

Court No. - 80

Case :- CRIMINAL REVISION No. - 4375 of 2023

Revisionist :- X- Juvenile

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

Counsel for Revisionist :- Rajneesh Sharma, Aditya Sharma, Bishram Tiwari

Counsel for Opposite Party :- G.A., Anjali Singh, Shikha Singh, Sushil Kumar Mishra

Hon'ble Subhash Chandra Sharma, J.

Counter affidavit filed today by learned counsel for opposite party no. 2 is taken on record.

Heard Sri Aditya Sharma, learned counsel for revisionist, learned counsel for opposite party no. 2 as well as 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 25.7.2023 passed by learned Additional District and Sessions Judge/Special Judge (POCSO Act), Court No. 1, Deoria in Criminal Appeal No. 33 of 2023 as well as order dated 12.6.2023 passed by Juvenile Justice Board, Deoria. Further prayed to stay the operation of the aforesaid orders and to release the revisionist on bail in Case Crime No. 56 of 2021, under Sections 363, 366, 376 IPC & Section 3/4 POCSO Act, Police Station Gauribazar, District Deoria.

It is submitted by learned counsel for the revisionist that in this case, the delinquent was juvenile aged about 17 years, 1 month and 20 days at the time of alleged offence. The victim was also aged about 15 years as per date of birth but during medical examination her age was found to be 19 years. In this way, she was major at the time of alleged incident. The victim was volunteer and went with the revisionist with her will to Surat where both of them lived together and physical relations were also established. She never made any hue and cry regarding use of force by the revisionist against her will. The statement of the victim was recorded under Section 164 Cr.P.C, before the learned Magistrate in which she

made allegation that she was taken by the revisionist by force where his brothers were also living. She has also stayed with the revisionist. He likely to wed her but she refused as a result he brought her back, it show that she was volunteer and willing. From the place of incident to Surat she never made any complaint to any person though traveled in public transport, it also shows that she was willing. Some photographs were also drawn those were related to the revisionist and the victim and show that both of them were consensus. 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 14.4.2021 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 counsel for opposite party no. 2 as well as A.G.A. opposed the aforesaid prayer and urged that in this case victim was minor at the time of alleged incident and she was taken away by the revisionist to Surat by force and she was under pressure and not made any hue and cry. In this way, she cannot be said to be willing and consenting party .

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 12.6.2023 and the appellate court dated 25.7.2023 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 :- 8.11.2023

A. Singh