

Om Prakash Vs. State of U.P. and Another

Om Prakash Vs. State of U.P. and Another

SooperKanoon Citation : sooperkanoon.com/918089

Court : Allahabad

Decided On : Dec-03-2010

Judge : Ashok Srivastava, J.

Appeal No. : CRIMINAL REVISION No. - 2398 of 2008

Appellant : Om Prakash

Respondent : State of U.P. and Another

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : S.P. Singh Parmar, Adv

Judgement :

1. This revision has been filed by the revisionist under the provisions of Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000,(for short the Act) feeling aggrieved by the judgment and order dated 2.8.08 passed by the learned Sessions Judge, Mathura, while disposing of Criminal Appeal No.101 of 2008.

2. The brief facts of the case are that the revisionist is involved in case crime no.201 of 2006 under Sections 302, 504 I.P.C., P.S.Kosi Kalan, District Mathura. He has been named in the F.I.R. After investigation a charge sheet was filed against him which was submitted by the investigating officer in the Court of learned Magistrate. Thereafter the case was committed to the Court of Addl.

Sessions Judge, Mathura where the case was transferred by the learned Sessions Judge. The revisionists moved an application before the learned Judge on 29.11.07 that he was a juvenile on the date of the alleged offence and he further prayed that his matter may be referred to the Board. Vide his order dated 29.1.08 the learned Judge referred the matter to the Board. The Board considered the application of the revisionist relating to his claim of juvenility and thereafter vide its order dated 4.7.08 the Board held that on the relevant date the age of the revisionist was about 17-1/2 years and therefore he was a juvenile on that date. Feeling aggrieved by this finding opposite party no.2 filed an appeal under Section 52 of the Act. The learned Sessions Judge after hearing both the parties quashed the order passed by the learned Board dated 4.7.08 and held that on the relevant date the revisionist was not a juvenile. Hence this revision.

3. On 12.7.2010 this revision was listed for hearing. On that date the learned counsel for the revisionist and learned AGA were present but no one was present from the side of opposite party no.2.

4. From a perusal of the office report dated 16.7.09 it is evident that opposite party no.2 has been served personally by the notice issued by this Court despite he remained absent.

5. I have heard learned counsel for the revisionist and the learned AGA and perused the records.

6. It should be mentioned here that lower court record has been received and is tagged with the file of this revision.

7. The date of the order passed by the Board is 4.7.08. This indicates that the Juvenile Justice(Care and Protection of Children) Rules, 2007 (for short the Rules) had come into force on that date. Rule 12 of the Rules deals with the procedure to be followed in determination of age. The relevant portion is as follows:-

"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 can not 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."

8. In the instant case admittedly the revisionist does not have a matriculation or equivalent certificate. Therefore sub-clause (ii) of Clause (a) of sub-rule (3) of Rule 12 of the Rules shall come into picture. It is evident from the records that the learned Board has endeavoured to decide the age of the revisionist under the provisions contained in this sub-clause. For the purpose he had examined a number of witnesses and documents were also filed from both the sides. After

considering the statements of the witnesses and the documents filed before it the Board was of the opinion that the documents filed relating to the date of birth of the revisionist were not believable as they were not proved in accordance with Section 35 of the Indian Evidence Act. Therefore the learned Board gave a categorical finding that the school leaving certificate filed from both the sides were manufactured and they could not be believed as they have not been proved in accordance with law.

9. In the instant case sub-clause (iii) is not applicable because admittedly no birth certificate is there given either by a Corporation or a Municipal authority or a Panchayat. In these circumstances, the Board had no option but to take the help of clause (b) of sub-rule 3 of Rule 12 of the Rules. He had also taken into consideration sub-rule 4 of Rule 12.

10. From the perusal of the lower court record it is evident that the original report issued by the office of the Chief Medical Officer, Mathura is available in original which is paper No.7 (Ba) of the said file. In this certificate the Medical Board had opined that on 22.2.08 the age of the revisionist was about 20 years. Keeping in view this figure the learned Magistrate has rightly calculated the age of the revisionist on the relevant date i.e. 2.9.06 as 17-1/2 years after giving him the benefit of sub-rule 4 of Rule 12 of the Rules.

11. I have examined the judgment and order passed by the learned Sessions Judge, Mathura in Criminal Appeal No.101/08 dated 2.8.08 passed under Section 52 of the Act. From perusal of this judgment it appears that the learned Sessions Judge had found that the school leaving certificate issued by Poorva Madhyamik Vidyalaya, Hatana is more believable as compared to the school leaving certificate issued by Shree Krishna Prathmik Vidyalaya., Chhata, Mathura. It is admitted case of the parties that the revisionist had studied first in the school at Chhata and thereafter he joined the school at Hatana. It appears that the learned Sessions Judge did not take notice of sub-clause (ii) of clause (a) of sub-rule 3 of Rule 12 of the Rules where it has been mentioned that that certificate of school shall be taken into consideration which was first attended by the juvenile.

12. From perusal of the judgment passed by the learned Sessions Judge it is evident that he had not considered the provisions as contained under Section 35 of the Evidence Act while believing the school leaving certificate issued by the Poorva Madhyamik Vidyalaya, Hatana. It is admitted case of the parties that both the schools wherefrom the school leaving certificates were issued were not government institutions nor the Principals of the two schools come within the definition of public servant. Therefore, no presumption under Section 35 of the Evidence Act can be drawn regarding the two school leaving certificates. They had to be proved in accordance with various provisions of Evidence Act by examining the persons, who had prepared the said documents and the original one should also be produced before the Court concerned.

13. From perusal of the lower court record it is evident that both the school leaving certificates have not been proved in accordance with the provisions contained in the Indian Evidence Act. Therefore, the learned Board had rightly did not take into account the two school leaving certificates while determining the age of the revisionist.

14. In the above circumstances, I am of the view that the finding recorded by the learned Sessions Judge is erroneous and I am also of the considered view that the view taken by the learned Board is correct.

15. Thus the revision is allowed. The judgment and order passed by the learned Sessions Judge, Mathura in Criminal Appeal No.101/08 dated 2.8.08 is quashed and set aside and that of the Board is restored. The necessary consequences shall follow keeping in view the fact that the revisionist was a juvenile on the relevant date.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com