

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 83 of 2011**

- Suraj Bai, D/o Kishore Dhruwe, aged about 15 years, minor through :
Natural Guardian Mother – Chandrakala, W/o Kishore Dhruwe, aged
about 43 years, R/o Anjora, Nandgaon Para, Police Station (O/P)
Anjora, District – Durg (C.G.)

---- Applicant**Versus**

1. Papu @ Akhilesh Sahu, S/o Anup Sahu, aged about 16 years, R/o
Nandgaon Para, Anjora, Police Station (O/P) Anjora, District – Durg
(C.G.)
2. State of Chhattisgarh, through Police Station Pulgaon, District Durg
(C.G.)

---- Respondents

For Petitioner	:	Mr. Praveen Dhurandhar, Advocate
For Respondent No.1	:	Mr. Ajay Thakre, Advocate
For State/Respondent No.2	:	Mr. D.R. Minj, Dy. Govt. Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order on Board****08/11/2016**

1. This revision petition arises out of order dated 20.10.2010 passed by the Juvenile Justice Board, Durg, by which the Juvenile Justice Board, after having held the Juvenile guilty of commission of offence under Sections 363, 366 and 376 of the Indian Penal Code and under Sections 3(1)(xii) and 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, has passed an order of the nature as provided under Section 15 sub-section (1) clause (g) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'the Act, 2000') for the period of Juvenile's stay in the Observation Home i.e. from 16.06.2009 to 20.10.2010.
2. The revision has been filed by the prosecutrix through her natural guardian seeking enhancement of the so called sentence awarded to the juvenile by the Juvenile Justice Board on the ground that looking to the nature and gravity of the allegations and offences committed by the respondent–juvenile, attending circumstances, conduct of the juvenile and that the applicant–prosecutrix was a minor and belonging

to reserve category, the juvenile ought to have been kept in the Reform Home for the maximum period, provided under Section 15 of the Act, rather than releasing him.

The submission of learned counsel for the applicant / victim is that the applicant belongs to Scheduled Tribe. Not only that it is also submitted that, the prosecutrix is a girl of 14 years of age, she was enticed and then kidnapped from the lawful guardianship of her parents. The delinquent juvenile took her to another place and on a false pretext of solemnization of marriage sexually exploited her. The accused admitted his guilt also, therefore, in these circumstances, justice would not be done if the maximum period of detention, as provided under Section 15 of the Act, 2000, is not ordered against the juvenile-accused.

3. On the other hand, learned counsel for respondent-juvenile submits that the case of the revisionist is based on erroneous assumption that the juvenile is liable to be convicted and sentenced. According to him, even if the offence is found to be committed, only those orders, as provided under Section 15 of the Act, 2000, could be passed and the Juvenile Justice Board in the attending circumstances of the case, has passed one of the order, as provided under Section 15(1)(g) of the Act, 2000, which is highest degree of detention that could be ordered against a juvenile under the scheme of the Act, 2000, though it has been reduced to about 1 and 1/2 years during which the juvenile remained in the Observation Home. It is further submitted that at this stage when a juvenile is more than 23 years of age, no purposes would be served in sending a juvenile to any Special Home or in the care or supervision of a fit person, a fit institution or any other Reform Institution.
4. The Juvenile Justice Board found the juvenile guilty of commission of offence under Sections 363, 366 and 376 of the Indian Penal Code and under Sections 3(1)(xii) and 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. The order passed by the Juvenile Justice Board has not been challenged by the juvenile in any separate proceedings. The only question which remains for consideration is whether in the facts and circumstances of the present

case, the order passed by the Juvenile Justice Board warrant interference by this Court.

5. The juvenile, at the time of commission of offence was found to be 16 years of age and there is no dispute in this regard. Moreover, the age of the prosecutrix being 14 years and she being Scheduled Tribe are also not in dispute.
6. The statement of the prosecutrix recorded by the Juvenile Justice Board in enquiry under the Act, 2000 reveals that the juvenile had fallen in love with the prosecutrix and went to the extent of cutting his wrist stating that if the girl does not come with him, he would commit suicide. According to the statement of the prosecutrix, because of this threat, she agreed to come along with juvenile and they left the place and went to different places and finally they married and started living as husband wife at village Mahapalli. After seven days, the parents of juvenile reached and the prosecutrix and juvenile–accused were brought back home. According to the prosecutrix, the juvenile committed sexual intercourse only after marriage solemnized between them. In her cross-examination, she has stated that if she would not have been brought back by the parents of the juvenile, she would not have lodged any kind of report. The juvenile has admitted his guilt before the Juvenile Justice Board, which led the Board to record a finding of guilt.
7. The Juvenile Justice Board, after having examined as to whether the juvenile has committed the offence or not, proceeded to pass an order of detention taking into consideration the period already undergone by the juvenile in the Observation Home, which was approximately 1 year and 4 months. The order, however, does not take into consideration any other material as to why the Juvenile Justice Board decided to pass such kind of order in respect of the juvenile. The reading of the order shows that the Juvenile Justice Board after holding the juvenile guilty of commission of offences only recorded “facts & circumstances and admission of guilt by the juvenile and the period undergone in judicial custody”. Except this, there is nothing which seems to have weighed in the impugned order of the Juvenile

Justice Board. This kind of approach is not at all correct nor any conformity with the scheme of the Act, 2000.

8. In five judges Bench decision in the case of *Pratap Singh vs. State of Jharkhand and Another* [(2005) 3 SCC 551], the statutory scheme of the Juvenile Justice (Case and Protection of Children) Act, 2000 was examined by the Supreme Court and it was observed as under :

“10. Thus, the whole object of the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at making available the benefit of the Act to the neglected or delinquent juveniles. It is settled law that the interpretation of the statute of beneficial legislation must be to advance the cause of legislation for the benefit of whom it is made and not to frustrate the intendment of the legislation.

19. The legislative intendment underlying Sections 3 and 26 read with the preamble, aims and objects of the Act is clearly discernible. A conjoint reading of the sections, preamble, aims and objects of the Act leaves no manner of doubt that the legislature intended to provide protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication thereof. Interpretation of Sections 3 and 26 of the Act are no more res integra. Sections 3 and 26 of the 1986 Act as quoted above are in pari materia with Sections 3 and 26 of the Rajasthan Children Act, 1970 (Raj Act 16 of 1970). A three-Judge Bench of this Court in **Umesh Chandra v. State of Rajasthan** [2 (1982) 2 SCC 202] after considering the preamble, aims and objects and Sections 3 and 26 of the Rajasthan Act, held that the Act being a piece of social legislation is meant for the protection of infants who commit criminal offences and, therefore, such provisions should be liberally and meaningfully construed so as to advance the object of the Act

23. As state herein above the whole object of the Acts is to provide for the care, protection, treatment, development and rehabilitation of juveniles. The Acts being benevolent legislations, an interpretation must be given which would advance the cause of the legislation i.e. to give benefit to the juveniles.”

9. In case of **Dharambir vs. State (NCT of Delhi) and another** [(2010) 5 SCC 344] decided by the Supreme Court, it was found that the age of the juvenile was much more than the age of juvenility and in that context, the Supreme Court dealt with such a situation and held as under :-

“19. In the instant case, as per the information furnished to us, the appellant has undergone an actual period of sentence of 2 years 4 months and 4 days and is now aged about thirty-five years. We feel that, keeping in view the age of the appellant, it may not be conducive to the environment in the Special Home and to the interest of other juveniles housed in the Special Home, to refer him to the Board for passing orders for sending the appellant to a Special Home or for keeping him at some other place of safety for the remaining period of less than eight months, the maximum period for which he can now be kept in either of the two places.”

10. In case of **Salil Bali vs. Union of India and another [(2013) 7 SCC 705]**, Juvenile Law was examined in detail in global context, recent development, reports of various committees, judgments, the trend of crime committed by the juvenile was also taken consideration as follows :

“49. There is little doubt that the incident, which occurred on the night of 16-12-2012, was not only gruesome, but almost maniacal in its content, wherein one juvenile, whose role is yet to be established, was involved, but such an incident, in comparison to the vast number of crimes occurring in India, makes it an aberration rather than the Rule. If what has come out from the reports of the Crimes Record Bureau, is true, then the number of crimes committed by juveniles comes to about 2% of the country’s crime rate.”

The Supreme Court, thereafter, examined the scheme of the Act, 2000 as below :-

“57. The Juvenile Justice (Care and Protection of Children) Act, 2000, is in tune with the provisions of the Constitution and the various Declarations and Conventions adopted by the world community represented by the United Nations. The basis of fixing of the age till when a person could be treated as a child at eighteen years in the Juvenile Justice (Care and Protection of Children) Act, 2000, was Article 1 of the Convention of the Rights of the Child, as was brought to our notice during the hearing. Of course, it has been submitted by Dr. Kishor that the description in Article 1 of the Convention was a contradiction in terms. While generally treating eighteen to be the age till which a person could be treated to be a child, it also indicates that the same was variable where national laws recognize the age of majority earlier.

58. In this regard, one of the other considerations which weighed with the legislation in fixing the age of understanding at eighteen years is on account of the scientific data that indicates that the brain continues to develop and the growth of a child continues till he reaches at least the age of eighteen years and that it is at that point of time that he can be held fully responsible for his actions. Along with physical growth, mental growth is equally important, in assessing the maturity of a person below the age of eighteen years. In this connection, reference may be made to the chart provided by Mr. Kanth, wherein the various laws relating to children generally recognize eighteen years to be the age for reckoning a person as a juvenile/ child including criminal offences.

61. One misunderstanding of the law relating to the sentencing of juveniles, needs to be corrected. The general understanding of a sentence that can be awarded to a juvenile under Section 15(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2000, prior to its amendment in 2006, is that after attaining the age of eighteen years, a juvenile who is found guilty of a heinous offence is allowed to go free. Section 15(1)(g), as it stood before the amendment came into effect from 22nd August, 2006, reads as follows:

“15(1)(g) make an order directing the juvenile to be sent to a special home for a period of three years:

(i) in case of juvenile, over seventeen years but less than eighteen years of age, for a period of not less than two years;

(ii) in case of any other juvenile for the period until he ceases to be a juvenile: Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.”

63. There is yet another consideration which appears to have weighed with the worldwide community, including India, to retain eighteen as the upper limit to which persons could be treated as children. In the Bill brought in Parliament for enactment of the Juvenile Justice (Care and Protection of Children) Act of 2000, it has been indicated that the same was being introduced to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of delinquent juveniles. The essence of the Juvenile Justice (Care and Protection of Children)

Act, 2000, and the Rules framed thereunder in 2007, is restorative and not retributive, providing for rehabilitation and re-integration of children in conflict with law into mainstream society. The age of eighteen has been fixed on account of the understanding of the experts in child psychology and behavioural patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future. There are, of course, exceptions where a child in the age group of sixteen to eighteen may have developed criminal propensities, which would make it virtually impossible for him/her to be reintegrated into mainstream society, but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try and re-integrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals, which does not augur well for the future.”

11. The scheme of the Act, 2000, as examined by the Supreme Court in aforesaid decisions, clearly shows that the object of the Act is not to impose any kind of penalty on the juvenile in conflict with law, who is found to have committed an offence, which is otherwise punished under the penal laws. The object of the Act is only to bring about reform and restitution of the juvenile who has been found to have committed an offence. This is clearly reflected from the provisions under Section 15 of the Act, 2000. This indeed indicates that intention of the legislature is not to impose any kind of jail sentence to punish or to impose any kind of penalty, but, either to release him or subject him to scheme of reform and restitution in any of the mode and manner prescribed under Section 15 of the Act, 2000. For this purpose, it would be appropriate to quote relevant provisions contained in Section 15 of the Act, 2000.

“15. Order that may be passed regarding juvenile.— (1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it so thinks fit,—

- (a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

- (b) direct the juvenile to participate in group counselling and similar activities;
- (c) order the juvenile to perform community service;
- (d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;
- (e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- (f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- [(g) make an order directing the juvenile to be sent to a Special Home for a period of three years:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.]

(2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

(3) Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law:

Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care

the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a Special Home.

(4) The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.”

12. A perusal of the aforesaid provision reveals that one or other kind of reformatory or restitutive order may be passed by the Juvenile Justice Board depending upon the facts and circumstances of a given case of a juvenile. None of the provision talk of any kind of penalty or jail sentence on the juvenile. Sub Section (2) of Section 15 of the Act, 2000 is very important which provides guidelines to the Board that the Board shall obtain the social investigation report of a juvenile either through a probation officer or a recognized voluntary organization or otherwise, and shall take into consideration the findings of such report before passing an order. This statutory mandate clearly enjoins upon the Board a duty to obtain report and to take relevant facts into consideration before passing any order under Section 15 of the Act, 2000. However, the impugned order before this Court mentioned nothing. There is no even in mention of any social investigation report submitted either by Probation Officer or by any other Institution or agency much less any consideration of the special circumstances justifying conclusion as has been been drawn by the Board for passing the order in the case. Quite apparently, the Board has acted mechanically and has dealt with the matter as if it was only required to decide the quantum of sentence and for that purpose, the period already undergone has been taken into consideration.
13. It may be noted that under Section 16 of the Old Act, in an appropriate cases, where the Board is satisfied that the offence committed is so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a Special Home to send him to such Special Home and that none of

the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. From this point of view also the Board did not take into consideration any of the aspect of the case including seriousness of the nature of offences committed by the juvenile.

14. May be that upon consideration of all the relevant facts and circumstances, the order, which has been passed by the Board could be justified, but in absence of there being any reasons assigned, much less, consideration of relevant aspect as mandated by the scheme of the Act, 2000, the approach of the Board cannot be countenanced.
15. On facts of the case, even if this Court comes to the conclusion that a different kind of order ought to be passed in the present case, possibly an order of sending a Juvenile to Special Home or in the care supervision of a fit person or a fit institution, taking into consideration, the lapse of time, at this stage, no useful purpose would be served in passing any other order in the present case because the alleged offence was committed in the year 2009 and after 7 years sending a Juvenile of the year 2009, who has now completed more than 23 years of age, would not serve any statutory purpose of reform or restitution. In the case of *Dharambir vs. State (NCT of Delhi)* and another (**supra**), Supreme Court found that keeping in view the age of the Juvenile, it would not be conducive to the environment in the Special Home and to the interest of other juveniles housed in the Special Home, to refer him to the Board for passing orders for sending the juvenile to a Special Home or for keeping him at some other place of safety for remaining period. The observation made in para 19 of the Judgment have already been noted above.
16. It is found that the Board has treated the period spent by the juvenile in the Observation Home sufficient for the purposes of the case and has released the juvenile.

17. In that view of the matter and above consideration, no further orders are found necessary to be passed in the interest of justice in the matter. No alteration in the order is considered, necessary at this stage of proceedings. The revision is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Chandra