

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

CRM-M No.8821 of 2017 (O&M)

Date of decision: 25.04.2017

Ajay @ Vicky

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. H.P.S. Ghuman, Advocate
for the petitioner.

REKHA MITTAL J.

CRM No.12044 of 2017

Heard.

Allowed as prayed for.

Annexures P6 is taken on record subject to just exceptions.

Disposed of accordingly.

CRM No.13043 of 2017

Heard.

Allowed as prayed for.

Affidavit of the petitioner is taken on record subject to just exceptions.

Disposed of accordingly.

CRM-M No.8821 of 2017

The present petition directs challenge against order dated 03.01.2017 passed by the Principal Magistrate, Juvenile Justice Board, Panipat whereby the petitioner has been declared as an adult and his

case has been referred for trial by the Special Judge under Protection of Children from Sexual Offences Act, 2012 (in short 'the Act'). Further challenge has been laid to order dated 09.02.2017 (Annexure P5) passed by the Special Judge, framing charge against the petitioner by the Special Court.

Counsel for the petitioner has submitted that FIR No.48 dated 14.07.2016 under Sections 366 and 376 of the Indian Penal Code (in short 'IPC') and 4 of the Act was registered at Women Police Station, Panipat. The petitioner was treated as a juvenile/a child and was released on bail by the Juvenile Justice Board (in short 'the Board') vide order dated 20.12.2016 (Annexure P3). An enquiry was conducted by the Board in terms of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred to as '2015 Act') and the petitioner has been held to be an adult under Section 18 of the 2015 Act and his case has been transferred to the Children's Court, Panipat and the said Court has framed charge under Sections 363, 366 and 376 IPC and 4 of the Act.

The sole submission made by counsel for the petitioner is that neither in the counseling report for Psychological and Behavioural Assessment of the petitioner nor in the order dated 03.01.2017, there is reference to the particular questions put to the petitioner and the answers to those questions given by the petitioner to record an adverse finding against the petitioner that the petitioner was aware of possible outcome and consequences of his act on him, his family members, therefore, order dated 03.01.2017 passed by the Board is liable to be set-aside and proceedings conducted by the Special Court are also

liable to be set-aside with a direction to the Board to pass a fresh order, in accordance with law.

I have heard counsel for the petitioner and perused the paperbook.

Before adverting to the submissions made by counsel for the petitioner, it is appropriate to take note of the relevant provisions of the 2015 Act namely Section 15 providing for preliminary assessment into heinous offences by the Board and Section 18 that deals with orders regarding child found to be in conflict with law. A relevant extract from Sections 15 and 18 reads as follows:-

“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.

18. Orders regarding child found to be in conflict with law.

(1) XXXX XXXX XXXX XXXX

(2) XXXX XXXX XXXX XXXX

(3) *Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."*

Concededly, the Board has sought the help of a Psychologist for the purpose of preliminary assessment envisaged under Section 15(1) of the 2015 Act. A brief reference to the Counseling Report for Psychological and Behavioural Assessment made by the Psychologist, germane to the present controversy, reads as follows:-

"Child was made to reply to a set of questions which were aimed at getting responses, so as to assess child's behaviour, understanding and mental capacity of the child to commit the act he is accused of and whether the child was aware of the probable future consequences of the act committed by him.

Queries included questions on like his views and thinking about such an act.

Whether he was aware of the consequences of the act committed by him.

It was observed that the child had previously heard about such cases and is also aware of such cases and their consequences by various means viz. friends and media.

It was further observed that child was aware of probable future consequences of the act i.e. personal familial, social and legal consequences.

However child did not admit committing of the act he is accused of and concealed the relevant information about the act he is accused of.

To conclude child was aware of the seriousness act committed by him and probable personal, familial social

and legal consequences of the act.

- i. Effect on his future personal life.*
- ii. Derogatory effect on himself and his family.*
- iii. That a legal action may be taken against him.*

However, from counseling conversation and psychological assessment of the child it appears that the child has sufficient reasonable mental capacity to commit the act.”

The Board has taken into consideration report of the Psychologist, stated to be sufficiently experienced and working in the office of District Child Protection Officer, Panipat and held that after considering the record and having heard both the sides and the juvenile personally, Board is of the considered opinion that juvenile had sufficient mental and physical capacity to commit the offence alleged against him and also he had adequate ability to understand the consequences of the act committed by him.

The petitioner has not denied his interaction with the Psychologist who has submitted the report to the Court. He has not levelled any allegation of mala fide against the Psychologist to challenge veracity of the report in regard to his mental ability and physical capacity to commit the offence and understand its consequences. Counsel for the petitioner has failed to point out any provision in law that makes it incumbent upon the Psychologist or the Court to specifically record the questions put to the juvenile and answers given by him for recording its satisfaction during preliminary assessment under Section 15(1) of the 2015 Act. In this view of the matter, I find myself unable to accept the submissions made by counsel

for the petitioner that the impugned order dated 03.01.2017 suffers from any infirmity much less illegality. As a natural consequence, challenge to the order passed by the Special Court framing charge against the petitioner vide order dated 09.02.2017 is mis-conceived and liable to be rejected.

For the foregoing reasons, the petition fails and is accordingly dismissed.

(REKHA MITTAL)
JUDGE

25.04.2017
yakub

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