

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Criminal Revisional Jurisdiction)

Cr. Revision No.328 of 2022

1. Nakul Turi, aged about 20 years, son of Suraj Turi, resident of 52 Bigha Sapaha, Madhupur, PO & PS Madhupur, District Deoghar.
2. Vikash Turi, aged about 19 years, son of Dukhan Turi, resident of Village Madhupur, PO & PS Madhupur, District Deoghar.

..... ... Petitioners

Versus

The State of Jharkhand

..... Opposite Party

(Heard on 11.09.2023)

PRESENT

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioners : Mr. Niranjana Kumar, Advocate
For the State : Mrs. Lily Sahay, APP

J U D G M E N T

CAV On 11th September 2023

Pronounced on 1st November 2023

Per, Subhash Chand, J.

The instant criminal revision is on behalf of petitioners Nakul Turi and Vikash Turi against the order dated 06.10.2020 passed by the learned Additional Sessions Judge-VIII, Deoghar in Criminal Miscellaneous Case No.448 of 2019, arising out of S.T. No. 121 of 2019 whereby the application under section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000, in terms of section 9(2) of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2015 has been rejected by the learned court below in connection with Madhupur P.S. Case No.342 of 2018 for the offence under sections 341, 323, 504, 302/34 of the Indian Penal Code (hereinafter referred to as 'IPC') pending before the learned court of Additional Sessions Judge-VI, Deoghar.

2. The brief facts of the prosecution case leading to this criminal revision are that the informant Shital Kole gave the written information with the police station concerned with these allegations that on 07.11.2018 at 12:30 in the day time, some persons were gambling (Jua) adjoining to her house. The women were also taking bath at the nearby handpump. At the same time, the brother of the informant Saroj Kole went to the persons who were gambling and asked them not to play cards. On the very issue, Sunil Turi (22 years old), Nakul Turi (21 years old) the brother-in-law of Arjun Turi, the nati of Sarju Turi, namely, Mukesh Turi (20 years old), Karu Turi and Vikash Turi having formed an unlawful assembly in furtherance of common intention hurled abuse and assaulted to the brother of informant with kick and fist whereby the brother of informant sustained internal injuries. Hearing the alarm all the accused persons fled away having criminally intimidated them. The primary treatment was given to the brother of the informant at the house who ultimately succumbed to the injuries. On this written information, the Case Crime No. 342 of 2018 was registered with Madhupur Police Station of District Deoghar for the offence under sections 341, 323, 504, 302/34 of IPC.

3. The investigating officer after having concluded the investigation filed charge-sheet against the accused Sunil Turi, Nakul Turi, Chandan Turi and Vikash Turi. While Mukesh Turi being juvenile charge-sheet was filed against him to the learned JJ Board concerned. The court concerned committed the case to the court of learned Sessions Judge, Deoghar for trial. The trial court framed charged against the accused persons for the offence under sections 341, 323, 504, 302/34 of IPC.

4. Before the trial court, an application was given on behalf of the petitioners Mukesh Turi, Vikash Turi, Nakul Turi and Chandan Turi under **section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000** with these averments that all the petitioners were juvenile at the time of commission of the offence. They have stated before the court below while surrendering that they were juvenile but no heed was paid to the request of the petitioners. In regard to the prove of the age, Adhar card and the school certificates, all were produced but the learned court of Magistrate did not take the same into consideration and committed the case for trial to the court of the sessions Judge. In view of the above prayed to declare the petitioners juvenile.

5. The learned court of VIIIth Additional Sessions Judge, Deoghar **passed the order** on this very application in Cr. Misc. No. 448 of 2019 on **06.10.2020** with the effect that except Mukesh Turi all the petitioners/accused were above the age of 18 years and the application on behalf of Vikash Turi, Nakul Turi and Chandan Turi was rejected; while this petition was allowed upto the extent of Mukesh Turi who was declared juvenile but it was held that the offence being heinous, his trial would be conducted as an adult.

6. **Aggrieved from this impugned order dated 06.10.2020** this criminal revision is preferred on behalf of petitioners Nakul Turi and Vikash Turi on the grounds that the impugned order passed by the learned court below is bad in the eye of law. The learned court below did not appreciate the evidence on record while from the exhibit-3 and exhibit-4 it was evident that both the petitioners were juvenile on the date of

commission of the offence.

6.1 It is also further stated that in view of the settled principle of law the entry of date of birth of matriculation certificate was the authentic evidence in regard to the age; but the court below did not take into consideration the same and passed the impugned order on the erroneous finding and accordingly prayed to allow the criminal revision and to set aside the impugned order.

7. From the perusal of the record it is found that during the inquiry on behalf of the petitioners the **inquiry witness no.2 Parwati Devi, inquiry witness no.4 Fulwa Devi and inquiry witness Swatantra Kumar Das** were also examined.

8. **Inquiry witness Parwati Devi** stated that Nakul Turi is her son, his date of birth is 07.01.2002. He was got admitted for the first time in Sapha Government School. This witness also in cross-examination stated that she does not know the counting from 1 to 30 and she does not know the date of her marriage. In cross-examination this witness says it is wrong to say that she has crammed the date of birth of her son.

9. **Inquiry witness Fulwa Devi** in her examination-in-chief says that Vikash Turi is her son. His date of birth is 17th March 2002. He was also admitted for the first time in Sapha Government School. This witness also in cross-examination stated that she does not know the counting from 1 to 30 and she does not know the date of her marriage. It is wrong to say that she has crammed the date of birth of her son.

10. In regard to the entry of the admission of these students in the school has been filed the certificate which is marked exhibit-5, 5/1, 5/2,

5/3 of the four students Chandan Turi, Mukesh Turi, Vikash Turi and Nakul Turi respectively.

11. **Inquiry witness Swtantra Kumar Das** is the primary teacher in Utkramit Madha Vidhaylay, Sapha has stated that in the register of the school the **date of birth of Vikash Turi**, son of Dukhan Turi is shown **17.03.2002**. He was admitted in class-1st in the year 2007. His admission in the register at serial no. 79 which is marked **exhibit-3**. **The date of birth of Nakul Turi**, son of Sarju Turi is **07.01.2002**. He was also admitted in the year 2007 in class-1st. In the register of the school his admission is at serial no.90 marked **exhibit-4**. In cross-examination, this witness says that **he is not aware who has made the entry in regard to these students in the register of the school and by whom it was signed is not known to him**. Nothing is in his personal knowledge since he was not posted in the school at that time.

12. The certificate dated 16.03.2019 issued by the Headmaster-cum-secretary, Utkramit Madha Vidhaylay, Sapha, Madhupur, Deoghar by the inquiry witness Swtantra Kumar Das in regard to the date of birth of Vikash Turi i.e. 17.03.2002 is exhibit-2 and the certificate in regard to age of Nakul Turi the date of birth shown as 7.01.2002 in exhibit-3. The photo copy of the register was also filed on which exhibit-3 on the date of birth of Vikash Turi and exhibit-4 on the date of birth of Nakul Turi is marked.

13. As per prosecution case the **date of occurrence is 07.11.2018**.

14. In view of the oral evidence of **inquiry witness PW2 Parwati Devi** who is mother of Nakul Turi and also the school certificate and testimony of **inquiry witness Swtantra Kumar Das** in the register of the

school in class-1st **date of birth is shown of Nakul Turi as 07.01.2002** likewise the date of birth of Vikash Turi in view of the testimony of the mother of Vikash Turi inquiry witness Fulwa Devi and also the testimony of Swtantra Kumar Das the teacher of Utkramit Madha Vidhaylay, Sapha, Madhupur, Deoghar the **date of birth of Vikash Turi is shown 17.03.2002.**

15. From the perusal of impugned order that the question of seminal importance is that if the entry of the date of birth in so called first attended school is not made on the basis of any authentic certificate rather it is based on the oral account given either by the parents or the entry made by any one of the person not competent to make the entry in the school admission register, such entry of date of birth will not prevail over the opinion of the medical board and also held that the entry made in matriculation certificate is deemed to be authentic only. In absence of the same, the medical evidence shall prevail. In view of the opinion of Medical Board, the age of the petitioners was shown 20 to 22 years and accordingly rejected the application.

16. Herein it would be pertinent to mention the **section 94** of the **Juvenile Justice Board Act, 2015** which reads as under:

*“94. Presumption and determination of age.— (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.
(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—*

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

17. In view of **Section 94** of the **JJ Act 2015** it is evident the date of birth certificate from the school, **matriculation or the equivalent certificate from the concerned examination Board, if available, is to be given preference; while determining the age of a juvenile.** Herein the school certificate which is adduced on behalf of the accused persons is of class-1st and **the entries in the register in regard to the age which has been deposed by the inquiry witness Swtantra Kumar Das, Primary Teacher of Utkramit Madha Vidhaylay are not found to be proved;** since this witness has stated that these entries were not made by him at that time he was not posted in the school.

18. **The entry in the school register of the class-I cannot be accepted as an authentic evidence. It is the matriculation or the equivalent certificate which can be the authentic evidence and can be given preference over all the evidence in regard to the age of a juvenile in view of section 94 of JJ Act 2015.**

19. From the perusal of the record it is found that the learned court below has recorded its finding that the school certificate in regard to the age of the petitioners Nakul Turi and Vikash Turi was not authentic and

relied on the medical evidence.

20. It also appears from the record that petitioner **Vikash Turi** was medically examined on **15.02.2020** and his age was determined **22 years old**. As per report of O.P.G of this petitioner **Nakul Turi**, the age is also shown **21 years old** vide report dated **15.02.2020**.

As such on the date of occurrence 07.11.2018 the age of petitioner Nakul Turi was above 18 years i.e. 19 years 3 months in view of medical evidence.

21. So far as the medical evidence in regard to the determination of age of the petitioner **Vikash Turi** is concerned in the certificate issued by Medical Board, his age was determined on 15.02.2020 which was signed by the Members of Medical Board on 17.02.2020 and was also signed by the the CMO, Deoghar on 23.02.2020 **is 22 years old**. As per O.P.G report of this **Vikash Turi** which is dated 15.02.2020 the age is shown 22 years old approximate. **Therefore, on the date of occurrence which is 07.11.2018 this petitioner Vikash Turi was also major much above 18 years old i.e. 19 years 3 months in view of the medical evidence.**

22. It is the settled law that **while determining the age of a juvenile, when there is no matriculation or equivalent school certificate then it is the medical evidence which should be resorted by the Court to determine the juvenility.**

23. The Hon'ble Apex Court in "**Kulai Ibrahim @ Ibrahim v. State**" **AIR 2014 SC 2726** held:

"12. Though in this paragraph, this Court observed that the

question of obtaining medical opinion from a duly constituted Medical Board arises only if the above-mentioned documents are unavailable, this Court went on to further observe that only in those cases, where documents mentioned in Rules 12(a) (i) to (iii) of the J.J. Rules, 2000 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. Thus in cases where documents mentioned in Rules 12(a)(i) to (iii) of the J.J. Rules, 2000 are unavailable or where they are found to be fabricated or manipulated, it is necessary to obtain medical report for age determination of the accused. In this case the documents are available but they are, according to the police, fabricated or manipulated and therefore as per the above observations of this Court if the fabrication is confirmed, it is necessary to go for medical report for age determination of the appellant. Delay cannot act as an impediment in seeking medical report as Section 7-A of the J.J. Act, 2000 gives right to an accused to raise the question of juvenility at any point of time even after disposal of the case. This has been confirmed in Ashwani Kumar (AIR 2013 SC 553). Moreover, J.J. Act, 2000 is a beneficent legislation. If two views are possible scales must tilt in favour of the view that supports the claim of juvenility. While we acknowledge this position in law there is a disquieting feature of this case which cannot be ignored. We have already alluded to the counter affidavit of Shri R. Srinivasalu, Inspector of Police. If what is stated in that affidavit is true then the appellant and his father are guilty of fraud of great magnitude. A case is registered against the appellant's father at the Ukkadam Police Station under Sections 467, 471 and 420 of the IPC. Law will take its own course and the guilty will be adequately punished if the case is proved against them. Since the case is being investigated, we do not want to express any opinion on this aspect. Till the allegations are finally adjudicated upon and proved, we cannot take registration of the offence against the appellant.”

24. The Hon'ble Apex Court in “**Om Prakash v. State of Rajasthan**” (2012) 5 SCC 201 held:

“20. We are unable to appreciate and accept the aforesaid contention of the learned counsel for the respondent since the age of the accused could not be proved merely on the basis of the school record as the courts below in spite of its scrutiny could not record a finding of fact that the accused, in fact, was a minor on the date of the incident. Hence, in a situation when the school record itself is not free from ambiguity and conclusively proves the minority of the accused, medical opinion cannot be allowed to be overlooked or treated to be of no consequence.”

25. The Hon'ble Apex Court in “**Ganesh v. State of Tamil Nadu**” AIR 2017 SC 537 held:

“10. The law on the point is well settled and succinctly stated in

Ashwani Kumar's case (AIR 2013 SC 553, Paras 34 to 36) (supra) where this Court after taking into consideration relevant statutory provisions observed in paragraphs 32 to 34 as under: 32. "Age determination inquiry" contemplated under Section 7-A of the Act read with 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 needs to 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 needs to 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."

26. In the case in hand there is no cogent & trustworthy documentary evidence in regard to determination of the age of the petitioners. The only evidence is of the entry made in the school register of class-1st of both petitioners which is not found proved and is not free from ambiguity as such the same cannot be said to be authentic. For lack of the matriculation school certificate, the IO had resorted the medical examination of both the petitioners and in view of the medical evidence in regard to determination of the age, both the petitioners are found major being 19 years 3 months old on the date of occurrence. Therefore, the impugned order passed by the court below rejecting the application of the petitioners to declare them juvenile on the date of the occurrence does not bear any infirmity and same needs no interference.

27. Accordingly, this criminal revision deserved to be dismissed.

28. This criminal revision petition is, hereby, dismissed and the impugned order passed by the learned court below is hereby affirmed.

29. Let the copy of the judgment be communicated to the court below.

(Subhash Chand, J.)

Jharkhand High Court, Ranchi
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