

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR No.3399 of 2015 (O&M).
Decided on:-07.10.2017.

Sabban.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Mohd. Arshad, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against the order dated 04.03.2015 passed by learned Principal Magistrate, Juvenile Justice Board, Gurgaon, whereby the petitioner being juvenile in conflict with law was ordered to be kept in Special Home, Ambala for three years for commission of offence under Section 302 IPC.

Challenge has also been laid to the judgment dated 26.08.2015 passed by learned Additional Sessions Judge, Gurgaon, vide which the appeal filed by the petitioner against the aforesaid order dated 04.03.2015 passed by learned Magistrate, was dismissed with modification in the order of sentence.

Briefly stated, FIR No.100 dated 22.06.1999 under Sections 148, 149, 302 and 506 IPC was registered against the petitioner and other co-accused at Police Station Ferozepur Jhirka, District Gurgaon, wherein the

petitioner along with other co-accused was held guilty under Section 302 IPC and was sentenced to undergo imprisonment for life by learned Additional Sessions Judge, Gurgaon vide judgment and order dated 15.06.2002. The petitioner filed an appeal against the said judgment and order before this Court and vide order dated 02.07.2014 passed by this Court, the conviction of the petitioner was maintained, but the sentence passed by learned Additional Sessions Judge, Gurgaon was set aside by holding that the petitioner was juvenile at the time of commission of offence and, therefore, he could not have been punished by the trial Court. Accordingly, the case was remanded back to the Juvenile Justice Board, Gurgaon for passing of appropriate order of punishment under the Juvenile Justice (Care and Protection of Children) Act, 2000.

In compliance of the aforesaid order dated 02.07.2014 passed by this Court, learned Principal Magistrate, Juvenile Justice Board, Gurgaon, vide order dated 04.03.2015 had ordered that the petitioner shall be kept in Special Home, Ambala for a period of three years for commission of offence under Section 302 IPC, however, the period of custody of 7 months and 21 days already undergone by him was ordered to be set off.

Aggrieved against the aforesaid order dated 04.03.2015, the petitioner preferred an appeal before the Court of Session, but the same was dismissed by learned Additional Sessions Judge, Gurgaon vide judgment dated 26.08.2015, however, with modification in the order of sentence that the appellant shall appear before the Board within thirty days and shall furnish a bond of good behavior for a period of two years to the satisfaction of the

Board and his conduct will be monitored by the Probation Officer. It was also ordered that the petitioner shall be sent to a special home or may be kept in a fit institution in such manner as the State Government may deem fit and appropriate to enable him to serve the remainder period of his sentence. It was also ordered that as the appellant was approximately 32 years of age, he shall not be kept with juveniles, who are serving the sentence in terms of Section 15 of the Act or under-adults, who have just attained majority.

Still aggrieved, the petitioner has filed the present revision petition.

Learned counsel for the petitioner has contended that the impugned orders passed by learned Magistrate and the appellate Court are contrary to law and facts. After the age of 21 years, an accused, juvenile in conflict with law, cannot be sent to Special Home and only the juveniles, who are below 21 years of age or before 18 years of age, can be sent to Special Home. He has further contended that in the present case, the provisions of the Juvenile Justice Act, 1986 are applicable.

Learned counsel for the petitioner has prayed that since the petitioner is about 34 years of age and has undergone substantial part of his sentence, it would not be proper to keep him in the special home and he may be released. In support of his contention, he has placed reliance upon ***Dharambir Versus State (NCT of Delhi) and another 2010(2) RCR (Criminal) 773***, wherein the accused was juvenile at the time of commission of crime, but had attained the age of 35 years and already undergone sentence of 2 years 4 months and 4 days. The Apex Court held that at this stage, it was

not 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 special home or for keeping him at some other place of safety for the remaining period of less than eight months i.e. the maximum period for which he can now be kept in either of the two places. Reliance has also been placed upon ***Matibar Singh Versus State of U.P. 2015(3) RCR (Criminal) 82*** wherein plea of juvenility was raised before Hon'ble Supreme Court and it was held by the Apex Court that there is no question of sending the accused to an observation home for possible reformation.

On the other hand, learned State counsel has argued that merely because the petitioner has attained the age of about 34 years during the intervening period is no ground to release him in the case. In support of his contention, he has relied upon the judgment of Hon'ble Supreme Court in ***Salil Bali Versus Union of India and another 2013(3) RCR (Criminal) 796*** and the order dated May 25, 2017 passed by this Court in ***Criminal Revision No.761 of 2016*** titled as ***Vikas Versus State of Haryana.***

I have heard learned counsel for the parties.

The plea of learned counsel for the petitioner that case of the petitioner is required to be dealt with as per the provisions of Juvenile Justice Act, 1986 cannot be accepted as vide order dated 02.07.2014, this Court has already ordered for passing of appropriate punishment of the petitioner in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

The creation of Special Home has not been disputed by either of the parties. Therefore, the plea of learned counsel for the petitioner that the petitioner is about 34 years of age and cannot be sent to special home cannot be accepted in view of the judgment passed by the Apex Court in ***Salil Bali's case (supra)*** wherein it has been held that even if the petitioner had attained the age of 18 years, he would still have to undergo the imposed sentence of three years which could spill beyond the period when he attained majority. The relevant part of the said judgment is reproduced as under:

“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.”

62. *It was generally perceived that a juvenile was free to go, even if he had committed a heinous crime, when he ceased to be a juvenile.*

The said understanding needs to be clarified on account of the amendment which came into force with effect from 22.08.2006, as a result whereof Section 15(1)(g) now 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:

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.”

The aforesaid amendment now makes it clear that even if a juvenile attains the age of eighteen years within a period of one year he would still have to undergo a sentence of three years, which could spill beyond the period of one year when he attained majority.”

Thus, having regard to the law laid down by the Apex Court in ***Salil Bali’s case (supra)*** and taking into consideration the judgment passed by this Court in ***Vikas Versus State of Haryana’s case (supra)***, this Court finds that there is no illegality or irregularity in the impugned orders passed by the Courts below.

Even otherwise, the scope of revisional jurisdiction is vested with limited powers and the same should be exercised only in case where the Courts below have committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence. In the present case,

the petitioner has also not been able to prove that in what manner, impugned orders passed by the Courts below suffer from illegality, irregularity or perversity which may warrant interference of this Court by invoking its revisional jurisdiction.

Accordingly, the impugned order dated 04.03.2015 passed by learned Principal Magistrate, Juvenile Justice Board, Gurgaon as well as the impugned judgment dated 26.08.2015 passed by learned Additional Sessions Judge, Gurgaon are affirmed and the present revision petition, being devoid of any merit, is dismissed.

October 07, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No