

**241 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM-M No. 29786 of 2014

Date of Decision: 27.01.2017

Gulzar Singh

-Petitioner

Versus

State of Punjab and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. J.S. Mehndiratta, Advocate,
for the petitioner.

Ms. Rimplejeet Kaur, A.A.G., Punjab.

Mr. Gurnam Singh, Advocate,
for respondent No.2.

RAJ MOHAN SINGH, J.

Petitioner has filed this petition for setting aside order dated 01.08.2013 passed by Principal Magistrate, juveniles Justice Board, Patiala and order dated 10.06.2014 passed by Additional Sessions Judge, Patiala whereby order to put respondents No.2 and 3 on community service in Rajindra Hospital, Patiala from 12.08.2013 to 12.09.2013 under

supervision of Chief Medical Officer was upheld.

The son of the petitioner Happy @ Kamaljit Singh was murdered by respondents No.2 and 3 on 09.03.2004. FIR was registered against respondents No.2 and 3. Respondents No.2 and 3 were tried by the juveniles Justice Board, Patiala, where they confessed their guilt and were accordingly convicted by the Principal Magistrate, juveniles Justice Board, Patiala vide judgment dated 01.08.2013. An order of sentence was passed by the Principal Magistrate, juveniles Justice Board directing the respondents No.2 and 3 to perform community service at Rajindra Hospital, Patiala under the supervision of Chief Medical Officer from 12.08.2013 to 12.09.2013.

The said order was assailed by the petitioner in appeal before Additional Sessions Judge, Patiala who dismiss the same vide judgment dated 10.06.2014.

Learned counsel for the petitioner contended that respondents No.2 and 3 confessed their guilt after attaining majority and therefore, order of performing community service

for the period in question was not adequate in terms of Section 15 of The juveniles Justice (Care and Protection of Children) Act, 2000. The case should have been considered by the Principal Magistrate, juveniles Justice Board under Section 15(g) and they were required to be sent to a special house for a period of three years.

I have considered the submissions made by learned counsel at the bar.

Section 15 of the juveniles Justice (Care and Protection of Children) Act, 2000 is reproduced as under:-

“15. Order that may be passed regarding juveniles.-(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 juveniles 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:"

In terms of Section 15(c), order for performing the community service by the juvenile-accused is one of the mode prescribed under the said scheme in the event of finding that the juvenile has committed an offence.

On completion of inquiry, there are certain dispositional alternatives wherein the juveniles can be asked to undergo punishment under reformatory mechanism.

Section 15(c) and (g) are amongst those dispositional alternatives wherein juveniles in conflict with law can be ordered to act. The juveniles were involved in case under Section 304-A IPC on the allegations that on 09.03.2004 at about 3.00 PM in the area of village Jakharan near Khanpur Relu, juveniles in

conflict with law by their act of rash and negligent driving caused death of Happy @ Kamaljit Singh. The act of the juveniles in conflict with law was treated to be an offence under Section 304-A IPC.

Challan was presented and they were charge sheeted under Section 304-A IPC. Besides the police report initiated on the FIR under Section 304-A IPC, the complainant had also filed complaint under Section 302 IPC. Accordingly charges were framed in the criminal complaint as well. Due to oversight, both the cases were not consolidated. The Board consolidated both the cases in terms of Section 201 Cr.P.C.

In the complaint, it was alleged that on 09.03.2004, complainant got a telephonic call that his son had been thrown in Narwana Branch of Bhakhra Canal near railway bridge. The complainant reached the spot and thereafter, he met one Nirmal Singh who told him that since time had elapsed, no purpose would be served by going to the spot. The complainant went back to village Mandoli bridge and was informed by some

people that the dead body would surface only after 2-3 days.

The complainant came back to the village where he was informed by his wife that at about 1.30 P.M., Malkit Singh and Gagandeep Singh had come on a cycle and they took the deceased along with them. The complainant went to police station for lodging FIR in respect of murdering of his son but the police did not take any action.

The dead body of the deceased Happy @ Kamaljit Singh was spotted on 18.03.2004. The dead body was subjected to post-mortem. Proceedings under Section 174 Cr.P.C. were done. Inquiry was conducted by DSP who recommended the case under Section 304-A IPC. Thereafter, the complaint in question came to be filed.

After leading preliminary evidence, charges under Section 302 IPC were framed. That is, how, the proceedings before the Principal Magistrate, Juvenile Justice Board started on finding the accused to be juveniles in conflict with law. The juveniles in conflict with law confessed their guilt before the

Principal Magistrate, Juvenile Justice Board. On the basis of such confession, the Board directed them to perform community service in Rajindra Hospital, Patiala under supervision of Chief Medical Officer.

From the record, it can be seen that the complainant led no evidence in the complaint in order to establish the guilt of the juvenile under Section 302 IPC over and above the confession got recorded by them. The only incriminating feature on record was the confession of the juveniles made in the Court. Apparently, Juvenile Justice Board did not afford any opportunity to the juvenile for re-consideration of their confession. The order was passed by the Board only on the basis of confession of the juveniles. However, there was some evidence recorded in the state case under Section 304-A IPC. The guilt of the accused was required to be proved beyond shadow of doubt.

In terms of Section 15(g), the juvenile in conflict with law could have been sent to Special Home, reformatory, bostal jail for three years. Apparently, when the cases were ordered to

be heard in terms of Section 210 IPC, the complainant did not press for amendment of the charge in the state case qua which some evidence had come on record. A statement was made by the complainant on 31.07.2013. When the accused had confessed the guilt, the complainant did not press the application for amendment of charge in the state case, therefore, cumulative appreciation of facts on record can be made to the effect that the complainant had an opportunity to seek amendment of charge in the state case which was not availed of. Only confession made by juvenile in conflict with law was availed before the Juvenile Justice Board without giving any opportunity to the juvenile to re-consider their option.

In totality of facts and circumstances of the case, it was thought appropriate by the Juvenile Justice Board to pass one of the dispositional sentence as provided under Section 15 of The Juvenile Justice (Care and Protection of Children) Act, 2000.

Learned counsel for the petitioner contended that

even after the order in question, the respondents did not mend their ways and have committed subsequent offence under Section 324, 506, 34 IPC for which FIR No.123 dated 08.06.2014 was registered against them in Police Station, Rajpura. It can be found that the order passed by Principal Magistrate, Juvenile Justice Board was passed on 08.08.2013. The period for performing the community service was from 12.08.2013 to 12.09.2013. Apparently, there was no stay granted against the dispositional punishment passed by the Juvenile Justice Board and the said period has already expired.

In view of attending circumstances of the case, I do not see any scope for interference in the orders passed by the Courts below.

Accordingly, the present petition is dismissed.

27.01.2017

jyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No