

Court No. - 80

Case :- CRIMINAL REVISION No. - 3001 of 2023

Revisionist :- X- Juvenile

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Renu Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Chandra Sharma,J.

1. Heard learned counsel for revisionist, learned counsel for opposite party as well learned A.G.A. for State and perused the record.

2. The present criminal revision has been preferred by the revisionist 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 orders dated 27.04.2023 passed by learned District & Sessions Judge/ Special Judge (POCSO Act), District Kushinagar in Criminal Appeal No. 24 of 2022 as well as order dated 02.05.2022 passed by Juvenile Justice Board, Kushinagar in case crime No. 164 of 2020 under Sections 376, 354B, 328, 313, 323 I.P.C. and 3/4 of POCSO Act, Police Station Jataha Bazar District Kushinagar.

3. Facts in brief are that an F.I.R. was lodged against the revisionist as Crime No. 164 of 2020 on 30.11.2020 and incident is said to have taken place from the year 2017 to 2020. As per allegation in F.I.R. the victim who was minor was enticed away by the revisionist and physical relations were established with her. Later on, she was married in the year 2018 to some other person and again she was brought by the revisionist from her marital house to his home and kept as wife, as a result she was subjected to divorce by her married husband. Physical relations were also established by the revisionist with the victim and she became pregnant in the month of August 2020, she was aborted in the hospital of Dr. Chanda Kushwaha at Gopalganj and the revisionist denied to keep her with him as his wife, that was the reason present F.I.R. was lodged. The revisionist presented claim of juvenility before the learned J.J. Board which was decided and his age was determined to be 17 years and 11 months. On 02.05.2022 on the basis of preliminary assessment conducted by the learned J.J. Board with the help of psychological expert, he was decided to be a child and to be tried as an adult before the children's court in accordance with the provisions as contained under Section 15(1) and 18(3) against which appeal was filed before the learned court of Session which was also dismissed. Being aggrieved with the orders passed as aforesaid present criminal revision has been preferred.

4. It is submitted by learned counsel for the revisionist that in this case the

preliminary assessment made by the learned Board cannot be said to be in conformity with the provisions as contained under Section 15 and 18 of the Act. It is also submitted that the incident is said to have taken place in the year 2017, thereafter the victim was got married with some other person in the year 2018. Later on, in the year 2020 present F.I.R. was lodged and the age of the revisionist was determined in the year 2022, when it was found to be 17 years and 11 months. This age was considered by the learned J.J. Board and the appellate court while deciding the claim but it was not considered that the offence was committed in the year 2017 therefore, the preliminary assessment must have been made on the basis of year 2017 not 2020. This fact was not considered by the learned J.J. Board as well as the learned appellate court. It is also submitted that there is only allegation made by the victim against the revisionist for rape and miscarriage but there is no material on record to show that prima facie case is made out against him. These facts were also not considered by the learned courts below, therefore the orders passed by the learned courts below are illegal and inappropriate and liable to be set aside.

5. Learned A.G.A. opposed the prayer as aforesaid and contended that in this case the offence was committed by the revisionist in the year 2017 and it continued till the year 2020 i.e. 08.09.2020 when she was administered poison in the tea by the revisionist and other members of his family as a result, present F.I.R. was lodged. The age of the revisionist was determined on the basis of academic record to be 17 years and 11 months on 17.01.2022 and thereafter preliminary assessment was made by the learned Board with the help of psychologist expert as per provisions contained under Section 15(1) and 18(3) and matter was referred to the learned children's court for trial of revisionist as an adult. All the facts were taken into consideration by the learned J.J. Board as well as learned appellate court. There is no any illegality and impropriety in the orders passed by the learned courts below. Proper opportunity of hearing was also given to the revisionist before the learned Board as well as the learned appellate court. In this way, the orders in question cannot be said to be unlawful but this revision being devoid of merit is liable to be dismissed.

6. Considering the facts and circumstances of the case, submissions made by learned counsel for the revisionist as well as learned A.G.A. for the State, perusal of record, the orders passed by learned courts below, it appears that the offence is said to have been committed by the revisionist with the victim from the year 2017 to 2020 when F.I.R. was lodged against him with other members of his family and when he was brought before the learned Board and presented his claim of juvenility which was decided by the learned Board on the basis of academic record in which his date of birth was found to be 09.10.2002 on the basis of this date of birth his age was found to be 17 years and 11 months at the time of alleged incident and as per provisions contained under Section 14(5) f(II). Further preliminary assessment was made in the light of provisions as contained under Section 15(1) and with the help of psychologist expert. On the basis of preliminary assessment he was found

physically and mentally fit to understand the gravity and consequences of the commission of offence. As a result, matter was referred under Section 18(3) of the act for trial as an adult before the children's court. All these facts were considered by the learned appellate court while deciding the appeal and the revisionist was also given an opportunity of hearing before the learned Board as well as the learned appellate court.

7. In my considered view, there appears no any illegality or impropriety in the orders passed by the learned courts below, therefore this criminal revision does not warrant interference by this Court but it being devoid of merit is liable to be dismissed.

8. Accordingly, this criminal revision is ***dismissed***.

Order Date :- 6.11.2023

Suraj Srivastav