

Court No. - 80

Case :- CRIMINAL REVISION No. - 1942 of 2023

Revisionist :- X (Minor)

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

Counsel for Revisionist :- Hans Nath Pandey, Ghanshyam Das Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Chandra Sharma, J.

Learned counsel for revisionist is to correct the relevant provision of law in the memo of revision during the course of the day.

Heard learned counsel for revisionist, learned A.G.A. for State and perused the record.

The present criminal revision has been preferred by the revisionist through his father under Section 102 of the Juvenile Justice (Care and Protection) Act-2015 (hereinafter referred to as "J.J. Act, 2015) to allow the present revision and set aside the judgment and order dated 24.2.2023 passed by learned Additional District & Sessions Judge, Agra in Criminal Appeal No. 161 of 2022 as well as order dated 3.12.2022 passed by Juvenile Justice Board, Agra. Further prayed to stay the operation of the aforesaid orders and to release the revisionist on bail in Case Crime No. 24 of 2022, under Sections 376, 506, 315 IPC & Section 5/6 POCSO Act, Police Station Mansukhpura, District Agra.

It is submitted by learned counsel for the revisionist that in this case, the delinquent was juvenile aged about 13 years, 8 months and 13 days at the time of alleged offence. Further submitted that the victim was also aged about 15 years. As per allegation in the F.I.R. physical relations were established with the victim by the revisionist several times in her home when she was alone under threat as a result she became pregnant and after 6-7 months she was aborted when medicine was administered by the revisionist. The statement of the victim was recorded under Section 164 Cr.P.C. before the learned Magistrate in which she admitted the fact that there was physical relations between both of them 3-4 times and even on the date of miscarriage, he established physical relation with her though she denied her willingness but the circumstances show that she was willing. No any force or violence

was used by the revisionist against her will while establishing physical relations with her. For a period of 7-8 months she kept mum but when there was miscarriage, this fact came into knowledge of her parents, present F.I.R. was lodged. It is also submitted that there is no any D.N.A. report on record to show that pregnancy was conceived as a result of physical relations with the present revisionist. In this way, it cannot be concluded that the victim became pregnant as a result of physical relations by the revisionist. There is nothing on record to show the complicity of present delinquent. There is nothing adverse to the present delinquent in the report as submitted by the District Probation Officer. The provisions as contained under Section 12 of the Juvenile Justice Act had not been considered by the Juvenile Justice Board as well as appellate court while rejecting the appeal which cannot be said to be in conformity with the law. The delinquent is in Juvenile Care Home since 30.5.2022 and his psychology is being affected adversely, therefore, requested to set aside the order passed by the J.J. Board as well as appellate court and allow the criminal revision.

Learned A.G.A. opposed the aforesaid prayer.

Considering the facts and circumstances of the case, submissions made by learned counsel for the revisionist as well as learned A.G.A., perusal of record, the provisions as contained u/s 12 Juvenile Justice Act and report submitted by the D.P.O. it appears that J.J. 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 3.12.2022 and the appellate court dated 24.2.2023 are, hereby, set aside and present Criminal Revision is hereby, **allowed**.

It is directed that delinquent/applicant be released on bail on executing personal 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 :- 31.10.2023

A. Singh