

Dhanjay Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-03-2004

Judge : Chandramauli Kr. Prasad, J.

Acts : Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 53

Appeal No. : Cr. Revision No. 452 of 2003

Appellant : Dhanjay Singh

Respondent : State of Bihar and ors.

Advocate for Def. : Vijay Kumar, Adv.

Advocate for Pet/Ap. : Mahesh Narain Parbat, Adv.

Disposition : Appeal allowed

Prior history : Chandramauli Kr. Prasad, J. 1. This revision application is directed against the order dated 12.5.2003 passed by the Additional Chief Judicial Magistrate, Chapra in U.T. No. 134 of 2003 (ST. No. 495 of 2003) arising out of Taraiya P.S. Case No. 54 of 2002, whereby the prayer made by the petitioner to declare him a juvenile, has been rejected. Further prayer made by the petitioner is to set aside the order dated 28.6.2003 passed by the Sessions Judge, Saran at Chapra in Cr. Appeal No. 54 of 20

Judgement :

Chandramauli Kr. Prasad, J.

1. This revision application is directed against the order dated 12.5.2003 passed by the Additional Chief Judicial Magistrate, Chapra in U.T. No. 134 of 2003 (ST. No. 495 of 2003) arising out of Taraiya P.S. Case No. 54 of 2002, whereby the prayer made by the petitioner to declare him a juvenile, has been rejected. Further prayer made by the petitioner is to set aside the order dated 28.6.2003 passed by the Sessions Judge, Saran at Chapra in Cr. Appeal No. 54 of 2003 whereby the appeal preferred against the aforesaid order, has been dismissed.

2. Short facts giving rise to the present application are that the petitioner is an accused in Taraiya P.S. Case No. 54 of 2002 registered under Sections 302, 201 and 201/34 of the Indian Penal Code. Petitioner filed application claiming himself to be a juvenile. The Additional Chief Judicial Magistrate, Chapra, by order dated 18.6.2001 (Annexure-3), declared him to be a juvenile. Thereafter the petitioner filed application for grant of bail. The Additional Chief Judicial Magistrate, by order dated 25.6.2001 rejected the petitioner's prayer for grant of bail. Petitioner thereafter filed Cr. Appeal No. 73 of 2001 and the Sessions Judge, Saran at Chapra, by judgment dated 23.7.2001, disposed of the appeal, set aside the order of the Additional Chief Judicial Magistrate dated 18.6.2001 declaring the petitioner to be a juvenile and directed to hold a fresh inquiry. After the remand of the matter to the Court of the Additional Chief Judicial Magistrate, one witness was examined on 24.3.2003 who produced the school records. Petitioner was further examined by a Medical Board under the orders of the Court and the Medical Board submitted its report dated 22.11.2002 holding the petitioner to be between the age of 18-19 years. The occurrence of this case had taken place on 14.6.2000. The Additional Chief Judicial Magistrate by the impugned order dated 12.5.2003 held the petitioner not to be juvenile and while doing so, he observed as follows :--

'So, from the perusal of the case record, I find that the date of occurrence as reported in the formal FIR is 14.6.2000, it means on the date of occurrence, as per his certificate, he was found to be the age of 15 years and about 2 months, while on the date of his medical examination, he was found 15 years 7 months of 16 years and 7 months at the time of occurrence as per the medical report. For my

satisfaction, since he does not appear to be minor, once again, I directed him to appear before me and I verified him physically, and assessed his age and as per my assessment and estimation, he is found to be at present of not less than 21 to 22 years old i.e., on 30.4.2002 and hence, in no way, I find him, in view of the above to be a juvenile under 18 years of age on the date of occurrence, in this case. So, he is declared major.'

3. Aggrieved by the same, petitioner preferred appeal and the Sessions Judge, Chapra by judgment dated 28.6.2003 passed in Cr. Appeal No. 53 of 2003, dismissed the same,

4. Mr. Mahesh Narain Parbat appearing on behalf of the petitioner submits that from the certificate produced by the petitioner his age on the date of occurrence was 15 years and 2 months and on the date of his medical examination, in between 15 and half years to 16 and half years and therefore, the Additional Chief Judicial Magistrate ought to have declared the petitioner to be a juvenile. He submits that the learned Magistrate has not found the petitioner to be a juvenile on the basis of his own assessment. The learned Magistrate has observed that on 30th of April, 2002, petitioner cannot be said to be less than 21-22 years and hence, cannot be said to a juvenile. Mr. Parbat submits that in the face of the certificate in regard to the age and report of the Medical Officer, the learned Magistrate ought not to have relied on his own assessment.

5. Learned counsel for the opposite party, however, submits that the assessment of age having been made by the Magistrate himself, same does not deserve to be interfered by this Court in exercise of its revisional jurisdiction.

6. True it is that the Court is considered to be expert of experts but this principle has its own limitation. In case, the Magistrate believed that the assessment made by the Medial Board or the certificate relied on by the petitioner is not worthy of reliance in view of his own assessment, nothing prevented him to refer the petitioner for examination by a Medical Board consisting of person of higher calibre and responsibility. In my opinion, in the facts of the present case, he ought not to have declined the prayer of the petitioner only on the basis of his personal assessment.

7. The learned Additional Chief Judicial Magistrate shall now refer the petitioner to a Medical Board consisting of doctors of the Professors rank of any Medical College who shall assess the age of the petitioner and submit a report to him. The learned Magistrate after giving opportunity to the petitioner, shall consider this question afresh in accordance with law. The aforesaid exercise be completed within three months from the date of receipt/communication of a copy of this order.

8. In the result, the application is allowed. The impugned orders are set aside and the matter is remitted back to the Additional chief Judicial Magistrate, Chapra for reconsideration in accordance with law bearing in mind the observation aforesaid.

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