

Court No. - 80

Case :- CRIMINAL REVISION No. - 5005 of 2023

Revisionist :- Baal Apachaaree

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

Counsel for Revisionist :- Mahesh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Chandra Sharma,J.

1. Heard learned counsel for revisionist as well as learned A.G.A. 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 order dated 20.07.2023 passed by learned Juvenile Judge/Special Judge (POCSO Act), Chandauli in Criminal Appeal No. 29 of 2023 as well as the order dated 4.8.2018 passed by Juvenile Justice Board, Chandauli in case crime No. 53 of 2018, under Sections 376(2)Cha, 323, 504, 498-A I.P.C. Police Station Sahabganj, District Chandauli. Against which this criminal revision has been preferred before this Court.

3. It is submitted by the learned counsel for the revisionist that in this case the incident was said to have taken place in the year 2018 and the revisionist was held to be juvenile by the learned J.J. Board vide order dated 04.08.2018 in which his age was found to be 16 years 09 months and 19 days. Later on, an application was moved on the part of prosecution under Section 15 of the Act to make preliminary assessment of the child and then to refer the case to the Children Court for trial as an adult. On this, the learned J.J. Board called for report from the psychological expert which was submitted by the psychologist on 03.01.2023 in which it was opined that psychological test findings were as per subjects current age that was 21 years. It was not possible to comment on patient's psychological status retrospectively. In view of that psychological test report the mental status of the revisionist at the time of alleged incident cannot be decided. Learned J.J. Board took in consideration, the report filed by psychological expert and pass the order on 19.5.2023 while rejecting the application filed on the part of prosecution to refer the matter to the Children Court. Against this order appeal was filed before the learned Court of Session which was decided by the Children Cout on 20.7.2023 by which the order passed by the learned J.J. Board was reversed and appeal was allowed while considering the report filed by the District Probation Officer. There was no any material on record to show that the revisionist was mentally and physically capable in committing such offence and there was ability to understand

the consequences of the offence and circumstances in which he allegedly committed the offence, even though learned appellate court held the revisionist to be such as aforesaid which cannot be said to be in conformity with the law as provided under Section 15 of the Act, therefore, request to set aside the orders passed by the learned appellate Court and allow this criminal revision.

4. Learned A.G.A. opposed the aforesaid prayer and contended that in this case, the District Probation Officer's report was prepared on 29.08.2018 that was just after commission of the incident in which it was found that the revisionist was making cooperation in the household works with his parents. He passed intermediate examination and was continuing his further study. There was no any complaint of misbehavior and there was no tendency of flying away from the house. His mental condition was found to be normal and he was also good in studies. His behavior was good towards neighbour and there was no any criminal history against the revisionist. On the basis of that D.P.O. report it was concluded that the revisionist was mentally fit and not suffering with any disability. His mental condition was also normal and education was being continued in well manner. He was also physically and mentally fit as a result conclusion was drawn that at the time of alleged incident, he was capable to understand the nature and consequences of the act, as a result matter was referred to Children Court for trial as an adult. It is further contended that the psychological expert's report also show that it was conducted in the year 2023 but no any symptom was found at the time of assessment that his mental level was below the average. As a result it can also not to be said that since the psychological expert was not in a position to assess the ability of the revisionist three years prior to the alleged assessment, therefore, he cannot be held to be mentally fit and capable of knowing the nature and consequences of the act committed by him. There being no any illegality or impropriety in the orders as aforesaid, it requires no interference at all but this revision is liable to be dismissed.

5. Section 15 of the Act provides that:

15. Preliminary assessment into heinous offences by Board. - (1) *In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:*

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation. - *For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.*

(2) *Where the Board is satisfied on preliminary assessment that the matter should be*

disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973:

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

6. From the language used under Section 15 (1) of the Act it is evident that while making preliminary assessment, the learned Board may take assistance of experienced psychologists or psycho-social workers or other experts regarding mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence and may pass an order in accordance with the provisions of sub-section (3) of section 18.

7. On considering the facts and circumstances of the case, submissions made by learned counsel for the revisionist as well as learned A.G.A. and perusal of record, the orders passed by learned J.J. Board as well as learned appellate court, it appears that learned J.J. Board drew its conclusion only on the basis of psychological test report which was prepared in the year 2023 and no any opinion regarding physical/mental/psychological state of the revisionist was likely to be given by the psychological expert for three years prior to the alleged date of assessment i.e. year 2018. No any assessment to understand the mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence was made by the learned Board which was required as per provisions as contained under Section 15(1) of the Act. In this way, the order passed by learned Board cannot be said to be lawful. Likewise learned appellate court also based its judgment on the D.P.O. report and no any such assessment was made even by the learned appellate court as per provisions as contained under Section 15(1) of the Act as a result the order passed by learned appellate court can also not be said to be in conformity with law.

8. In such circumstances of the case, this Court is of the considered view the orders passed by the learned Board as well as learned appellate court cannot be said to be in conformity with law and these orders warrant interference by this Court. As a result the orders passed by the learned Board as well as learned appellate court are hereby set aside and this criminal revision is **allowed** with direction to the learned Board to decide the matter afresh in accordance with provisions as contained under Section 15(1) of the Act.

Order Date :- 2.11.2023

A. Singh