



2026:AHC:62312

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 1157 of 2026

Shah Faisal

.....Revisionist(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Shiv Bahadur Singh, Zafeer Ahmad
Counsel for Opposite Party(s)	:	G.A., Sarve Nazir, Zafar Abbas

Court No. - 84

HON'BLE JAI PRAKASH TIWARI, J.

Counter affidavit filed on behalf of the opposite party no. 2 is taken on record.

Learned counsel for the revisionist/informant does not want to file any rejoinder affidavit.

Heard learned counsel for the revisionist/informant, learned counsel for the opposite party no. 2, as well as Sri Rajeev Kumar Singh, learned A.G.A. for the State and perused the entire material available on record.

This criminal revision has been filed under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 for setting aside the impugned judgment and order dated 16.07.2025 passed by learned Special Judge (POCSO Act)-II/Additional District and Sessions Judge, Moradabad in Criminal Appeal No. 72 of 2025; titled Shah Faisal vs. State and others, as well as order dated 27.05.2025 passed by learned Juvenile Justice Board, Moradabad in Misc. Case No. 45 of 2025; titled State vs. Aa, arising out of Case Crime No. 54 of 2025, under Sections 70(2), 351(3), 115(2), 333 B.N.S. and Section 5g/6 POCSO Act, Police Station Mainather, District Moradabad.

It is submitted by the learned counsel for the revisionist/informant that the accused/opposite party no. 2 is above 18 years of age. Despite this, the courts below have wrongly treated him as a juvenile. It is submitted that the application dated 21.05.2025 filed by the revisionist seeking medical

examination for determination of age was neither decided nor properly considered by the Juvenile Justice Board, Moradabad, and was kept pending without justification. It is further submitted that neither any matriculation or equivalent certificate was produced, nor birth certificate issued by a municipal authority, corporation, or Panchayat was brought on record. No reliable document as prescribed under law was available. Despite the absence of these mandatory documents, no medical examination was conducted. The courts below have erroneously relied upon a transfer certificate issued by the alleged first attended school, namely J.S. Inter College, Pandit Nagla, Moradabad, which recorded the date of birth of opposite party no. 2 as "23.06.2010". It is submitted that the opposite party no. 2 was directly admitted to Class II in the said school. The date of birth was recorded solely on the oral statement of the father, without any supporting document. The Headmaster himself admitted this fact during deposition. Hence, the said document lacks evidentiary value and cannot be treated as conclusive proof of age. Learned counsel submits that Section 35 of the Indian Evidence Act would not apply in the present case, as the school in question is not a government institution and the Headmaster is not a public servant within the meaning of law. The entries in the school record were not made in discharge of any statutory duty but merely on oral representation. Therefore, the said record cannot be treated as a public document or a reliable piece of evidence. There are material contradictions in the statements of CW-1 (father of the opposite party no. 2) and CW-2, which render their testimonies unreliable. It is next submitted that CW-1 stated that opposite party no. 2 was admitted in primary class and studied up to Class VI in J.M. Inter College, and thereafter, studied in another school. CW-2, however, stated that opposite party no. 2 was admitted directly in Class II and studied up to Class VIII in the same institution. These inconsistencies create serious doubt regarding the accuracy of the school record and the claimed date of birth. As per Rule 12(3) of the Juvenile Justice Rules, 2007, the determination of age must follow a sequential hierarchy: i.e. Matriculation certificate; or Date of birth certificate from the first attended school; or Birth certificate from municipal authority/Panchayat; or Medical opinion (in absence of the above).

In the present case, the alleged first school certificate is unreliable and not trustworthy; even no other valid document exist. Therefore, the Medical Board opinion ought to have been obtained and failure to do so amounts to gross violation of statutory provisions. The procedure prescribed under Section 94 of the Juvenile Justice (Care and Protection of Children) Act has not been followed. Learned counsel has also drawn the attention of the Court to the Annexure No. C.A.-3 to the counter affidavit filed on behalf opposite party no. 2, i.e. birth certificate of the opposite party no. 2 dated 04.06.2025 to submit that opposite party no. 2 has not produced his birth certificate at any time before the Board.

The courts below have mechanically accepted an unreliable document without adhering to the statutory mandate. The impugned orders suffer from serious legal infirmities. Learned counsel respectfully submits that the courts below, while passing the impugned orders dated 27.05.2025 and 16.07.2025, have failed to properly appreciate the facts and circumstances of the case as well as the material evidence available on record. The findings recorded are perverse, arbitrary, and contrary to settled principles of law and against the provisions of Section 94 of the Juvenile Justice Act, and therefore, the same are not sustainable in law and are liable to be set aside, in the interest of justice.

In support of his submissions, learned counsel for the revisionist/informant has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Om Prakash Vs. State of Rajsthan and another in Criminal Appeal No. 2012 (Arising out of S.L.P. (Crl) No. 2411 of 2011*** decided on 13.4.2012 and also judgment of this Court in ***Suresh Vs. State of U.P. and another in Criminal Appeal No. 347 of 2018*** decided on 1.8.2025.

Learned counsel has also placed reliance upon the another judgment of the Hon'ble Supreme Court in the case of ***P. Yuvaprakash vs. State Rep. By Inspector of Police (Criminal Appeal No(s). 1898 of 2023*** and referred para '14' which quoted as under:-

"14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth

certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence."

Learned counsel for the opposite party no. 2 as well as learned A.G.A. have vehemently opposed the submissions made by the learned counsel for the revisionist and have submitted that the judgment of the courts below are in accordance with law.

Learned counsel for opposite party No. 2 submits that opposite party No. 2 has placed on record documentary evidence, namely the school records, scholar register certificate, and birth certificate (Annexure C.A.-3 to the counter affidavit), which consistently reflect his date of birth as "23.06.2010". It is contended that, on the date of the alleged incident, opposite party no. 2 was aged about 14 years and, thus, falls within the definition of a juvenile. It is further submitted that, as per the settled legal position, the aforesaid documents are sufficient and reliable proof of age, and in the absence of any material casting doubt on their genuineness, there is no requirement for medical examination for age determination. Learned counsel further submits that the admission of opposite party no. 2 in the school was carried out in accordance with the prescribed rules and procedures, and there is no evidence on record to suggest that the said documents are forged or fabricated. It is also contended that the informant has failed to produce any cogent or reliable material to contradict the

documentary evidence relied upon by opposite party No. 2. On the strength of the aforesaid submissions, learned counsel prays that the present revision lacks merit and is liable to be dismissed.

For deciding the present controversy, a perusal of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is required to be made, which is as follows:-

"94. Presumption and determination of age.-

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(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.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

As per Section 94 of the Act, 2015, *prima facie*, for determination of age of a juvenile, the preference shall be given to the date of birth from the school or the matriculation or equivalent certificate from the concerned examination board in accordance with the provisions of Section 94(2)(i) of the Act. The said section provides that, if, the date of birth given in clause (i) is not available, the provision of Section 94(2)(ii) shall be given preference and as per the provisions of Section 94(2)(iii), in absence of above two clauses, 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.

In the present case, there is transfer certificate issued by the first school attended by opposite party no. 2 is J.S. Inter College, Pandit Nagla, Moradabad to which he was directly admitted in Class II and as per transfer certificate, the date of birth of the opposite party no. 2 is "23.06.2010" and also there is material contradictions regarding the admission of the opposite party no. 2 in the said school in the statements of CW-1 (father) and CW-2.

A bare perusal of the aforesaid section shows that only after the documents provided under Sub Clause (i) or Sub Clause (ii) of Section 94(2) of the Act are not available, the ossification test of the accused can be ordered. As per the aforesaid sub clauses only in the absence of the documents mentioned sub-clause (i) or (ii) resort to ossification test should be made.

In the present case, the Juvenile Justice Board has relied upon a transfer certificate issued by the school claimed to be the first attended institution. However, from the material on record, it appears that the date of birth mentioned in the said certificate was not based on any foundational document but on oral disclosure of father made at the time of admission. Further, contradictions in the testimonies of CW-1 and CW-2 with respect to the admission and schooling of opposite party no. 2 cast doubt on the authenticity and reliability of the said document. Apart from this, documents submitted by the opposite party no. 2 alongwith counter affidavit, in support of date of birth of juvenile, before this Court appears, *prima facie* to be contradictory. They were not even produced before the

concerned board or appellate court. There are also inconsistencies regarding the grounds upon which the date of birth was recorded/entered in the transfer certificate and Birth certificate issued by the Registrar (Birth and Death), Nagar Nigam, Moradabad.

It is also noteworthy that the application filed by the revisionist seeking medical examination for determination of age was not adjudicated upon. In a situation where the primary document relied upon is itself doubtful, the failure to consider the prayer for medical examination amounts to non-compliance with the statutory mandate.

In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the impugned orders suffer from material irregularity and legal infirmity, having been passed without proper appreciation of evidence and without following the procedure prescribed under Section 94 of the Act, 2015.

Accordingly, the impugned judgment and orders dated 16.07.2025 and 27.05.2025 are hereby set aside.

Accordingly, the revision is allowed.

The matter is remitted back to the Juvenile Justice Board, Moradabad for fresh determination of the age of opposite party no. 2, strictly in accordance with law. The Board shall reconsider the evidentiary value of the school records in light of the objections raised and shall examine the authenticity and admissibility of the birth certificate placed on record before this Court. In the event of any doubt regarding the genuineness or reliability of the documentary evidence, proceed to obtain medical opinion (ossification test or any other latest age determination test) as per Section 94 of the Act.

Office is directed to communicate this order to the concerned court.

(Jai Prakash Tiwari,J.)

March 25, 2026

Brijesh