(2010) 08 CAL CK 0002

Calcutta High Court

Case No: C.R.R. No. 575 of 2010

Bablu Roy		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision: Aug. 20, 2010

Acts Referred:

- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 64, 7A, 7A(1)
- Juvenile Justice (Care and Protection of Children) Rules, 2007 - Rule 12, 19, 19(3)
- Penal Code, 1860 (IPC) - Section 201, 302, 380, 457

Citation: (2011) 1 CHN 420

Hon'ble Judges: Ashim Kumar Roy, J

Bench: Single Bench

Advocate: Navanil De, for the Appellant; Sandipan Ganguly, for the Respondent

Judgement

Ashim Kumar Roy, J.

The Petitioner who has been charge sheeted under sections 457/380/302/201 of the Indian Penal Code after commitment of this case to the Court of Sessions, raised a claim of juvenility before the Trial Court. After his such claim was turned down, the Petitioner approached this Court and this Court directed the learned Trial Court to hold an enquiry in this regard. Accordingly, an enquiry was held and during such enquiry a copy of the certificate issued by the Headmaster of Ambari Falakata CM. High School (H.S.) showing his date of birth as March 29, 1991, as per the Admission Register was exhibited. The Admission Register of the school on the basis of which such certificate was issued was also exhibited. But the Trial Court refused to act on the said document, on the ground, that during the course of examination, of the Headmaster, who issued such certificate, he admitted that date of birth was recorded in the Admission Register on the basis of a document issued by Bhotpara B.F. Primary School and no document from Bhotpara B.F. Primary School was produced. However, the Trial Court relying on the Ossification Test report held the Petitioner is not a juvenile. In this criminal revision the Petitioner has challenged the said order.

2. The learned Counsel appearing on behalf of the Petitioner vehemently urged that in the circumstances as aforesaid the learned Trial Court should have called for the records from the Bhotpara B.F. Primary School to ascertain the Petitioner''s claim of juvenility. Whereas Mr. Ganguly, learned Counsel appearing for the State, in his usual fairness submitted that he has no objection if the Trial Court is directed to consider relevant records of the primary school and then to decide the Petitioner''s claim of juvenility.

3. I have given my anxious and thoughtful consideration to the submissions made on behalf of the parties. Perused the materials on records.

4. The section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 while prescribes the procedure to be followed when claim of juvenility is raised before any Court, the Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 prescribes the procedure to be followed in determination of age. The said provisions are read as follows:

Section 7A. Procedure to be followed when claim of juvenility is raised before any Court.--(1) Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the Court finds a person to be a juvenile on the date of commission of the offence under Sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a Court shall be deemed to have no effect."

Rule 12. Procedure to be followed in determination of age.--

(1) In every case concerning a child or a juvenile in conflict with law, the Court or the Board or as the case may be the committee referred to in Rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in. the absence whereof;

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

(b) and only in the absence of either (i), (ii) or (iii) of Clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the committee, for- the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

And, while passing orders in such case shall after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the Clauses (a)(i), (ii), (iii) or in the absence whereof, Clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in Sub-rule (3), the Court or the Board or as the case may be the committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the Court or the Board after examining and obtaining the certificate or any other documentary proof referred to in Sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in Sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.

5. According to the Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, in order to determine the age of a child or juvenile or juvenile in conflict with law, the Court has to seek evidence by first obtaining the matriculation or equivalent certificates and in absence of that, the date of birth certificate from the school first

attended and in the absence whereof by obtaining the birth certificate given by a corporation or a municipal authority or a panchayat and when the aforesaid documents are not available, the medical opinion has to be sought from a duly constituted medical board. In this case as it appears from the materials on record that the Petitioner first attended Bhotpara B.F. Primary School, therefore, the learned Court below should have obtained the date of birth certificate from the said school, however, no such attempt has been made and the learned Court relying on the Ossification Test Report held the claim of the Petitioner is not tenable. According to the mandate of the aforesaid rules, when no such certificate of birth is available from the concerned authority then in that case Court has to obtain a medical opinion from a duly constituted Medical Board. In this case neither the Court made any attempt to obtain the birth certificate from the school first attended by the Petitioner, nor any Medical Board has been constituted to obtain evidence as regards to the age of the Petitioner but on the Ossification Test Report the Court rejected the Petitioner''s plea of juvenility, in my opinion, the approach of the Court below is wholly erroneous and not in accordance, with law, accordingly the order impugned is set aside.

It is directed at once upon receipt of communication of this order, the Trial Court shall call for the relevant records from the Bhotpara B.F. Primary School, viz., the Admission Register and upon consideration of the same shall dispose of the Petitioner''s claim of juvenility in accordance with law and in the event no records as to the date of birth of the Petitioner is available from the Bhotpara B.F. Primary School the Petitioner first attended, then in that case the Court concerned shall constitute a Medical Board in accordance with the provisions of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. The learned Court is directed to conclude the entire enquiry within the time stipulated in the statute.

The office is directed to communicate this order to the Trial Court, in course of this week, by special messenger at the cost of the Petitioner to be deposited in course of tomorrow.

Criminal Section is directed to deliver urgent photostat certified copy of this Judgment to the parties, if applied for, as early as possible.