

Mukesh Kumar Singh and Another Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Aug-11-2011

Reported in : 2012CrLJ118(NOC)

Judge : Rajesh Chandra

Appeal No. : CRIMINAL REVISION NO. 5402 OF 2009

Appellant : Mukesh Kumar Singh and Another

Respondent : State of U.P. and Another

Judgement :

Rajesh Chandra, J.

This revision has been filed by the revisionists against the judgment and order dated 26.11.2009 passed by the Additional Session Judge, Court no. 1, Ballia, in S.T. No. 91/2005, by which the Additional Session Judge dismissed the applications of the revisionists for declaring them as Juvenile in conflict with law.

In brief, the facts of the case are that the S.T. No. 91/2005, State Vs. Ajeet and Others was pending in the Court of Additional Session Judge, Court no. 1, Ballia. In that Sessions Trial an application was moved by the revisionist Arvind Kumar Singh alleging that as per the marksheet of the high school examination his date of birth is 03.05.1986 whereas the alleged incident, in which he is an accused, took place on 11.10.2001. It was further alleged that on the date of occurrence, i.e.

11.10.2001 the age of the revisionist Mukesh Kumar was 15 years and 159 days. It was claimed that in view of the provisions of "The Juvenile Justice (Care and Protection of Children) Act, 2000, the revisionist Mukesh Kumar is a juvenile and as such he cannot be tried with other accused.

The other revisionist Arvind Kumar also moved similar application mentioning therein that on the date of occurrence i.e. 11.10.2001, he was only 17 years 2 months and 28 days as his date of birth as per the high school mark-sheet is 13.07.1984. He also claimed the benefit of the said Act.

Vikram Singh, the informant of the F.I.R. of Crime No. 133-A/2001 under Section 302 I.P.C. filed objections against the above-said applications of the revisionists and alleged that incorrect date of births have been given by the revisionists at the time of high school examination and infact the date of birth of the revisionist Mukesh is 15.07.1983 whereas the date of birth of the revisionist Arvind is 04.07.1981. It has further been alleged in the objections that these dates of birth are confirmed by the transfer certificate issued from the Primary Pathsala Bhikha, Chapra. District Ballia. Vikrama Singh further contended that in 'parivar register' the date of birth of the revisionist Arvind has been noted as 12.02.1978 and the date of birth of Mukesh has been registered as 02.12.1980.

Evidence was recorded in the Sessions Court and after considering the entire evidence adduced by the parties, the learned Additional Session Judge came to the conclusion that the revisionists were not juvenile on the date of occurrence and rejected their applications by passing the impugned order dated 26.11.2009. The said order dated 26.11.2009 has been challenged in this revision.

I have heard Shri Anand Kumar Pandey, learned counsel for the revisionists, the learned A.G.A. and Shri Akhilesh Kumar Singh, learned counsel for the opposite party no. 2, Vikrama Singh and I have also gone through the material available on record. It is not in dispute that on the date of occurrence i.e. 11.10.2001, The Juvenile Justice (Care and Protection of Children) Act, 2000, had been enacted and was in force since 01.04.2001. It is also not in dispute that at the relevant time the U.P. Juvenile Justice (Care and Protection of Children) Rules, 2004, were also in force. Now the question is as to whether the dates of birth given in the mark-

sheets of high school examination of the revisionists be relied upon or the date of births mentioned in the records of Primary Pathsala Bhikha Chapra, be given preference. To resolve this controversy it is proper to refer Rule-22 of the said Rules of 2004.

" Rule-22:- Procedure to be followed by a Board in holding inquiries and the determination of age:-

1. -----

2. -----

3. -----

4. -----

5. In every case concerning a juvenile or child, the Board shall either obtain-

(i) a birth certificate given by a corporation or a Municipal Authority; Or (ii) a date of birth certificate from the school first attended' or

(iii) matriculation or equivalent certificates, if available, and

(iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board, regarding his age; and when passing orders in such cases 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.

A perusal of Sub-rule 5 of Rule 22 makes it evident that a date of birth certificate from the school first attended has to be given preference over the matriculation or equivalent certificates.

In the present case the revisionists have examined Bheem Singh, clerk of Sudisht Bagh Inter College, Ballia, who has stated that the revisionist Arvind Kumar took admission in class 9th in the school on 31.08.1996 and at that time his date of

birth was recorded as 13.07.1984. He further stated that the revisionist Mukesh Kumar was admitted in the school on 11.07.1998 and at the time of admission, his date of birth was recorded as 03.05.1986. However, during cross examination he admitted that he has not brought the transfer certificates to the Court on the basis of which the dates of birth of the two revisionists were recorded in the school.

On the other hand when the headmaster of Primary Vidyalai, Bhikha, Chapran, namely Janardan Singh, was examined, he stated in the Lower Court that he has brought the original admission register of the school and as per the entries made in the register the revisionist Mukesh Kumar was admitted in the school on 25.09.1991 and at that time his date of birth was recorded as 15.07.1983. Similarly Arvind Kumar Singh was admitted in the school on 18.07.1986 and at that time his date of birth was recorded as 04.07.1981. He proved the entries. He further stated that he had issued the transfer certificates relating to the revisionists under his own signatures and on the basis of the entries made in the register.

The learned counsel for the revisionists argued that the statement of Janardan Singh cannot be believed as the register in which the names of the revisionists have been entered has not been certified by any authority. The contention is that fictitious entries of the names of the revisionists have been made in the register just to create evidence against them. It was also argued that the transfer certificates were issued by Janardan Singh without their being any order of the S.D.I.

I have considered over the said submissions and I am satisfied that these do not contain any water. The register is being maintained in the school since 1978 and there is nothing in the evidence of Janardan Singh showing that at any point of time this register was discontinued or there is any change in the serial number given to the students at the time of admission in the school. Janardan Singh has categorically stated that the revisionist Arvind Kumar was admitted on 18.07.1986 and his name was entered in the register at serial no. 1923. Similarly, when the revisionist Mukesh Kumar Singh got admission in the school on 25.09.1991 his name was entered at serial no. 2106. Thus there is no reason to disbelieve the statement of Janardan Singh to the effect that the two revisionists took admission

in the school. The photostat copies of the transfer certificates of Mukesh Kumar Singh and Arvind Kumar Singh, signed by the witness Janardan Singh, have also been filed in the revision at page no. 38 and a perusal of the transfer certificate of Mukesh Kumar Singh makes it evident that he could not pass class 5th in the year 1993, hence, his name was scored out from the school register. The transfer certificate of the revisionist Arvind Kumar Singh shows that he could not pass class 2nd examination in the school and due to his continuous absence from the school his name was scored out from the school register in 1987.

The two revisionists have appeared in high school examination hence it is confirmed that they must have got education up to class 8th in some school. If the revisionists had not studied. Primary Vidyalaya Bhikha Chapra, as according to them the entries of their names in that school are fictitious, it was their duty to apprise the Court as to in which school they got the primary education. They were further obliged to produce the documents showing their education in that other school. In the absence of any such record it is difficult to believe this version of the revisionists that they did not get any education in primary vidyalaya Bhikha Chapra. If they were the students of Primary Pathsala of Bhikha Chapra, then there is no reason to disbelieve the dates of birth as have been mentioned in the register of that school and have been proved by the witness Janardan Singh.

Again, Janardan Singh has stated that the transfer certificates were issued from the school, (whose photostat copies have been filed as page no. 38) in which dates of birth of the two revisionists have been given. After leaving this Primary Vidyalaya Bhikha, Chapra, the revisionists must have taken admission in some other institution and must have submitted their transfer certificates there. The revisionists could have summoned those original transfer certificates from that school and could have shown that the transfer certificates which have been proved by Janardan Singh do not contain the correct dates of birth. The revisionists have not done anything in this regard and as such the dates of birth given in the Primary Vidyalaya Bhikha Chapra cannot be disbelieved.

So far as the dates of birth given in the school, from where they appeared in the high school examination, are concerned, there may be so many reasons for the

revisionists to show their lesser age. It is a well known fact that at the time of taking admission in the high school there is a tendency of the parents to show a lesser age so that the age benefit may be taken at a future date and specially to get a Government job. There may be other reasons for not showing the correct date of birth while taking admission in the high school classes.

In view of the provisions of Rule 22 noted above the dates of birth as given in the primary school are to be believed as that is the first disclosure about the date of birth by the parents of the students.

In view of the above, I am satisfied that the Lower Court has not committed any illegality in passing the impugned order and coming to the conclusion that the revisionists are not juveniles in conflict with law. The impugned order does not warrant any interference in the exercise of revisional jurisdiction.

The revision is accordingly dismissed.

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