

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO.1198 OF 2017

ORDER:

Heard the learned Public Prosecutor appearing for the petitioner State and the learned counsel for the respondent.

2. The present Criminal Revision Case is filed questioning the Official Memorandum vide Dis.No.1445 dated 28.2.2017 directing the I Additional Judicial Magistrate of First Class-cum-Principal Magistrate, Juvenile Justice Board, Karimnagar to try the case and dispose of the same in accordance with law.

3. The facts of the case are that the defacto complainant lodged a complaint on 25.2.2016 against the respondent herein and two others stating that on 10.2.2016, while herself and her friend were waiting at the bus stand, Veenavanka at about 2.00 p.m., one G.Srinivas asked them to come to cinema and picked them on his mother cycle and proceeded towards Kalvala Road. The friends of Srinivas i.e., the respondent herein and one Anjaiah also joined them. When he stopped the vehicle, the defacto complainant and her friend got down, and later they went on their bikes. When the defacto complainant was proceeding towards Veenavanka side, said Srinivas came to her and forcibly made her to sit on his motorcycle promising to drop her at Veenavanka, but he took her to Kachapur hillocks side by making phone calls to the respondent herein and Anjaiah to come there. At the said place, she was raped by said

Srinivas and Anjaiah. The respondent herein has videographed the same in his mobile phone.

4. On a complaint lodged, the Sub-Inspector of Police, after investigation, filed charge sheet. The Court below took cognizance of the offence under Sections 342, 354-C, 366, 376-D, 506 IPC and Sections 3(2)(v) of SC/ST (PoA) Act and Section 66(E) of I.T. Amendment Act read with 34 IPC. After cognizance, the same was numbered as S.C.No.29 of 2016. As far as the case against the respondent herein is concerned, it was taken on file by the Juvenile Justice Board, Karimnagar. The Board, after conducting preliminary assessment and after collecting reports from the Counsellor and the District Probation Officer, was satisfied that the respondent herein was mentally and physically capable to commit the said offence and also had enough ability to understand the consequences of committing the offence. Basing on the same, learned Magistrate vide order dated 21.6.2016 found that the respondent herein has to be tried as an adult for the above said offences by the learned Childrens Court (I Additional District & Sessions Court, Karimnagar). After receiving the file from the I Additional Judicial Principal Magistrate, Juvenile Justice, Karimnagar, the I Additional District and Sessions Judge, vide docket order dated 27.8.2016 observed that the victim is a major by the time of the offence and the record was transmitted to try the respondent herein as an adult. In fact, as the Accused Nos.1 and 2 were being tried for the same offence by the V Additional District and Sessions Judge-cum-SCs/Sts (PoA),

Karimnagar vide S.C.No.29 of 2016 and since the respondent herein is also one of the accused, he should also be tried as an adult and, therefore, the said file was transmitted to V Additional District & Sessions Judge-cum-SCs/STs (PoA), Karimnagar. Learned V Additional District and Sessions Judge-cum-SCs/STs (PoA) Karimnagar, vide docket order dated 22.9.2016, passed an order stating that as on the date of offence though the victim was major, the respondent herein was not an adult, so, that Court is not a proper Court to try the case, more over, the powers of making over Sessions Cases are vested with Principal District and Sessions Judge, Karimnagar, and the same may be sent to the said Court for making over to appropriate Court for disposal according to law. In fact, the District and Sessions Judge, Karimnagar through Office Memorandum dated 28.2.2017, which is impugned herein, held that prior to production of the respondent herein before the Board, report was filed. Hence, the preliminary enquiry is not valid as per Section 14(2) of the Act and directed the I Additional Judicial Magistrate of First Class-cum-Principal Magistrate, Juvenile Justice Board, Karimnagar to try the case. Aggrieved by the same, the present Criminal Revision Case is filed.

5. Learned Public Prosecutor appearing for the petitioner State contended that as per the report of the Board, if the respondent is tried as an adult by the Childrens Court, the sentence prescribed by the penal provisions is life imprisonment. However, if the respondent is tried by Juvenile Justice Board, the sentence

prescribed is only three years. Therefore, since the offence committed by the respondent is grave and heinous and though he is aged more than 17 years and having knowledge about the consequences of the offence, he deserves severe punishment. In fact, he also brought to the notice of the Court about the orders passed by the Juvenile Justice Board on 21.6.2016 and submitted that the preliminary assessment is done within a period of four months from the date of first production of the respondent before the Board. Therefore, the finding of the District and Sessions Judge that the preliminary assessment report is not valid under Section 14 (2) of the Act, is not correct.

6. Having heard the submissions of both the parties and after perusal of the material on record, it is revealed that the Juvenile Justice Board conducted preliminary assessment and passed an order on 21.6.2016 and after collecting reports from the Counsellor and the District Probation Officer, was satisfied that the respondent had enough mental and physical capacity to commit the said offence and also had enough ability to understand the consequence of committing the offence and, therefore, it cannot be said that the respondent herein, is a minor and he should be tried by the Juvenile Justice Board. In fact, the preliminary assessment, after collecting the reports from the Counsellor and the District Probation Officer was done, within a period of four months from the date of production of the respondent before the Board. According to Section 14(2) of Juvenile Justice (Care and Protection of Children)

Act, 2015, enquiry shall be completed within a period of four months from the date of first production of the child before the Board. In the case on hand, the respondent herein was produced on 16.6.2016 before the Board and report was filed on 10.6.2016. As per Section 15 of the Act, Board shall conduct preliminary assessment, but in the present case, District Probation Officer has filed a report. As such, it evidences that prior to production of the respondent herein before the Board, report was filed. Therefore, the preliminary enquiry report which is filed, is not filed as per Section 14(2) of the Act. Though the Juvenile Justice Board, after conducting preliminary assessment and after collecting reports from the Counsellor and the District Probation Officer, was satisfied that the respondent herein had enough mental and physical capacity to commit the offence and also had the ability to understand the consequences of the same, cannot displace the mandatory procedure as contemplated under Section 14(2) of the Act. Merely because the Board has given a Certificate that the respondent shall be treated as an adult, it cannot be said that the respondent should be tried in violation of the procedure contemplated under the provisions of the Juvenile Justice Act, more so, when the respondent was a minor at the time of commission of the offence.

7. In these circumstances, this Court finds no irregularity or illegality in the orders passed in the Official Memorandum in Dis.No.1445 dated 28.2.2017 by the District and Sessions Judge, Karimnagar.

8. Accordingly, Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

P. KESHAVA RAO,J

Date:24 . 07 .2018

KPM

