

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.38 of 2018
Arising out of
CRIMINAL APPEAL (DB) No.1375 of 2017

Arising Out of PS. Case No.-60 Year-1996 Thana- BIBHUTIPUR District- Samastipur

Suresh Rai son of Sri Haruni Rai, Resident of Village Mahishi, P.S.
Bibhutipur, District Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar

2. Manoj Rai @ Manoj Kumar Rai, son of Narsingh Rai, resident of Village
Mahishi, P.S. Bibhutipur, District Samastipur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ramesh Prasad Singh with
Mr. Sanjay Kumar Singh and
Mr. Ravi Shankar, Advocates

For the State : Mr. Md. Arif, APP

For the O.P. No. 2 : Mr. Laxmendra Kumar Yadav, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 01-07-2019

Heard learned counsel for the petitioner; learned APP for
the State and learned counsel for the opposite party no. 2.

2. The present application has been filed under Section
102 of the Juvenile Justice (Care and Protection of Children) Act,
2015 for setting aside the order and judgment dated 22.12.2015
passed by the Juvenile Justice Board, Samastipur in Juvenile
Enquiry No. 679 of 2015 under Sections 302 and 427 of the Indian



Penal Code relating to Bibhutipur P.S. Case No. 60 of 1996 dated 24.05.1996 under Sections 304A and 279 of the Indian Penal Code.

3. The petitioner is the informant of Bibhutipur P.S. Case No. 60 of 1996 in which it has been alleged that the opposite party no. 2 while driving Tractor dashed against the son of the petitioner, who died on the spot. During trial, the opposite party no. 2 filed a petition claiming to be juvenile on the date of occurrence. The same was sent to the Juvenile Justice Board, Samastipur for holding enquiry which has resulted in passing of the impugned order by which he has been held to be a juvenile and further he has been acquitted.

4. Learned counsel for the petitioner submitted that the plea of juvenility was taken with *mala fide* intention as it is totally false. Learned counsel drew the attention of the Court to the school certificate of the opposite party no. 2 which reveal that his date of birth is 05.06.1977. He also drew the attention of the Court to the certificate of the Headmaster of the school dated 01.06.2017 in which also he has certified that as per the records of the school, the date of birth of the opposite party no. 2 is 05.06.1977. Learned counsel submitted that the said document, at the earliest point of time, had to be considered but the same has not been done.



Learned counsel submitted that the petitioner being the informant, who has lost his son, is entitled to participate in the enquiry before the Juvenile Justice Board for deciding juvenility, which in the present case has been denied to him as notice has neither been sent to him nor received by him. It was further submitted that the Juvenile Justice Board has erroneously acquitted the opposite party no. 2 on the ground that there was no evidence. It was submitted that the evidence was being recorded in the criminal case and in the case before the Juvenile Justice Board, it was the duty of the prosecuting agency, i.e., the State authorities, who had to produce the witnesses and if there has been any lapse on their part the petitioner's cause cannot be allowed to suffer as it would lead to miscarriage of justice.

5. Learned APP fairly submitted that the petitioner was required to be given opportunity and the materials brought on record by him was required to be considered by the Juvenile Justice Board before passing any final order which has not been done.

6. Learned counsel for the opposite party no. 2 submitted that before the Juvenile Justice Board, witnesses were called and rightly time was given but when they did not appear, the Juvenile Justice Board has gone ahead and passed the order.



However, on a direct query of the Court, as to how the issue of juvenility was decided without taking note of the school certificate and the certificate of the Headmaster which show that the petitioner was not juvenile on the date of occurrence, learned counsel could not meet the query of the Court and only submitted that in the certificate issued by the Bihar School Examination Board, his date of birth has been shown as 22.01.1980.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

8. The petitioner being the father of the victim has *locus standi* even in the enquiry which is conducted as to whether the accused was juvenile on the date of occurrence or not. This clearly has not been done. Further, before the Court, the petitioner has been able to bring cogent materials which indicate that in the entry made in the school register, which was at the earliest point of time, the date of birth recorded is 05.06.1977. The same is also corroborated by a certificate of the Headmaster certifying that such entry was as per the records of the school. Another aspect which is quite curious in the matter is that the Juvenile Justice Board has held the certificate of the Bihar School Examination Board produced on behalf of the opposite party no. 2 to be valid and



genuine only on the basis of comparison with the so called original and attestation by learned counsel. The law requires that only the office/agency/institution/person which has issued a so called certificate can say as to whether the document is genuine or not based on the records available with that office/agency/institution/person. This not having been done, the Juvenile Justice Board could not have accepted the certificate produced before it on behalf of the opposite party no. 2 to be genuine straightaway.

9. Thus, taking an overall view in the matter, in the considered opinion of the Court, the order impugned cannot be sustained. Accordingly, it is set aside. The matter is remanded to the Juvenile Justice Board, Samastipur to conduct fresh enquiry on the claim of the opposite party no. 2 that he was a juvenile on the date of occurrence, i.e., 24.05.1996. In the said proceeding, the petitioner shall also be permitted to assist the Court. Further, all points raised by him and materials/documents produced by him, shall be taken into consideration by the Juvenile Justice Board and thereafter an order shall be passed, in accordance with law. Based on the same, consequences shall follow.

10. The application stands allowed in the aforementioned terms.



11. The Court would clarify that it has not expressed any opinion with regard to the merits of the matter.

12. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J)

Anjani/-

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