

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

CRM No.A-431-MA of 2017 (O&M)
Date of decision: August 20, 2018

Rajesh Kumar

...Applicant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Shiva Khurmi, Advocate for
Mr.Amardeep Hooda, Advocate for the applicant.

INDERJIT SINGH, J.

Applicant-Rajesh Kumar has filed this application under Section 378(4) read with Section 482 Cr.P.C. seeking permission for leave to appeal against respondents State of Haryana and Sonu, challenging the judgment dated 18.01.2017 passed by learned Principal Magistrate, Juvenile Justice Board, Rohtak, vide which respondent No.2 was acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

I have heard learned counsel for the applicant and have gone through the record.

From the record, I find that Sonu-respondent No.2 juvenile-in-conflict with law was sent to face enquiry for commission of offence punishable under Section 306 IPC. The perusal of the record shows that Sonu was acquitted of the notice of accusation vide impugned judgment

dated 18.01.2017 passed by learned Principal Magistrate, JJB, Rohtak.

Aggrieved from the above-said judgment, present appeal along with the application for grant of leave has been filed.

Section 101 of The Juvenile Justice (Care and Protection of Children) Act, 2015 [for brevity 'the Act'] deals with the 'appeals' which provides as under:-

“101. Appeals.

1. Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children’s Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate:

Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.

2. An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.

3. No appeal shall lie from,—
a. any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or

b. any order made by a Committee in respect of finding that a person is not a child in need of care and protection.

4. No second appeal shall lie from any order of the Court of Session, passed in appeal under this section.

5. Any person aggrieved by an order of the Children’s Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973.

Sub-section 5 of Section 101 states that any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Cr.P.C. Sub-section 20 of Section 2 of the Act deals with the definition of children court, which is as under:-

“20. “Children's Court” means a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;”

Section 102 deals with 'revision' which provide as under:-

“102. Revision.

The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.”

Keeping in view the above provisions, appeal along with the application under Section 378(4) Cr.P.C. is not maintainable. Rather, provisions of The Juvenile Justice (Care and Protection of Children) Act, 2015 will apply in the present case.

Therefore, present application stands dismissed being not maintainable.

August 20, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No