

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 364 OF 2020
[@ SPECIAL LEAVE PETITION (CRL.) No.7952 OF 2019]

...APPELLANT

Versus

STATE OF JHARKHAND

...RESPONDENT

ORDER

1. Leave granted.
2. Aggrieved by the conviction for the offences under Sections 377 and 511 of the Indian Penal Code and the sentence of rigorous imprisonment for three years with a fine of Rs.3,000/- imposed upon him by the trial Court, which was confirmed by the Sessions Court on appeal and by the High Court on revision, the sole accused in the case has come up with the above appeal.
3. We have heard the learned senior Counsel for the appellant and the learned standing counsel for the respondent-State.
4. The appellant was prosecuted for an offence under Section 377 read with Section 511 of the Indian Penal Code, on the ground that the appellant subjected a 10 years old boy to carnal intercourse,

thereby committing an offence punishable under the said provision. After trial, the Judicial Magistrate First Class, Dhanbad found the appellant guilty of the offence and sentenced him to undergo rigorous imprisonment for three years with a fine of Rs.3000/- with a default sentence. The appeal filed by the appellant was dismissed by the learned Additional Sessions Judge, Dhanbad. The appellant filed a revision before the High Court, but the same was also dismissed.

5. Before the trial Court, the appellant pleaded juvenility. But the trial Court rejected the school certificate, which recorded his date of birth as 10.08.1984, on the ground that upon medical assessment, the appellant was found to be 20 years of age. The trial Court opined that the horoscope and the school certificate are not proper and genuine to assess the age of the appellant.

6. The appellate Court did not deal with this aspect. Before the High Court, none appeared either for the appellant or for the prosecution. Therefore, the High Court chose to dispose of the revision based upon the materials on record, as the revision was of the year 2009. Since the High Court disposed of the revision in the absence of the appellant and the prosecution, the Court did not have an opportunity to consider the case of juvenility.

7. In view of the above circumstances, this Court directed the learned Senior Counsel for the appellant, when the special leave petition came up for hearing on 6.09.2019, to produce the original date of birth certificate. Thereafter, notice was ordered in the special leave petition on 4.10.2019. Again the matter came up on 22.11.2019 and this Court passed the following order on the said date:

“The instant petition is directed against order dated 26.11.2018 passed by the High Court of Jharkhand at Ranchi in Criminal Revision Petition No.252/2009 whereby the High Court dismissed the revision preferred by the petitioner and confirmed the conviction under Section 377 I.P.C. as imposed by the trial court.

Heard learned counsel for the parties at length and carefully perused the record.

In the instant matter, the petitioner has claimed that he was under the age of 18 years on the date of incident and accordingly he is claiming juvenility as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, ‘the Act’).

The petitioner has relied upon the Transfer Certificate issued by the Indian School of Learning, Dhanbad, which was issued by the Principal of the said School on 17.03.2001, and in which the date of birth of the petitioner has been mentioned as 10.08.1984.

The trial court, vide order dated 05.08.2002, has not considered this aspect and simply rejected the claim of juvenility stating that it cannot rely upon the horoscope and the school certificate as these were not the proper and genuine documents to assess the age of the petitioner. We are of the opinion that the same is not in consonance with the requirements as contemplated under the Act.

Accordingly, we direct the A.C.J.M., Dhanbad District to examine the issue in the light of the Transfer Certificate

issued by the Indian School of Learning, Dhanbad on 17.03.2001, and also in accordance with the provisions of the Act and submit a report to this Court expeditiously.

For the purpose of producing the Transfer Certificate before the concerned trial court, we direct the Registry to return the said certificate to the petitioner.

List the matter immediately after receipt of report from the concerned trial court.

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8. Pursuant to the above order, the Additional Chief Judicial Magistrate, Dhanbad had conducted an enquiry and submitted a report dated 23.12.2019. The relevant portion of the Report reads as follows:

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On careful perusal of the oral and documentary evidence particularly transfer certificate (Ext-3), it appears that the date of birth of the petitioner has been mentioned as 10.08.1984 in Sl. No. 7, it also appears from Sl. No. 6 of transfer certificate that date of admission is mentioned as 249 dated 06.03.1990, at Sl. No. 8 of the certificate, the date of leaving the school was mentioned as 30.03.1998, at Sl. No. 9. It has been mentioned that he stayed at this school upto Class –VII and the reason of leaving of school was parents wish. The E.W.3, who has produced the admission register before this court as stated in his evidence that the name of this petitioner is mentioned as Sl. No. 249, his date of admission is 06.03.1990 and date of birth is 10.08.1984. this witness has proved his signature and stated that all the entries has been filled up by him and also identified his signature as well as signature of the principal. The transfer certificate was exhibited (Ext-03) on his testimony and he also identified photocopy of the admission register (mark-x for identification). During cross-examination by prosecution he stated that at the date of the admission of the petitioner he had not joined the school and denied the suggestion that the transfer certificate is a forged

document. During question by court he stated that father of the petitioner as employee of ISM, Dhanbad and he prepare the transfer certificate on the basis of particulars mentioned in the admission register. The E.W.5 and he identified his signature on the transfer certificate. Further he stated that transfer certificates were being issued on the basis of entries and information mentioned in the admission register. During cross-examination by the prosecution he stated that he did not enquired the age of the petitioner at the time of his admission rather admissions were being taken on the basis of birth certificate, transfer certificate and declaration of the parents. He further stated that counterfoils of the transfer certificates were being kept in the office. During question by court he stated that due to determination of lease period school was closed. Although the prosecution has suggested the E.W.3 that certificate is manufactured but in it support nothing was brought by the prosecution on record. It is important to mention here that the photocopy of the admission register (Mark-X for identification) is available on the record and on meticulous perusal of admission register, it appears that before admitted in this school, the petitioner was studied at Bal Bharti, I.S.M., Dhanbad in-Class-U.K.G. and he took admission in the Indian School of Learning I.S.M. in Class-I on the basis of transfer certificate and his date of birth is mentioned as 10.08.1984 and he took transfer certificate bearing no.112 on dated 17.03.2001 from Indian School of Learning, I.S.M. Therefore, on perusal of photocopy of the admission register, brought before this court during course of inquiry, it appears that the recital of first attended school as well as the basis of got admission in the Indian School of Learning is also found in the admission register, which endorsed that the date of birth of the petitioner in transfer certificate was 10.08.1984. Besides this on perusal of transfer certificate, it appears that the petitioner took admission at Indian School of Learning in Class-I on dated 06.03.1990 and he left the school on dated 30.03.198 and at the time of leaving school, he was studied upto Class-VII. It also appears that during course of inquiry, no contrary evidence have been brought on the record, regarding the particulars mentioned in transfer certificate of the petitioner.

In the case of Ashwani Kumar Saxena Vs. State of M.P. (2012) 9 SCC 750 while dealing with the scope of Section-

7A and Rule 12 of 2007 in paras 34 and 35, the Hon'ble Supreme Court held as follows:

“Age determination inquiry” contemplated under Section-7A of the Act r/w rule 12 of the 2007, Rules enables the Court to seek enables the Court to seek evidence and in that process, the Court can obtain the 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 above mentioned 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.

Once the Court, following the above mentioned procedure, 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 section (5) or 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.”

In the case of Chandana Rani Barik. Vs. State of Jharkhand, 2015 (3) J.B.C.J. 117 H.C. The Hon'ble Jharkhand High Court has been pleased to observe that – “it is noted that school leaving certificate has not been challenged neither the evidence of the Headmaster has been doubted and there is no cogent reason to disbelieve the same. In the absence of any evidence to the contrary, the same has to be accepted.

The Hon'ble Jharkhand High Court in the case of Goutam Giri Vs. The State of Jharkhand & Anr. 2008(3)

JLJR 140 H.C. has been pleased to rely in on the case of Dablu @ Manish Kumar Vs. The State of Bihar 2004(1) East. Cr.C.651 wherein it was observed that “In my opinion, no hard and fast rule can be laid in regard to weightage to be given either to the school leaving certificate or the report of the medical board. It will depend upon the facts and circumstance of each case. Where there is no doubt in regard to the certificate granted by the authority then in that case entry made therein shall have higher value. However, in a case in which the certificate looks to be doubtful, the opinion given by the Medical Board may be worthy of reliance. I am of the considered opinion that this is in realm of appreciation of evidence and for that every case has to be decided on its own merit. However, one has to bear in mind that the opinion of the medical board is after all an opinion and till date science has not developed to the extent that it can accurately assess the age whereas the school leaving certificate is granted on the basis of declaration made by the guardian or the parents of the child at the time of his admission and in a case in which there is either no interpolation, misrepresentation or fraud, the entry made in the school leaving certificate shall certainly carry more weight.”

In the present case, in the foregoing discussion, it has been well founded that no contrary facts or evidences has been brought on the record, regarding the transfer certificate and date of birth of the petitioner, mentioned in transfer certificate as well as testimony of this witness (E.W.3), is not discredited who brought the admission register before the Court. The E.W., 5 has also corroborated the issuance of transfer certificate bears his signature. Hence, there is nothing on the record to discard and disbelieve the transfer certificate. Therefore, in the view of above discussed facts and reasons, as well as ratio laid down by the Hon'ble Courts above discussed, I find that date of birth of the petitioner was 10.08.1984 and on the date of occurrence i.e.12.03.2001, the petitioner was at the age of 16 years 7 months and 2 days and as per Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act 2000, the petitioner namely – Sukhdeo Singh @ Jannu singh was juvenile or child on the date of occurrence.”

9. In view of the finding recorded by the Additional Chief Judicial Magistrate, the appellant is entitled to the benefit of juvenility. However, the learned standing counsel for the State vehemently contended that the school certificate was not conclusive. According to him, the certificate issued by the school in which the appellant studied at the earliest point of time alone could be conclusive evidence.

10. But we do not agree. As per the transfer certificate produced by the appellant, his date of birth was 10.08.1984. The transfer certificate also mentions his date of admission in the school as 06.03.1990. The admission register was also produced before the Additional Chief Judicial Magistrate. The name of the appellant was mentioned at serial No.249 therein. The Additional Chief Judicial Magistrate has recorded a categorical finding that the recital contained in the certificate issued by the first attended school also tallied with the date of birth.

11. We have no reason to doubt the correctness or genuineness of the Report submitted by the Additional Chief Judicial Magistrate.

12. Therefore, in view of the above, the appeal is allowed and the sentence imposed upon the appellant is set aside. The appellant shall be released forthwith unless he is in custody in respect of some other case.

.....J
(N.V. Ramana)

.....J
(V. Ramasubramanian)

New Delhi
February 24, 2020.

ITEM NO.28

COURT NO.2

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.) No.7952/2019

(Arising out of impugned final judgment and order dated 26-11-2018 in CRLR No. 252/2009 passed by the High Court of Jharkhand at Ranchi)

SUKHDEO SINGH@ JANNU SINGH

Petitioner(s)

VERSUS

THE STATE OF JHARKHAND

Respondent(s)

(REPORT HAS BEEN RECEIVED FROM THE A.C.J.M. DHANBAD)

(IA No. 39470/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 24-02-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s)

Mr. Satish Tamta, Sr. Adv.
Ms. Binu Tamta, AOR
Mr. Abhishek Vikram, Adv.
Mr. Dhruv Tamta, Adv.
Mr. Shariq Iqbal, Adv.

For Respondent(s)

Mr. Tapesk Kumar Singh, AOR
Mr. Aditya Pratap Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

The appellant was granted bail by this Court on 22-11-2019 which is made absolute and his bail bonds stand discharged.

(VISHAL ANAND)
COURT MASTER (SH)

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)

