

Court No. - 80

Case :- CRIMINAL REVISION No. - 2542 of 2023

Revisionist :- Juvenile X

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Shyam Murari Upadhyay, Sandeep Tripathi

Counsel for Opposite Party :- G.A., Haya Rizvi

Hon'ble Subhash Chandra Sharma, J.

Heard Sri Shyam Murari Upadhyay learned counsel for the revisionist, learned counsel for the opposite party as well as learned A.G.A. for the State and perused the record.

The present criminal revision has been preferred by the revisionist through his father with a prayer to allow this revision and set aside the judgment and order dated 02.03.2023 passed by learned Additional Sessions Judge/ Special Judge (POCSO Act), Muzaffar Nagar in Criminal Appeal No. 03 of 2023 as well as order dated 05.01.2023 passed by Juvenile Justice Board, Muzaffar Nagar. Further prayed to release the revisionist on bail in Case Crime No. 174 of 2022 under Section 376, 316 I.P.C., Section 5(J)(2)/6 of POCSO Act, Police Station Chhapar, District Muzaffar Nagar.

It is submitted by learned counsel for the revisionist that in this case the delinquent was aged about 16 at the time of alleged incident. It is further submitted that the victim was also aged about 14 and she was in relation with the revisionist six months prior to the alleged incident and there was conversation between both of them with the will of the victim herself. The revisionist also used to go to the house of grandmother of the victim and physical relations were established with her. Later on a video was prepared and made viral and he refused to marry with her and also her abortion was made, as a result present F.I.R. was lodged but the statement of the victim as recorded under Section 164 Cr.P.C. before the learned Magistrate also shows the similar statement of the victim and it appears that she was willy and volunteer. There was affair between both of them, as a result physical relations were established. There is nothing on record to show that any such video was made viral or prepared by the revisionist or his brother. It is also submitted that

there is no any medical report showing that abortion was got done by the revisionist in the hospital except taking her to children's hospital. It is further submitted that there is nothing adverse against the interest of the delinquent in the report submitted by D.P.O.

It is further submitted that the provisions as contained u/s 12 of the Juvenile Justice Act had not been considered by the Juvenile Justice Board even the report submitted by Probation Officer was also not considered. The appellate court has also not considered all these facts but rejected the appeal without applying its judicial mind and considering the law as contained u/s 12 of the aforesaid Act. He is in Child Care Home since 06.08.2022 i.e. more than one year and his psychology is being affected adversely, therefore, requested to set aside orders passed by the J.J. Board as well as appellate court and allow the criminal revision.

Learned counsel for the opposite party as well as learned A.G.A. opposed the prayer as aforesaid and contended that in this case the revisionist established physical relations with the victim at the point of pistol and when she became pregnant she was aborted in a hospital at the instance of the present revisionist. In this way, he cannot be said to be innocent and the victim can also not said to be volunteer and willy. The statement of the victim herself before the I.O. as well as before the learned Magistrate that incident took place with her and it was caused by the revisionist himself. In this regard, the orders passed by the learned J.J. Board as well as learned appellate court cannot be said to be unlawful, therefore, he cannot be said to be entitled for bail and revision, being devoid of merit, is liable to be dismissed.

Considering the facts and circumstances of the case, submission made by learned counsel for both the parties as well as learned A.G.A. for the State, perusal of record, the provisions as contained u/s 12 of Juvenile Justice Act, the report submitted by the Probation Officer, it appears that Juvenile Justice Board as well as the appellate court had not considered the relevant provisions and the material on record in well manner but passed the orders without applying their judicial mind. In this way, there appears ground in this revision and the orders passed by the Juvenile Justice Board as well as learned appellate court are liable to be set aside.

Accordingly, the orders passed by Juvenile Justice Board dated 05.01.2023 and the appellate court dated 02.03.2023 are, hereby, set aside and present criminal revision is hereby, **allowed**.

It is directed that delinquent/applicant be released on bail on executing person bond by the revisionist (father of the delinquent) and two sureties each in the like amount to the satisfaction of the Juvenile Justice Board concerned on following conditions :-

(i) The revisionist/ father will furnish an undertaking that upon release on bail the revisionist will not be permitted to go into contact or association with any known criminal or allowed to be exposed to any moral, physical, or psychological danger and further that the father will ensure that the juvenile will not repeat the offence.

(ii) The revisionist/ father will further furnish an undertaking to the effect that the juvenile will pursue his study at the appropriate level which he would be encouraged to do besides other constructive activities and not be allowed to waste his time in unproductive and excessive recreational pursuits.

(iii) Juvenile and the revisionist/ father will report to the Probation Officer on the first Monday of every calendar month.

(iv) The Probation Officer will keep a strict vigil on the activities of the juvenile and regularly draw up his social investigation report that would be submitted to the Juvenile Justice Board concerned on such a periodical basis as the Juvenile Justice Board may determine.

Order Date :- 18.10.2023

Suraj Srivastav