

Md Meraj Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Nov-27-2014

Appellant : Md Meraj

Respondent : The State of Jharkhand and Anr

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Rev. No. 651 of 2014
Md. Meraj . Petitioner Versus The State of Jharkhand d& Ors. Opposite Parties
----- CORAM: HONBLE MR. JUSTICE AMITAV K. GUPTA For the Petitioner :
Mr. Mahesh Tiwari For the State : A.P.P For the O.P No.2 :Indrajit Sinha -----
07/Dated:

27. 11/2014 The instant revision has been preferred against the order dated 18.6.2014 passed by the District Judge, 3rd Giridih, in S.T. No.296 A/2013 (arising out of Gandey P.S. Case No.29/2013 corresponding to G.R. No.1086 of 2013) whereby the application under Section 7(A) of the Juvenile Justice (Care and Protection) Act, 2000 (for short J.J.Act) filed by O.P.No.2 was allowed as declaring him to be a juvenile.

2. An F.I.R was lodged by the petitioner stating that his father, Abdur Rauf Ansari and elder brother Md. Ziauddin were returning home on a motorcycle and the petitioner/informant was following them on a scooty. That at Ahardih (near Gandey) the accused persons came on a Tata Sumo vehicle and stopped the motorcycle and assaulted his father and brother with a rod and when his father

and brother tried to flee away they were dashed by the Tata Sumo. On the alarm raised by the petitioner villagers came there, whereupon the accused persons fled from the place of occurrence. It is alleged that the accused committed the crime on account of contract work of a school.

3. After investigation charge-sheet was laid against O.P.No.2 under Section 302 IPC and other Sections of IPC.

4. Learned counsel for the petitioner has assailed the impugned order inter-alia on the following grounds:- (i) that after investigation the police submitted the charge-sheet wherein the petitioner's age has been mentioned as 34 years. (ii) that the enquiry under Section 7A of the J.J.Act is to be done in terms of the procedure prescribed under Rule 12 of J.J.

Rules, 2007 which prescribes that priority has to be given to Matriculation Certificate or its equivalent but the District Judge,3rd failed to consider that the opposite party had relied on the registration slip of Wastania examination mentioning the date of birth as 15.8.1995, issued by Jharkhand Academic Council , Ranchi wherein the name of Madrasa Ashraful Uloom, Karaiya, Deoghar appears. It is contended that there is no such Madrasa functioning at Karaiya vilalge and a certificate to that effect has been given by the Masjid Committee (Annexure-2). It is argued that 'Vastania' is not equivalent to Matriculation but is equivalent to Middle School as would be evident from the copy of notification of Jharkhand Academic Council (Annexure-6). It is urged that during enquiry under Section 7A the father of opposite party was examined as EW-1 and Headmaster of Madrasa Jamia Faizul Rasid, Kulgo, Bagodar was examined as E.W.2. It is argued that when opposite party has relied on the registration slip of 'Wastania' issued by JAC wherein the name of Madarss Islamia Ashraful Uloom, Deoghar has been mentioned then it is inexplicable as to why opposite party had examined Head Maulvi of Madarsa Jamia Faizul Rasid, Kulgo. According to the learned counsel the documents namely the voters list dated 1.1.2011 wherein the age of the opposite party has been mentioned as 19 years (Annexure-4); the photocopy of Admission Register of Manjhladih Urdu School, the school first attended by the opposite party showing the date of birth of opposite party no.2 as 10.1.1988; the

statement of O.P.No.2 under Section 313 Cr.P.C. recorded on 17.6.2009 recorded in the trial arising out of Gandey P.S. Case No.20/8 wherein O.P.No.2 disclosed his age as 19 years (Annexure-5) were filed by the prosecution as would be evident from the copy of the order-sheet dated 28.11.2013 of S.T.No.296A/13 wherein it is mentioned that documents were filed by the prosecution. It is argued that the trial court without considering and appreciating documents has passed the impugned order which is not sustainable in law as no opportunity was given to the prosecution or the informant to rebut the documents filed by the O.P.No.2. 3 5. Learned counsel for O.P.No.2 while controverting the submissions has contended that there is no illegality or impropriety in the order passed by the court below. The certificate issued by the Headmaster of Madarsa Islamia Ashraful Uloom, Karaiya, Deoghar has been marked as Ext.2 and Mohd. Rafique Alam Headmaster of Madrasa Jamia, Faizul Rashid Kulgo has been examined as E.W.-2 and he has proved the Admission Register of the school which was first attended by O.P.No.2. The name of O.P.No.2, is mentioned at serial 1071/271 wherein the date of birth has been mentioned as 15.8.1995; the father (E.W.-1) of the petitioner/ O.P.No.2 has also deposed that the petitioner/ O.P.No.2 is studying at Madarsa Kulgo. That Rule 12 lays down the priority of the documents which is to be considered by the court for determination of juvenility.; that the said rule stipulates that firstly the matriculation or equivalent certificate has to be considered, in absence whereof, the certificate of the school first attended (other than a play school) has to be looked into. That in the instant case the Admission Register of the school first attended has been proved by the Headmaster of Madarsa Jamia Kulgo and his evidence has not been challenged by the petitioner. As noticed in the Admission Register the date of birth of O.P.No.2 is mentioned as 15.08.1995. That the Court below has rightly held that there is no cogent reason to disbelieve the Admission Register, accordingly it found that O.P.No.2 was a juvenile on the date of occurrence. To substantiate the contention reliance has been place on the decision in 2012 (9) SCC750 in the case of Ashwani Kumar Saxena Vs. State of M.P. It is contended that enquiry under Section 7A as per the procedure laid down in Rule 12 of J.J.Rules (2007) does not envisage or contemplate a roving enquiry so as to go behind the certificate to examine the correctness. That the roving enquiry can only be made when the documents or certificates are found to be false

or manipulated. But in the instant case the prosecution has not been able to prove that the said documents were fabricated or manipulated and the court rightly passed the order in terms of the procedure prescribed under Rule 12. Learned counsel has also relied on the decision in the case of Jabar Singh Vs. Dinesh & Anr. reported in (2010)3 SCC757 and contended that the Apex Court has categorically held that in exercising the revisional power, the High Court, cannot convert itself into Court of appeal and reverse the findings of the facts found by the trial court on the basis of evidence and material on record. It is argued that in the absence of any illegality or impropriety of the impugned order, the documents adduced by the petitioner has to be considered by the revisional court; that in the absence of any illegality or impropriety in the order this revision is fit to be dismissed in view of the settled legal position.

6. Having heard the submissions and on perusal of the record it transpires from copy of the order-sheet dated 28.11.2013 and 30.1.2014 that the prosecution had filed photocopy of documents as contended by the petitioner and the trial court ordered for keeping it on record and the matter was posted on 18.2.2014 for enquiry whereafter again it was fixed for 15.3.2014 for enquiry. The witnesses on behalf of the opposite party were examined and cross-examined. It is evident from the impugned order that no discussion has been made regarding the documents filed/produced by the prosecution, neither there is any recital that the prosecution or informant had been heard or opportunity was given to the informant to adduce evidence to rebut the evidence of the petitioner. Apparently, the finding is based on the basis of the documents produced by O.P.No.2. The documents filed by the prosecution or the informant has not been considered or discussed nor the submissions advanced by the petitioner have been discussed. It is noticed that the enquiry has been conducted without giving fair opportunity of hearing to the prosecution or informant which is against the principle of audi alteram partem. The principle of natural justice is essential for adjudication of any matter. Thus in the attending facts and circumstances it is held that the impugned order is not sustainable and is hereby, set aside. The matter is remitted to the court below with a direction to give an opportunity to the parties to adduce the evidence or documents and after hearing the parties pass necessary order in accordance to law.

7. With the said direction and observation, the revision application is hereby, allowed and disposed of. (AMITAV K. GUPTA, J.) Fahim/

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