000 and the Juvenile Justice Act, 2015, as to inquiry into determination of age of the juvenile and also the power to seek evidence, how and when to exercise that power and when to go for ossification test. The Hon'ble Court, in nutshell, held that each case may be dealt with in the light of its own peculiar facts and circumstances while keeping certain principles as guiding factor in mind as described in concluding para of the judgment of Hon'ble Apex Court. The concluding para shall be reproduced verbatim in para 13 of present judgment.

9. At the same time, the Hon'ble Apex Court in **Rashipal Singh Solanki (supra)**, in the same para pointed out **the similarity** between the Rule 12 of the Juvenile Justice Rules, 2007 and sub-section (2) of Section 94 of the Juvenile Justice Act, 2015, as a substantive provisions. The Hon'ble Apex Court referred to a

judgment in *Ashwani Kumar Saxena (supra)* and also *Abuzar Hossain (supra)* highlighting the fact that only in cases where certificates are found to be fabricated and manipulated, the Juvenile Justice Board need to go for medical report and also highlighted the fact that the yardstick for depending on the school certificates may be a bit different where the school leaving certificate or voter list etc., is obtained after conviction.

10. In my view, the Hon'ble Court kept in mind the facts and circumstances attached to production of documents/certificates, as required by the provisions of the Juvenile Justice Act before those documents could be relied upon. In another words, it appears that the opinion largely is that even if the documents are found to be prima facie correct, **there may be facts and circumstances to alert the Court to go into the inquiry to satisfy itself as to correctness of the claim.** In the same breath, the Court referred to an opinion given in the judgment of *Abuzar Hossain (supra)* that when any claimant or any of the parents or a siblings in support of the claim of the juvenility raised for the first time in appeal or revision depends on mere affidavits, it shall not be sufficient to justify the inquiry for determination of age unless there exist circumstances which cannot be ignored.

11. In *Sanjeev Kumar Gupta (supra)*, the credibility and authenticity of the matriculation certificate for the purpose of determination of age under Section 7(A) of the Juvenile Justice Act, 2000 came up for consideration. In the said case, the Juvenile Justice Board had rejected the claim of the juvenility and that decision of the Juvenile Justice Board was restored by the Hon'ble Apex Court by rejecting the order of the Hon'ble High Court. It was observed therein that the records maintained by the C.B.S.C. were purely on the basis of final list of the students forwarded by the Senior Secondary School where the juvenile had studied from Class 5 to 10 and not on the basis of any other underlying documents. On the other hand, there was clear and unimpeachable evidence of date of birth which had been recorded in the records of another school, which the second respondent therein had attended till class 4 and which was supported by voluntary disclosure made by the accused while obtaining both, Aadhaar Card and driving license. It was observed that the date of birth reflected in the matriculation certificate could not be accepted as authentic or credible. In the said case, it was held that the date of birth of the second respondent therein was 17.12.1995 and that he

was not entitled to claim juvenility as the date of the alleged incident was 18.08.2015.

12. The Hon'ble Apex Court in **Sanjeev Kumar Gupta (supra)** considered the judgment in **Ashwani Kumar Saxena (supra)** and also judgment in **Abuzar Hossain @ Gulam Hossain (supra)**, and observed that the credibility and acceptability of the documents including the school leaving certificate would depend on the facts and circumstances of each case and no hard and fast rule as such could be laid down in that regard. The Hon'ble Apex Court reproduced the observation of itself in **Abuzar Hossain @ Gulam Hossain (supra)** which is below:

".....directing an inquiry is not the same thing as declaring the accused to be a juvenile. In the former, the Court simply records a prima facie conclusion, while a declaration is made on the basis of evidence. Hence, the approach at the stage of directing an inquiry has to be more liberal lest, there is miscarriage of justice. The standard of proof required is different for both. In the former, the Court simply records the prima facie conclusion. It would eventually depend on how the Court evaluates such material for a prima facie conclusion and the Court may or may not direct an inquiry. In the latter, the Court makes a declaration on evidence that it scrutinises and accepts such evidence only if it is worthy of acceptance."

13. The Hon'ble Apex Court in **Rashipal Singh Solanki (supra)**, after considering all the judgments held as below:

"29. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

(i) A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

(ii) An application claiming juvenility could be made either before the Court or the JJ Board.

(ii-a) When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.

(ii-b) If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

(ii-c) When an application claiming juvenility is made under section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a Court, then the procedure contemplated under section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board,

when an application is filed seeking a claim of juvenility when the trial is before the concerned criminal court, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide section 9 of the JJ Act, 2015).

(iii) That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i),

(ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

(iv) The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

(v) That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

(vi) That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

(vii) This Court has observed that a hyper-

technical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

(viii) If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

(ix) That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

(x) Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions.

(xi) Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.”

14. The Hon'ble Court, referring to the fact that there was no other document contradicting the date of birth as shown in the matriculation certificate, held that the medical evidence is not required and upheld the order of the Hon'ble High Court which sustained the judgment of the Sessions Court as well as the Juvenile Justice Board.

15. Coming to the facts of this matter admittedly, the school leaving certificate, wherein the date of birth was shown as 10.08.2006, issued on 25.11.2020 by the Primary School, Bawan Kheri, Thana-Hasanpur, Amroha was produced, however, the authenticity and the acceptability of that certificate was challenged by the respondent-informant by producing a copy of pariwar register showing date of birth of juvenile as of the year 1999 as well as a driving licence showing the same year of birth. Thereafter, in rebuttal another copy of pariwar register was produced on behalf of the juvenile showing his date of birth as 10.08.2006.

16. In the above circumstances, an inquiry into the age determination was directed and several witnesses were examined. CW1-father of juvenile admitted that he knows about the date of birth of his son only on the basis of entry in the school leaving certificate and that he does not remember his exact date of birth. CW2-Mariyam, Principal of the school, though, verified the fact that the transfer certificate was issued by the school and also produced the S.R. register, the attendance register etc., however, she stated that she was unaware of the basis of entry of date of birth as 10.08.2006 and the reasons for juvenile's admission in that institutions in Class-IIInd. CW3-the Ex-principal of that school stated that at the time of his admission, he recorded the age of the juvenile and the date of birth as 10.08.2006 as told by his elder brother, the only person who accompanied the juvenile at the time of his admission. Admittedly, admission register was never produced. The medical examination and the X-ray of the juvenile indicated that his radiological age was about 19 years. The radiologist namely, Dr. Kuldeep Singh found that the bones of wrist, elbow, knees and clavicle were all fused.

17. From the perusal of the impugned order, it appears that finding the school leaving certificate quite doubtful and finding that there was no underlying document to record his age at the time of admission in the concerned institution coupled with the facts that other documents like copy of pariwar register and driving licence

showed different age of the juvenile, in my view, the Juvenile Justice Board and the learned Appellate Court below rightly embarked on an inquiry and radiological age was ordered to be conducted. The courts below cannot be faulted for depending upon the medical/radiological age of the juvenile and declaring him as an adult on the basis of the evidence available in the facts and circumstance of the case. Before this Court, copy of bail order passed in Bail Application No. 70/2022 dated 15.01.2022 passed by the Incharge, Sessions Judge, Amroha and copy of the order passed by this Court on 24.05.2022 in Criminal Misc. Bail Application No. 7301 of 2022 moved on behalf of the present revisionist, who claim himself to be a juvenile, has been brought on record. In the bail application moved before the Sessions Judge, the applicant-revisionist has shown his age as 19 years, which goes against his own claim.

18. In my view, there were enough of reasons to discard the documented age of the juvenile and to call for ossification test, the Board was perfectly justified in seeking evidence for determination of age and drawing its own conclusion based on the evidence available including evidence of radiological test. The Board as well as appellate court both have given a concurrent finding which is not liable to be disturbed by this Court while exercising revisional powers under Section 102 of the Juvenile Justice Act, 2015, therefore, I do not find any illegality or impropriety in the impugned order.

19. The revision is, accordingly, **dismissed**.

Order Date :- 22.9.2022

Vik/-