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(2012) 12 AHC CK 0211

Allahabad High Court

Case No: Criminal Revision No. 3281 of 2012

Harpal Singh	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision: Dec. 10, 2012

Acts Referred:

- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 12(3)(a)(i)(ii), 7A
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 307

Citation: (2013) 1 ACR 791 : (2013) 1 ADJ 198 : (2013) 2 ALJ 365

Hon'ble Judges: Manoj Misra, J

Bench: Single Bench

Advocate: Radhey Shyam, Raj Kumar Sharma and Neeraj Pandey, for the Appellant; Narendra Kumar Singh, for the Respondent

Final Decision: Dismissed

Judgement

Manoj Misra, J.
I have heard Sri. Raj Kumar Sharma assisted by Sri. Neeraj Pandey, learned counsel for the revisionist, Sri. Narendra Kumar Singh for the opposite party No. 2 and the learned A.G.A. for the State. By this revision, the revisionist, who is the informant, has challenged the order dated 29.8.2012 passed by the Additional Sessions Judge, Court No. 9, Farrukhabad in Criminal Appeal No, 31 of 2012 connected with Criminal Appeal No. 36 of 2012, whereby the opposite party No. 2 (Daulat Singh) has been declared juvenile in reference to Case Crime No. 671 of 2011 at P.S. Jahanganj, District Farrukhabad.

2. The facts, as they appear on the record, are that in respect to an incident dated 12.12.2011 relating to the murder of the informant''s uncle, a First Information Report was lodged by the revisionist against six persons including the opposite party No. 2 (Daulat Singh), which was registered as Case Crime No. 671 of 2011 at P.S. Jahanganj, District Farrukhabad, under Sections 147/148/149/302/307/ 504 and 506 I.P.C. Consequent to

his arrest, Daulat Singh, claiming himself to have been born on 20.6.1994, applied for being declared a juvenile. In support of his claim reliance was placed on a High School Certificate, which disclosed his date of birth as 20.6.1994. Pursuant thereto, the Juvenile Justice Board, Farrukhabad (hereinafter referred to as the Board) held an inquiry u/s 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the Act).

3. The Board rendered a fractured opinion so much so that the Principal Magistrate, placing reliance on the High School Certificate as also the transfer certificate, declared Daulat Singh a juvenile, aged 17 years 5 months and 22 days on the date of the incident whereas the other members of the Board, relying on a certificate of a Hospital that a child was born to Sunita Devi (petitioner''s mother) on 23.6.1992, negatived his claim.

4. Challenging the order passed by the Board, two appeals were filed. Appeal No. 36 of 2012 was filed by the informant (the revisionist herein) whereas Appeal No. 31 of 2012 was filed by Daulat Singh (the opposite party No. 2). The Court below allowed the appeal of the opposite party No. 2 whereas the appeal preferred by the revisionist was dismissed. While allowing the appeal, the Court below placed reliance on the High School Certificate.

5. I have perused the order passed by the Court below. A perusal thereof reveals that in the age determination inquiry statements of several witnesses were recorded. Smt. Sunita Devi, the mother of the opposite party No. 2, was examined as C.W. 1. She deposed that she was married about 19 years ago; she has three children, the eldest being 17 years of age, named Daulat Singh (the opposite party No. 2), second being Himmat Singh aged about 14 years and the third being daughter, namely, Sheetal aged 11 years; that Daulat Singh was admitted in Class-1st at Prathamik Vidyalaya, Jaitpur, where his date of birth was recorded as 20.6.1994 and he studied there up to Class 4; thereafter he studied at his maternal grand parents house up to Class 7; and thereafter he took admission at Junior High School, Jaitpur from where he passed Class 8 and took admission in Class 9 at Swami Aatmadeo Gopalanand Inter College, Ugarpur from where he passed his High School examination. The High School Mark-sheet and the school transfer certificate was brought on record, which disclosed the date of birth of Daulat Singh as 20.6.1994. Vidya Chauhan, the Head-Master of Prathamik Vidyayla, Jaitpur was examined as C.W. 2. She produced the admission register, in original, disclosing that Daulat Singh was admitted on 21.7.2001 and left the school on 5.7.2003 and that his date of birth was recorded as 20.6.1994. Mohd. Yamin Siddiqui, the Principal of Swami Aatmadeo Gopalanand Inter College was examined as C.W. 3. He produced the original of the students record register; the original of the pass-outs list; and the school leaving transfer certificate of Class 8. The documents disclosed that Daulat Singh took admission in the said Inter College in Class 9 and gave his High School examination in the year 2010, which he passed out with Roll No. 1496107. In his testimony, he disclosed that the date of birth of Daulat Singh was recorded as per the entry in the transfer certificate of Class 8.

6. In rebuttal, Aruna Devi, the village Pradhan, was examined as C.W. 4 who disclosed that a Job Card of Nar Singh (the father of Daulat Singh-opposite party No. 2) as also that of Daulat Singh (the opposite party No. 2) was prepared under the MNREGA Scheme. It was stated that a Job Card is prepared only for person who is an adult. Harpal Singh, the revisionist, was examined as C.W. 5. Harpal Singh deposed that Daulat Singh was born in the month of June 1992 in a Hospital at Barhpur. A certificate obtained from the hospital was produced to disclose that one Sunita Devi had given birth to a child on 23.6.1992. Vimal Kumar, Manager of Memorial Hospital, Barhpur was examined as C.W. 6, who deposed that from the concerned register relating to admission of the patients, it appeared that Sunita Devi had given birth to a child on 23.6.1992.

7. Relying on the testimony given by C.W.4, C.W.5 and C.W.6, it was argued that since Sunita Devi had delivered a child on 23.6.1992, and that it could not proved that any child other than Daulat Singh was born to Sunita Devi on that day, as also the fact that a Job Card was prepared in the name of Daulat Singh, it could be assumed that Daulat Singh was over 18 years of age and, as such, his claim of juvenility was liable to be rejected.

8. The Court below placing reliance on Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, held that since a matriculation certificate/ high school certificate was there on record and the veracity of the said certificate was beyond doubt, the date of birth entered in the said certificate had to be given precedence over any other evidence and as the date of birth of Daulat Singh was 20.6.1994 in the certificate, his claim of juvenility could not be denied. Accordingly, the Court below declared Daulat Singh a juvenile in reference to Case Crime No. 671 of 2011. As regard the hospital certificate, the Court below was of the view that the same was not wholly reliable inasmuch as in the patient''s admission register neither the name of patient''s husband nor the sex of the child born to the patient so admitted was disclosed. The Court below, therefore, did not place much reliance on the same.

9. The learned counsel for the revisionist has submitted that the date of birth recorded in the High School Certificate cannot be accepted as correct when there was evidence on record to show that Sunita Devi, the mother of the opposite party No. 2, had given birth to a child on 23.6.1992 and that there was no evidence to show that any other child was born to Sunita Devi on that day, and since the opposite party No. 2 was admittedly the eldest child born to Sunita Devi, therefore, it should have been assumed that the opposite party No. 2 was the child who was born on 23.6.1992. It was also submitted that C.W. 1-the mother of Daulat Singh had not explained the entry in the certificate issued by the hospital, therefore, adverse inference ought to have been drawn against her.

10. Per contra, the learned counsel for the opposite party No. 2 contended that from the evidence brought on record it was duly proved that the opposite party No. 2 had given his high school examination and that his date of birth was entered as 20.6.1994, therefore, in view of sub-rule (3) of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 precedence was rightly given to the date of birth entered in the High School

and any other evidence was wholly irrelevant and could not have been taken into consideration for negativing the claim of juvenility. Reliance was placed on a recent decision of the Apex Court in the case of Ashwani Kumar Saxena Vs. State of M.P., , wherein the Apex Court took the view that Juvenile Justice Board or a Committee functioning under the Juvenile Justice Act is not expected to conduct a roving enquiry so as to go behind the correctness of the entry made in the documents and registers kept during the normal course of business. The Apex Court observed that 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. It was contended that since in the present case, the school admission register as also the transfer certificate was produced to support the date of birth entered in the High School Certificate and as there was no challenge to the veracity of the High School Certificate, the decision of the Court below, declaring opposite party No. 2 a juvenile, cannot be faulted.

11. In reply to the contention of the learned counsel for the opposite party No. 2, the learned counsel for the revisionist placed decisions of the Apex Court in the case of Babloo Pasi Vs. State of Jharkhand and Another, ; Ravinder Singh Gorkhi Vs. State of U.P., ; Jitendra Ram @ Jitu Vs. State of Jharkhand, , so as to contend: (a) that the entry in public record can be relied upon only when the source of the entry is duly proved; and (b) that the age of a claimant should be determined on the basis of consideration of the entire evidence on record.

12. Having considered the rival submissions of the learned counsel for the parties, it is undisputed:

(a) that the evidence on record proved that at all the stages of schooling including High School the date of birth of the opposite party No. 2 was consistently recorded as 20.6.1994; and

(b) that there was no evidence to show that the high school certificate or the transfer certificate or the school admission register produced before the Court was fabricated or forged or that it did not relate to the opposite party No. 2.

13. The hospital certificate disclosing that Sunita Devi had given birth to a child on 23.6.1992 was discarded by the Court below on the ground that the hospital register had not disclosed whether she gave birth to a son or daughter and further, in the register, the name of her husband was not disclosed. Even otherwise, from the testimony of C.W. 1, which has been enclosed as Annexure 5 to the affidavit, it does not appear that Sunita Devi was confronted with the hospital certificate or that any question was put to her with regards to her having given birth to a child on 23.6.1992, in the concerned hospital. In the given circumstances, the hospital certificate to the effect that Sunita Devi gave birth to a child on 23.6.1992 is of no consequence.

14. The decisions cited by the learned counsel for the revisionist are not relevant to the facts of the case whereas the decision of the Apex Court in the case of Ashwani Kumar Saxena v. State of Madhya Pradesh (supra) clinches the issue. The Apex Court, in paragraphs 34, 35, 38 and 39 of the judgment, observed as follows:

34. Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. 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, J.J. Board or a Committee functioning under the J.J. 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 J.J. Board or the Committee need to go for medical report for age determination.

35. We have come across several cases in which trial Courts have examined a large number of witnesses on either side including the conduct of ossification test and calling for deontology report, even in cases, where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal authority or a panchayat are made available. We have also come across cases where even the Courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted.

38. We fail to see, after having summoned the admission register of the Higher Secondary School where the appellant had first studied and after having perused the same produced by the principal of school and having noticed the fact that the appellant was born on 24.10.1990, what prompted the Court not to accept that admission register produced by the principal of the school. The date of birth of the appellant was discernible from the school admission register. Entry made therein was not controverted or countered by the counsel appearing for the State or the private party, which is evident from the proceedings recorded on 11.2.2009 and which indicates that they had conceded that there was nothing to refute or rebut the factum of date of birth entered in the School Admission Register. We are of the view the above document produced by the principal of the school conclusively shows that the date of birth was 24.10.1990 hence Section 12 (3)(a)(i)(ii) has been fully satisfied.

39. The Sessions Judge, however, has made a fishing inquiry to determine the basis on which date of birth was entered in the school register, which prompted the father of the appellant to produce a horoscope. The horoscope produced was rejected by the Court stating that the same was fabricated and that the Pandit who had prepared the horoscope was not examined. We fail to see what types of inquiries are being conducted by the trial Courts and the appellate Courts, when the question regarding the claim of juvenility is

raised.

14. In view of the afore-quoted observations of the Apex Court, it is clear that once it is proved on record that the person claiming to be declared a juvenile has obtained a matriculation or equivalent certificate in due course, which discloses his date of birth, his claim of juvenility is required to be tested with reference to the date of birth entered in such certificate and a roving enquiry into the correctness of the date of birth entered in such certificate is not required while carrying out the age determination enquiry as contemplated in the Act.

15. In the instant case, the school admission register, the transfer certificate and the high school certificate as well as the corresponding gazette were all produced in original and their genuineness was proved by examining the person in-charge of those registers/documents. There has been no challenge to the fact that the opposite party No. 2 was a student in those schools and that the certificates related to him. In the said circumstances, if the Court below, relying on the high school certificate, found the opposite party No. 2 to be below 18 years of age on the date of the incident, no fault can be found with the order. For the reasons aforesaid, I do not find any illegality, impropriety or jurisdictional error in the order passed by the Court below. The revision is, accordingly, dismissed.