

In the Court of D.A.S.J-I, Patna-cum-Spl Judge- Children Court.
Criminal Appeal No.- 177/2019

Order

09.07.2025 At the very outset it is essential to mention that there are two conflicting decisions of the J.J.B. regarding Juvenility of the respondent No. 2 and 3 and two conflicting educational certificates of respondents No. 2, one of the Bihar School Examination Board and two others of CBSE, Delhi, depicting conflicting dates of birth of respondent no. 2 having a disparity of four years on higher side.

Respondents No. 2 and 3 (CICL) along with others were chargesheeted for the murder of son of the appellant on 23.02.2005 in crime case no. 92/2005 under sections 302 and 201/34 of the IPC and the case was committed to the Court of Sessions, for trial.

They moved an application dated 26.05.2010 before the Ld. Additional Sessions Judge-11, claiming themselves to be Juvenile on the date of occurrence. That application was not pressed for about eight years. Vide order dated 27.03.2018, the Ld. Addl. Sessions Judge, relying on Xeroxes of Matriculation Certificates transferred their case to the J.J.B. Patna for decision on point of juvenility. A fresh application dated 21.04.2018 was presented before the J.J.B. Patna for declaring respondents no. 2 and 3 as juvenile on the date of occurrence. In support of their application, both accused filed xeroxes of their High School Examination Marksheets which were sent to Bihar School Examination Board for verification as is evident from the verification reports of Bihar School Examination Board, dated 03.05.2018 annexing Xerox copies of marksheets of respondent no. 2 and 3. From the said reports it transpired that a printed form of Bihar School Examination Board was filled by some official and at the end of the reports, only initials were made and the identities of the signatories were not clear. Both the CICLs did not file their original High School certificates before the JJB. Father of the deceased filed his objections in JJB vide his applications dated 25.08.2018 and 01.09.2018. In his application dated 25.08.2018 the appellant asserted that in civil transfer case no. 163/2017 paternal uncle of both the CICLs had declared their age to be 38 and 32 years respectively. Along with the said application dated 25.08.2018 the appellant annexed a copy of the transfer petition no. 163/2017 dated 19.08.2017 filed in the Court of District Judge, Patna. In the other application dated 01.09.2018 the father of the deceased asserted that the respondent no. 2 is facing another Kotwali PS case No. 126/1999, Cr. Trial no. 1044/1999 pending in the Court of Judicial Magistrate, Patna for the last eighteen years and in that

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case respondent no. 2 never claimed that he was a minor on the date of occurrence of the crime. Along with his above application dated 01.09.2018 the appellant filed a copy of the FIR and order sheet of the court concerned.

As the Principal Magistrate of the J.J.B was not convinced of the genuineness of the verification report of Bihar School Examination Board and as the respondents no. 2 & 3 did not file their original matriculation certificates, therefore, vide order dated 05.10.2018 the Principal Magistrate directed the production of admission registers relating to respondents no 2 and 3 by their concerned schools fixing 25.10.2018 as next date of hearing.

Surprisingly, on 06.11.2018 the respondents no. 2 and 3 presented a fresh application before the J.J.B for declaration of their Juvenility and the two members of the J.J.B without affording an opportunity of hearing to the father of the deceased (appellant) to produce his evidence regarding the age of the respondents no. 2 and 3 as mentioned in his earlier applications dated 25.08.2018 and 01.09.2018 and by overreaching the order dated 05.10.2018 passed by the Principal Magistrate, passed then and there an order dated 06.11.2018 declaring the respondents no 2 and 3 as juvenile on the date of occurrence notwithstanding the fact that even on 06.11.2018 the respondent no. 2 did not file his original high school certificate and the two members of the J.J.B relies on his marksheet and the verification reports of Bihar School Examination Board. The Principal Magistrate, dissenting from the order passed by two members of the J.J.B, held that since the original matriculation certificate of respondent no. 2 has not been produced, hence for determining the age of Juvenility, the date of birth certificate from the school or examination board is needed about authenticity of the respective age of the respondents no 2 and 3 and fixed 29.11.2018 for decision on the point of Juvenility of respondents no. 2 and 3.

The appellant after learning about the order dated 06-11-2018 passed by the two members of the J.J.B on his back without affording an opportunity of hearing preferred an application dated 17.12.2018 before the J.J.B in which he interalia narrated his grievance that no opportunity was afforded to him by the J.J.B to produce his documentary evidence regarding the age of the respondent no. 2 and 3, specifically mentioned in earlier applications dated 25.08.2018 and 01.09.2018, that the two members of the J.J.B had nullified and invalidated the order dated 05.10.2018 passed by the Principal Magistrate, that the Principal Magistrate had fixed 29.10.2018 for verification of the documents regarding age of the respondents no. 2 and 3 and that the Chief Judicial Magistrate, Patna had passed an order dated 25.07.2007 on the surrender cum bail application of the respondent no. 2 assessing the age of the

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respondent no. 2 as 22 (twenty two) years. The appellant enclosed the order dated 25.07.2007 passed by the chief judicial magistrate, Patna as Annexure no. 1 to his petition which reveals that the anticipatory bail petition of the respondent no. 2 was rejected by the Sessions Court as well as by the Hon'ble High Court, Patna. The appellant prayed for granting opportunity of hearing to him in the light of the facts stated in the application and also prayed for constitution of medical board to ascertain the age of respondents no. 2 and 3.

On the said application dated 17.12.2018 the two members of the J.J.B vide their order dated 09.08.2019 rejected the application dated 17.12.2018 by incorrectly stating in the said order that matriculation examination certificates were filed by the respondents no. 2 and 3 and the same were sent for verification to the Bihar School Examination Board and further observing that as the application dated 17.12.2018 has been filed after the order dated 06.11.2018 determining the age of respondents no. 2 and 3, the application moved by the appellant is not maintainable. But the facts regarding the documentary evidence mentioned in the earlier applications dated 25.08.2018 and 11.09.2018 moved by the applicant were suppressed by the Board in the impugned order dated 09.08.2019.

Aggrieved by the impugned orders dated 06.11.2018 and 09.08.2019 passed by the two members of J.J.B, the appellant has preferred this appeal. However, subsequently, the appellant deleted his prayer for quashing the impugned order dated 06.11.2018 passed by the J.J.B and at present, the appeal contains the prayer for quashing only the impugned order dated 09.08.2019.

An application dated 10-06-2025 has been presented on behalf of respondents no. 2 and 3 (the CICLs) that this appeal may be heard on the point of maintainability first. In support of the said application, written arguments have been filed on 25.06.2025 in which reliance has been placed on some decisions of different High Courts and of the Hon'ble Apex Court.

I have heard the learned counsels for the parties and perused the record.

Hearing the appeal on the point of maintainability first would defeat the ends of justice and in the light of the illegalities committed by the two members of the J.J.B, it is expedient that the question of maintainability of appeal should be decided along with the decision on merits of the appeal, for the following reasons:

1. The respondent no. 2 was declared juvenile placing reliance on the date of birth mentioned in his high school marksheet although he did not file his original high school certificate despite specific orders by the Principal Magistrate of J.J.B.

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2. Vide order dated 27.05.2025 of this court, the respondents no. 2 and 3 were directed to file their original matriculation certificates but they did not comply with the order. This creates a serious doubt about the genuineness of the matriculation certificates relied by the two members of the J.J.B.

3. During the pendency of the appeal, the appellant (father of the deceased) has filed xerox of the admission card of respondent no. 2 for the CBSE examination, Delhi, 2001, bearing xerox impression of the photograph of the respondent no. 2 and xerox of his marks statement of the CBSE, 2003. In both the above documents, names of the mother as well as of the father of the respondent no. 2 have been correctly mentioned and his date of birth is reflected as 24.10.1986 whereas in xerox of the provisional high school certificate and marksheet presented before the J.J.B the date of birth of the respondent no. 2 is depicted as 15.10.1990. Thus, there are two conflicting documents, regarding the age of respondent no. 2 and either of them is definitely forged and fabricated and therefore, further inquiry is essential to ascertain the genuineness of these two documents.

4. The appellant had filed before the J.J.B, the F.I.R and order sheet of judicial magistrate, Patna regarding the trial of respondent no. 2 in criminal case no. 126/99 in which the respondent no. 2 did not make any claim of Juvenility and if his claim that he was juvenile on 23.02.2005 (14 years 4 months), the date of occurrence of this case, then it is beyond comprehension that he was aged only eight and half years while facing his trial in G.R. No. 1044/1999 arising out of Kotwali P.S. Case No. 126/99.

5. The Chief Judicial Magistrate, Patna has passed an order dated 25.07.2007 on the surrender cum bail application of the respondent no. 2 assessing his age as 22 (twenty two) years.

6. The appellant has filed before the J.J.B, xerox of civil transfer case 163/2017, filed in the court of District Judge, Patna where in the uncle of respondents no. 2 and 3 has mentioned their age to be 38 (thirty eight) years and 32 (thirty two) years respectively. This fact also needs verification by this court.

7. This case pertains to the year 2005. The first application claiming Juvenility was filed in 2010 but that was not pressed for 8 years.

8. The appeal was filed in 2019 but the first application regarding maintainability of the appeal was filed after five years, on 16.12.2024.

The Hon'ble Apex Court in the case of Zahira Habibullah and others Vs State of Gujarat AIR 2004 SC 3114, has held that "Disposal of appeal does not mean disposal for statistical for purposes but effective and real disposal to achieve the object of the trial. The exercise has to be taken up together. "

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In the light of the foregoing discussion, the applications dated 16.12.2024 and 10.06.2025 for decision of the appeal on the point of maintainability first is rejected.

The question of maintainability of appeal shall be decided along with the decision of the appeal on merits.

Fix 16.07.2025 for further inquiry regarding the verification of the documents mentioned above.

(Dictated)

Sd/

D.A.S.J-I