

Court No. - 67

Case :- CRIMINAL REVISION DEFECTIVE No. - 136 of 2022

Revisionist :- Naushad Ali

Opposite Party :- State Of U.P. Through Secretary Home And Another

Counsel for Revisionist :- Mehdi Abbas, Suresh Kumar Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi, J.

Heard Shri Suresh Kumar Maurya, learned counsel for the revisionist and learned A.G.A. Perused the record.

There is delay in filing the present revision. Learned counsel for the revisionist submits that on account of Covid pandemic the revisionist could not come to the Court within time specified, therefore, delay may be condoned.

Cause shown is sufficient. The delay condonation application is allowed and the delay in filing the revision is condoned.

By filing of the present criminal revision the revisionist is challenging the validity and legality of order dated 07.12.2019 passed by the Special Judge, POCSO Act/Additional Sessions Judge, Court No.3, Bulandshahr in Criminal Case No.523 of 2017, u/s 363, 366, 376, 120B, 420 I.P.C. and Section 04 of POCSO Act, P.S.-Kakod, District-Bulandshahr, whereby Application No.3B moved on behalf of revisionist for declaring him to be juvenile has been rejected.

I have perused the order impugned, whereby the Application No.3B moved by Smt. Sabra, mother of the revisionist, has been rejected holding that on the date of incident the revisionist was major one as his date of birth is 7.4.1994.

Learned counsel for the revisionist has drawn attention of the Court to the provisions of Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 which reads thus :

"94 (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

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

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order."

Learned counsel for the revisionist has also drawn attention of the Court to the High School Certificate of the revisionist, annexed as Annexure-9, whereby it is clear that the revisionist Naushad Ali has passed the High School Examination, 2015 from the Board of High School and Intermediate Education U.P. and in the certificate his date of birth mentioned as 4.3.2001. Submission is that the learned Special Judge while determining the age of revisionist has not taken into account the either of the documents as enumerated in Section 94(2) of the Juvenile Justice Act, 2015 and declined to declare him (revisionist) juvenile.

Perusal of impugned order seems that the learned Special Judge, POCSO Act has grossly erred in law while relying upon the Learning License of the revisionist and Voter I.D. Card, because none of these documents should be taken into account while determining the age of a juvenile. When in the High School Certificate the age of the revisionist is mentioned, which is available before the learned Special Judge, POCSO Act, he has to determine the age of the revisionist after taking into account the High School Certificate alone, but he has not done so and has wrongly rejected the claim of juvenality relying upon the documents which are not categorized in the Act of 2015.

Under the circumstances, the impugned order dated 07.12.2019 passed by the Special Judge, POCSO Act/Additional Sessions Judge, Court No.3, Bulandshahar is hereby quashed and the matter is remanded back to learned Special Judge, POCSO Act/Additional Sessions Judge, Court No.3, Bulandshahar with a direction to re-consider and re-visit the entire matter once again and decide the matter afresh, after taking into account the High School Certificate of the revisionist and authenticating

and evaluating its genuineness, by passing a well reasoned order on merits strictly in accordance with law within a period of eight weeks from the production of certified copy of this order.

With the aforesaid direction, the present revision stands disposed off.

Order Date :- 8.4.2022

M. Kumar