

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 818 OF 2020
(Arising out of SLP(CrI.) No. 209/2020)

A AND ANR. .. APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH
AND ORS. .. RESPONDENT(S)

O R D E R

Leave granted.

This appeal by A & B (names withheld) takes exception to Order dated 30.07.2019 passed by the High Court of Judicature at Allahabad, which rejects the writ petition preferred by the Appellants and directs A should be taken to Protection Home (Nari Niketan), Meerut.

The primary dispute relates to the age of A. As per the Aadhaar Card, her date of birth is 23.07.2000. Further, the High Court during the pendency of the writ petition had directed medical examination of A. Thereupon, the Chief Medical Officer, Meerut had estimated the age of A as to 18 years on the basis of the x-rays of the right elbow and right knee which had revealed that epiphysis was fused. Likewise, x-ray of

the right wrist disclosed all epiphysis were almost fused. However, x-ray of right clavicle disclosed that epiphysis medial end was not fused. Thereupon, the Division Bench of the High Court had called upon the Chief Medical Officer to determine the upper and lower age of A. The Chief Medical Officer had opined A was between 18 years to 20 years.

Parents of A have registered the First Information Report against B for enticing and forcibly seducing their daughter. A, however, in a statement before the police has stated that she has voluntarily entered into relationship and married B, without any pressure and coercion. In support she has produced certificate of marriage issued by Marriage Registration Officer, Ghaziabad. In her statement before the Magistrate, under Section 164 of Code of Criminal Procedure, she has affirmed the court marriage on 17.01.2019. Further, A in clear terms stated that she wants to be with B, who had neither intimidated nor seduced her.

The impugned order passed by the High Court relying upon Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (J.J. Act), holds that primacy is to be given to the date of birth

certificate from the school or the matriculation certificate or any equivalent certificate from the concerned examination board. In the absence thereof, the birth certificate given by the Municipal Corporation or Panchayat can be taken into consideration. Only in the absence of aforesaid any certificate as mentioned, age shall be determined by Ossification test or any other medical age determination test on the orders of Committee or the Board. The High Court has relied upon the date of birth as recorded in High School pass certificate, which is 05.05.2003. A had apparently appeared in the High School Examination in the year 2018, which means that A was merely 15 years old when she had appeared and cleared the High School Examination. The High Court order notices confusion about school/institute A had attended, but states that the position stands cleared as the inter college in question was located in the school in Meerut.

However, certain issues and facts are not clear as the impugned order records that the school in question is actually a coaching center for under-privileged children. It is also uncertain whether this school/inter college was the school first attended by

A. In the present case, inquiry on the said aspects in terms of Section 94 of the J.J. Act is required to be made by the Child Welfare Committee. In addition, the Child Welfare Committee has been vested with powers to pass appropriate orders in terms of Sections 37, 39, 40, 43 and 44 of J.J. Act.

Accordingly, we set aside the impugned order and remit the matter to the Child Welfare Committee to pass appropriate order under Section 94, uninfluenced by any earlier order and this order, and depending upon its outcome and findings, pass orders under other provisions of J.J. Act. This exercise by the Child Welfare Committee would be completed expeditiously and preferably within a period of 3 weeks from the date copy of this order received by them.

We would also like to clarify that the determination of age under Section 94 of the J.J. Act is confined to said Act. As far as criminal trial being faced by B is concerned, the Investigating Officer/Police and the Court would keep in mind the observations of this Court in *Ashwani Kumar Saxena Vs. State of Madhya Pradesh*, (2012) 9 SCC 750. Sub-Section 3 of Section 94 of the J.J. Act clarifies that the age recorded by the Child Welfare Committee or the Juvenile

Justice Board to be the age of the person so brought before it shall for the purpose of the J.J. Act be deemed to be the true age of that person.

The appeal and any pending application is disposed of in abovesaid terms.

.....J.
[S. ABDUL NAZEER]

.....J.
[SANJIV KHANNA]

NEW DELHI,
DECEMBER 01, 2020.

