

GAHC010137552023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : W.P.(Crl.)/24/2023

TOKO RUNEL
S/O LATE TOKO PEKHI, R/O NIRJULI BAGE TINIALI, NEAR VKV SCHOOL,
NIRJULI, DIST- PAPUM PARE, ARUNACHAL PRADESH-791109

VERSUS

THE CHIEF SECRETARY TO THE GOVT OF ASSAM AND 7 ORS
HOME AND POLITICS DEPARTMENT, ASSAM SECRETARIAT, DISPUR-
781006, GUWAHATI

2:THE COMMISSIONER AND SECRTEARY TO THE GOVERNMENT OF
ASSAM
THE LGAL REMEMBRANCER DEPARTMENT
ASSAM SECRETARIAT
DISPUR-781006
GUWAHATI

3:THE SUPERINTENDENT OF POLICE
LAKHIMPUR
NORTH LAKHIMPUR
ASSAM-787001

4:THE SUPERINTENDENTOF POLICE
PAPUM PARE
ARUNACHAL PRADESH-791113

5:THE SUPERINTENDENT OF POLICE
CAPITAL COMPLEX
ITANAGAR-791110
ARUNACHAL PRADESH

6:THE REGISTRAR OF BIRTH AND DEATH

ITANAGAR MUNICIPAL CORPORATION
NAHARLAGUN-79111
ARUNACHAL PRADESH

7:DIRECTOR OF ECONOMICS AND STATISTICS
YUPIA. PAPUM PARE-791110
ARUNACHAL PRADESH

8:BIKI TAKIO
FATHER OF CICL X
R/O VILL- NIYA COLONY
NIRJULI
P.S.-NIRJULI
DIST-PAPUM PARE
ARUNACHAL PRADESH-79110

Advocate for the Petitioner : MS. S G BARUAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT & ORDER

Date : 28-06-2024

1. Heard Ms. S.G. Baruah learned counsel for the petitioner. Also heard Mr. D Nath learned senior Govt. Advocate appearing for respondent Nos.1 to 3, Mr. NNB Choudhury learned Additional Advocate General, Arunachal Pradesh, Mr. A Chandran learned counsel appearing for respondent Nos.4 to 7 and Mr. D.K. Medhi learned counsel for respondent No.8.

2. This writ petition arises out of Sessions case No.50(NL)/2023, pending in the court of learned Addl. District and Sessions Judge (FTC), Lakhimpur, North Lakhimpur.

3. **THE CHALLENGE:**

The basic challenge in this writ petition is made against the order dated 10.01.2022, passed by the Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur in GR Case No.4465/2021 and also against the order dated 11.05.2023 passed by the Principal Magistrate, Juvenile Justice Board, Lakhimpur, North Lakhimpur, whereby the learned Court dismissed the petition being the petition No.301/2022 filed by the respondent No.8. The challenge is also made to the manner and procedure adopted while determining the juvenility of the alleged Child in Conflict with Law (hereinafter referred to as CICL), allegedly involved in commission of crime in connection with Laluk PS Case No.400/2021 under section 302/34 IPC. The CICL is the son of respondent No.8 in this writ petition.

4. The factual matrix leading to the passing of the orders impugned are recorded herein below:-

I. The dead bodies of two minor sons of the petitioner were found with multiple head and bodily injuries in Dikrong river No.2 Parbotipur village, Assam in the district of North Lakhimpur on 30.11.2021. Accordingly the petitioner lodged an FIR on 30.11.2021 registered as Laluk PS Case No.400/2021 under sections 302/34 IPC.

II. During the course of investigation the investigating officer arrested three persons including the CICL.

III. On 23.12.2021 a bail application was preferred before the learned Addl. CJM, North Lakhimpur claiming that the accused (son of the respondent No.8) was minor on the date of alleged offence. In support of such contention photocopy of birth certificate, Aadhar Card and SLC certificate of the CICL were annexed. Though the birth

certificate was in original, but the Magistrate doubted the genuineness of the birth certificate as the same did not contain any QR code or bar code and therefore, directed an enquiry to find out the genuineness of the birth certificate. A notice was issued to the District Register of Birth and Death, Itanagar, Naharlagun to depute a staff of his office to appear before the Magistrate on the next date fixed.

IV. Subsequently on 10.01.2022, the Revenue Officer of the Office of the Municipal Corporation Itanagar, appeared before the court and produced one original birth registrar and also produced a communication addressed to the court by the Statistical Officer of the Itanagar Municipal Corporation. After perusal of the aforesaid documents, the learned Magistrate opined that birth certificates are not doubtful and also concluded that the accused son of the respondent No.8 had not attained the age of 18 years and accordingly directed the IO of the case to produce CICL before the JJB, Lakhimpur, North Lakhimpur.

V. In terms of the aforesaid order, on 11.01.2022, the records were produced before the learned JJB and the learned JJB declined to grant zimma of the CICL to the parent and directed the IO for investigation and to submit the report along with medical report and fixed the next date on 21.01.2022. The JJB recorded that the age of CICL is 17 years 7 months 8 days on the basis of the order of the learned Additional Chief Judicial Magistrate.

VI. Subsequently, by an order dated 17.01.2022 the custody of the CICL was handed over to the respondent No.8.

VII. It is important to note that on 25.05.2022 petition No.950 was

filed by the father of the deceased/informant before the Chief Judicial Magistrate, Lakhimpur, North Lakhimpur in GR Case No.4465/2021, through the Asstt. PP, Lakhimpur claiming that the two CICT are actually not juvenile and the documents/birth certificates on the basis of which, they claimed to be juvenile are fake and manufactured documents. A further prayer was made to the effect that a fresh enquiry is required to be made in this regard.

VIII. The learned Addl. CJM under its order dated 25.05.2022 directed the IO to look into the matter and submit a report by 06.06.2022 but the IO sought for further five days time to complete his investigation and submit report.

IX. Accordingly on 12.06.2022 a report was submitted by the IO along with certain documents and on the basis of materials collected, the IO opined that the documents and the materials collected support that the declared CICT are not juvenile/child.

X. On the basis of such report the learned Magistrate concluded that there appears some grounds for warranting a fresh enquiry and determination of the age of CICT, however, declined to do the same on the ground that since the court has already, after conducting an enquiry, declared the accused as CICT, the petition filed by the informant is not maintainable. Accordingly, the petition was dismissed. The learned Additional Chief Judicial Magistrate however, forwarded the petition filed by the informant to the Principal Judge, JJB for further action.

XI. Thereafter, on 14.06.2022, the record was once again put up before the Principal Magistrate, JJB Lakhimpur in view of the order

passed by the learned CJM, Lakhimpur.

XII. By order dated 14.06.2022 the learned Principal Magistrate, JJB issued notice to the custodian of the CICAL to produce the original age certificate and also the CICAL before the court on 07.07.2022.

XIII. On 20.10.2022, a petition No.301 was once again filed by the informant, amongst others seeking a declaration that the CICAL be declared as adults. A written objection was filed on behalf of the CICAL.

XIV. On 23.02.2023, after hearing both the parties, the JJB Lakhimpur passed an order directing the CICAL to produce the birth certificates and other relevant documents on the basis of which he claims to be Juvenile. Thereafter by the impugned order dated 11.05.2023, the Principal Magistrate declined to proceed with the enquiry on the following grounds:

I. Prior to enquiry by the JJB, the court of Addl. CJM, by its order dated 10.01.2022 held that no discrepancies is found with regard to age of CICAL.

II. The JJB on 11.01.2022 declared the CICAL to be juvenile holding that there is nothing to doubt the birth certificate produced on behalf of the CICAL.

III. Such decisions not being challenged before the appellate court, the board cannot review its own order.

IV. Accordingly it was declared that both the CICAL's are juvenile.

5. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE PETITIONER

i. The two decisions i.e., passed by the learned Addl. CJM dated 10.01.2022 and the orders of the JJB dated 11.05.2023 passed

by the court of learned Principal Magistrate, JJB Lakhimpur are under challenge in this case being violative of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Rules framed thereunder, more particularly, in violation of sections 14, 15, 18, 20 of the Act.

ii. It is also contended that the entire procedure adopted by the JJB and the learned Addl. CJM, are in complete derogation of the Rule 10(1)/11 and accordingly it is submitted by the learned counsel for the petitioner that when there are prima facie materials to suggest that declaration of juvenility was obtained by fraud, the JJB is not powerless to direct a fresh enquiry. Accordingly learned counsel for the petitioner submits that this is a fit case wherein this court may like to direct for a fresh enquiry in terms of the provisions of the JJ Act, 2015.

6. The learned counsel for the respondent No.8 has not argued anything on merit rather submits that they have instructions from the client that they will not object for a fresh enquiry.

7. The Itanagar Municipal Board represented by Mr. A Chandran learned counsel had filed an affidavit and also raised a doubt as regards the genuineness of the birth certificates on the basis of which the two CICL claim to be juvenile.

8. The State of Arunachal Pradesh represented by Mr. NNB Choudhury, learned additional Advocate General, state of Arunachal Pradesh also contends that this is a fit case where a fresh enquiry should be directed.

9. This court has given anxious considerations to the

arguments advanced by the learned counsel for the parties and also perused the materials available on record.

10. One of the prime objectives of enacting juvenile justice Act is to stop juveniles from becoming hardened criminals. The primary goal of juvenile justice system is to maintain public safety, skill development, rehabilitation, addressing treatment needs and successful reintegration of youth into the community.

11. Section 4 of the Act 2015 mandates for constitution of Juvenile Justice Boards for exercising the powers and discharging its functions relating to the children in conflict with law (CICL). Under the Act, there is mandate for constitution of atleast one Juvenile Justice Board for every district.

12. Chapter IV of the Act deals with procedure in relation to children in conflict with law. Section 10, under chapter X prescribes that a child alleged to be in conflict with law, when is apprehended by police such child is to be placed under the special juvenile police unit or the designated child welfare police officer. The said police or police officer is mandated to produce the child before the Board without any loss of time within a upper limit of 24 hours of apprehension.

13. Section 12 of the Act mandates that a person, who is apparently a child and is in conflict with law and produced before the Board, such person need to be released on bail with or without surety, if there appears reasonable ground for believing that release is not likely to bring that person into association with any known criminal etc.

14. Section 14 of the Act 2015, deals with the enquiry by

Board regarding the child in conflict with law. In terms of sub section (1) of section 14, the CICL, when produced before the Board, board is to held an enquiry in accordance with the provision of the Act and is to pass an order in terms of section 17/18 of the Act. When after the enquiry, the Board is satisfied that a child irrespective of age has committed a petty offence or a serious offence, then the Board is to pass an order in terms of the clauses enumerated under subsection 1 of section 18. However, when the nature of offence is heinous and the child has completed the age of 16 years, the board is to conduct a further preliminary assessment with regard to the mental and physical capacity of the child to commit such offence, ability to understand the consequences of the offence and circumstances in which he allegedly committed the offence and thereafter is to pass an order in terms of subsection 3 of section 18. Subsection (3) of section 18 empowers the board to transfer the trial of the children to a court having jurisdiction to try such offence, when after its assessment, it had concluded that there is a need for trial of the child as an adult.

Section 23 of the Act further mandates that no joint proceedings of child in conflict with law and a person not being a child shall not be jointly proceeded.

15. Now coming to the case in hand, the detail facts recorded herein above, clearly establish that the two child who are alleged to be in conflict with law were arrested on 07.12.2021 And were produced before the learned Additional Chief Judicial Magistrate on 23.12.2021, on which date a bail application was filed. Though certain documents including birth certificate, Aadhar card etc of the child was

produced, however for the reason of same being Xerox copies of the original, the learned Additional Chief Judicial Magistrate did not consider the juvenility of the child nor sent them to the Board.

16. In the considered opinion of this court such course of action is in disregard of the provision of section 10 and section 12 of the Act. There is no doubt that the parents of the child had claimed the child to be juvenile and that being the position, the child ought to have been directed to be produced before the Board. However, the learned Magistrate started enquiry on its own. Thus the order dated 10.01.2022 passed by the learned Additional Chief Judicial Magistrate, clearly demonstrates violation of the provisions of section 14 of the Act, 2015. An additional Chief Judicial Magistrate may be a member of the Juvenile Justice Board, however, he is not empowered under section 14 to make an enquiry and declare the child produced before it to be juvenile. The law mandates that such assessment that the child is in conflict with law is to be made by the Board under section 14 of the Act and not by a Magistrate exercising power under section 437 or 439 Cr.P.C.

17. The learned Additional Chief Judicial Magistrate, had itself determined that the child alleged to be in conflict with law was above 16 years. That being the position, the procedure mandated under section 15 ought to have been followed by the Board inasmuch as, the allegation is brutal murder of two children. Thus, it seems that the learned additional Chief Judicial Magistrate, who passed the order dated 10.01.2022 is not even aware of the provision of section 15 of the Juvenile Justice Act, 2015 and thus, the said Additional Chief

Judicial Magistrate while passing the orders dated 10.01.2022 had not only exceeded its jurisdiction but also committed a glaring illegality.

18. The learned Additional Chief Judicial Magistrate under its order dated 25.05.2022 proceeded to enquire as regards the juvenility of the two accused whereas, such enquiry even if permissible ought to have been done by the juvenile justice board and not by the learned Additional Chief Judicial Magistrate in his capacity as a Magistrate and not as a Chairman of the Juvenile Justice Board.

19. Therefore, in the considered opinion of this court the learned Additional Chief Judicial Magistrate assumed jurisdiction without having none and therefore such order are not sustainable in the eye of law being without jurisdiction and violative of section 14/15 of the Act.

20. Another aspect of the matter is that, when the Additional Chief Judicial Magistrate doubted the genuineness of the claim of the juvenile, referred the matter to the JJB. Unfortunately the JJB, Lakhimpur by the impugned order dated 11.05.2023 declined to proceed with a fresh enquiry.

21. The order dated 23.02.2023 passed by learned Principal Magistrate, Juvenile Justice Board, Lakhimpur resulted in detention of a person under police custody, who claimed to be juvenile and was finally held to be CIIL. Not only that, in the meantime, a child alleged to be in conflict with law was under police custody who claimed to be juvenile and was finally held to be CIIL. Not only that, no determination was even made as mandated under section 15 even after concluding that the child was above 17 years.

22. The JJB committed a serious error of law accepting the determination made by the Additional Chief Judicial Magistrate as regard juvenility of the accused in total ignorance of the proposition of law that it is the JJB who is empowered to make an enquiry under section 14 of the Act and not the Additional Chief Judicial Magistrate, before whom the alleged child in conflict with law was produced after arrest.

23. In terms of section 10 of the JJ Act, such determination made by the Additional Chief Judicial Magistrate, at the time of consideration of bail, cannot be treated as an enquiry made under section 14 of the act as discussed hereinabove.

24. Now coming to the order of 10.01.2022 whereby the Additional Chief Judicial Magistrate declared the son of the respondent No.8 as CICL, this court is of the opinion that proper procedure is not followed.

25. Further, when the JJB itself had held that the children were above 17 years, it ought to have proceeded under section 15 of the Act inasmuch as it is not only a valuable right of the child in conflict with law but also of the prosecution. Yet another aspect of the matter is that the order dated 11.01.2022 was passed only on the basis of the determination made by the Additional Chief Judicial Magistrate in its order dated 10.01.2022. Therefore, the determination made is not as per procedure mandated under section 14 read with rule 47 and 18 of the rules framed under Juvenile Justice Act. Therefore in view of the aforesaid fact and procedural impropriety, the orders holding the child alleged to be in conflict with law to be juvenile are not

maintainable under law.

26. Now coming to the review of the order of juvenility, this court is of the view that there may not be any expressed provision of review. However, in the case in hand and as held hereinabove, the determination of juvenility by the Additional Chief Judicial Magistrate is void ab initio being without jurisdiction. The determination made by the Board is also based on such an order. Thus there was no bar to exercise power under Section 14 of the Act, 2015, inasmuch as the child was produced before the Board only after the order of the Additional CJM.

27. It is true that a person aggrieved by an order made by the committee or the board is an appealable order except for the decision made by the committee relating to foster care and sponsorship aftercare, however, section 102 of the Act, 2015 gives a revisional power to the High Court and the High Court is empowered to examine the legality and propriety of any such order. In the considered opinion, the High Court can exercise such power to consider the correctness, legality or propriety of any finding, inter say an order and as to the regularity of the proceeding of the committee or the Board as the case may be. However, in such exercise of power, the High Court should not dwell upon the facts and evidence of the case.

28. From the discussions made hereinabove, it is clear that the learned Courts/Board while exercising their power has committed glaring procedural impropriety and therefore, the orders passed by it had not only resulted in failure of justice but also resulted in illegality and therefore, in the considered opinion of this Court, this is a fit case

to exercise this Court's power under section 102 of the J.J. Act, 2015.

29. This court cannot also be oblivious of the fact that the noble object for which the Juvenile Justice Act was enacted cannot be allowed to be defeated inasmuch as the victim or the family of the victim/deceased including the prosecution is having a right to have exact determination of age of alleged CIOL, more particularly, when the age is determined to be above 16 years and alleged offence is heinous in nature to get justice and therefore, the Juvenile Justice Board ought not to have lightly taken the allegations raised by the informant.

30. In view of the aforesaid, this court is of unhesitant view that the impugned orders dated 10.01.2022 and 11.05.2023 are not sustainable in law. Accordingly, the same stands set aside. The Juvenile Justice Board, North Lakhimpur shall proceed afresh under section 14 of the Act to determine the juvenility of the two accused alleged to be child in conflict with law and thereafter pass order under section 17 and 18 of the act as the case may be. While doing so, if necessity arises the Board shall also do the needful in terms of section 15 of the Act. The entire proceeding be completed within a period of 3 months from the date of receipt of a certified copy of this judgment and order.

31. It is stated at the bar that in the meantime charge sheet was filed wherein the two CIOL were sent for trial and presently trial is being conducted by the learned Sessions judge. Therefore, it is provided that till completion of the aforesaid exercise, the proceeding of Sessions Case No.50(NL)/2023 pending in the court of the learned

Additional District and Sessions Judge (FTC), Lakhimpur, North Lakhimpur shall remain suspended and the trial shall proceed on the basis of the determination of the Juvenile Justice Board.

32. In terms of the determination made hereinabove, the writ petition stands allowed.

JUDGE

Comparing Assistant