Court No. - 80

Case :- CRIMINAL REVISION No. - 4088 of 2023

Revisionist :- Mr. X (Minor)
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- Akhilesh Kumar Mishra
Counsel for Opposite Party :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for the revisionist as well as learned counsel for opposite party alongwith learned A.G.A. for the State and perused the material on record.

The present criminal revision has been preferred by the revisionist through his mother 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 impugned judgment and order dated 20.05.2023 passed by Additional Sessions Judge/Special Judge, Exclusive Judge (POCSO Act) Basti in Criminal Appeal No.20 of 2023 (Rahul vs. State of U.P. & another) and order dated 08.02.2023 passed by Juvenile Justice Board, Basti in Case Crime No.194 of 2022, under Sections 376D, 457 I.P.C., Police Station Sonaha, District Basti and further order which this Hon'ble Court may deem fit and proper under the circumstances of the case.

It is submitted that in this case the delinquent/applicant was aged about 14 years and was juvenile at the time of alleged incident. Further submitted that in this case incident took place on 02.09.2022 but the F.I.R. was lodged after delay of four days on 06.09.2022 without any explanation thereto. It is further submitted that five persons are said to have committed rape with the victim but she kept silent and did not make any complaint to anybody subsequent to the incident. It is also submitted that during medical examination no any such injury was found on the person of the victim to show that she was raped by five persons. It has also been mentioned in the F.I.R. that video was prepared by the revisionist and other co-accused persons and it was made viral but there is nothing on record to show that such video was prepared and made viral. During investigation no any such material was found by the I.O. in this regard. The statement of the victim was also recorded u/s 164 Cr.P.C. in which she stated clearly that she could not

identify the persons committing rape with her but later on she was told by her inmates that video was made viral on the basis of which they knew about the identity of the present revisionist and other co-accused persons but the aforesaid photos or video were not seen by the victim herself. It shows that the revisionist is innocent and has falsely been implicated in this case by concocting false story of rape. The report submitted by the D.P.O. is also not adverse for the present delinquent even though the juvenility of the delinquent was not considered either by the J.J. Board or by the appellate court and also the provisions as contained u/s 12 of the aforesaid Act were not considered by the courts below while passing the aforesaid orders. The delinquent is in Juvenile Care Home since 07.09.2022 (i.e. more than one year) and his psychology is being affected adversely, therefore, requested to set aside the orders passed by the J.J. Board as well as appellate court and allow the present criminal revision as the orders passed by the courts below cannot be said to be in conformity with law.

Learned counsel for the opposite party as well as learned A.G.A. opposed the prayer as aforesaid.

Considering the facts and circumstances of the case, submission made by learned counsel for the revisionist as well as learned A.G.A., perusal of record, the provisions as contained u/s 12 of Juvenile Justice Act, the report submitted by the District Probation Officer, the victim could not identify the revisionist and the period present delinquent remained in child care home, 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 08.02.2023 and the appellate court dated 20.05.2023 are, hereby, set aside and the present criminal revision is hereby, ***allowed.***

It is directed that delinquent/applicant be released on bail in the aforesaid case on executing person bond by the revisionist (mother 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 natural guardian/mother 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 mother will ensure that the juvenile will not repeat the offence.

(ii) The natural guardian/mother 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 natural guardian/mother 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 :- 19.10.2023
Ashok Gupta

Digitally signed by :-
ASHOK KUMAR GUPTA
High Court of Judicature at Allahabad