

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO. 551 OF 2018**

|                          |     |            |
|--------------------------|-----|------------|
| Manish Surendra Sharma   | ... | Applicant  |
| vs.                      |     |            |
| The State of Maharashtra | ... | Respondent |

Ms. Neha Philip a/w. Mr. Gaurav Bhawnani i/b. Anne Thomas  
Panicker, Advocate for the applicant.  
Mr. A.R. Patil, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.  
DATED: 20<sup>th</sup> March, 2019**

**P.C. :**

In this Revision Application, it is prayed that the case be sent back to Juvenile Justice Board to try the child in conflict with law Application as a child and pass final order under section 18(1) of Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "J.J. Act") .

2. The applicant is a child in conflict with law and was approximately 17 years old when the offence of murder was committed. The child was referred to the Board of Mental Health and thereafter the procedure was followed under section 18 of J.J. Act and as the report about the mental health of the child is given that the child is mentally fit to understand the consequence of the

Act, which he has done and what he was doing and what he has done. The Board issued certificate accordingly. After receiving the preliminary assessment from the Board under section 15 of the J.J. Act, the Child in conflict with law was referred to the Children Court under section 19 of J. J. Act. However, the Child in conflict with law is aggrieved with the report of the Board of Mental Health and also the step taken by the Court sending the matter to the Children Court under section 19 of the J. J. Act, hence the applicant in this Application demanded that he be again sent to the the Board to reconsider his mental health.

3. The learned counsel for the applicant has submitted that both the orders of the trial Court and the Sessions Court are erroneous, as the trial Court as well as the Sessions Court did not take into account properly the report of the Social Worker, who has stated that the applicant is found well behaved and he is assuring good behaviour and taking into account object and spirit of Juvenile Justice Board Act, the child should have been given opportunity for his rehabilitation in Society. The orders passed by both the Courts below are illegal and they need to be set aside. She further argued that in the Mental Health report of the child, the Board did not mention what tests were carried out to assess the mental health. It

appears that the mental health of the child is assessed arbitrarily and in mechanical manner by the Board of Mental Health. The learned counsel heavily relied on the report dated 11<sup>th</sup> August, 2016 of Mr. R.R. Kulkarni, Probation officer, Observation Home, Umerkhadi, Mumbai. She further submitted that the descending report dated 26<sup>th</sup> March, 2018 of the social worker, who is member of Juvenile Justice Board, Dongri, Mumbai, is not considered by the learned Magistrate. She relied on the judgment of the Single Judge of Punjab and Harayana High Court at Chandigarh in the case of **Bholu vs. Central Bureau of Investigation in Criminal Revision Application No. 2366 of 2018 decided on 11<sup>th</sup> October, 2018**. The learned counsel submitted that the applicant was not allowed to cross-examine the Members of the Board of Mental Health who gave report.

4. The learned APP relied on the Mental Health Report dated 6<sup>th</sup> April, 2016 so also read over the relevant paragraphs from the order of the Sessions Judge and the learned Special Judge, Children Court under Juvenile Justice Board and also the order of learned Magistrate. He also pointed out the present Child in conflict with Law is the main accused, who has inflicted multiple blows with sword on the deceased. He pointed out that the applicant/accused

was physically and mentally fit and the assessment of the Board of Mental Health is correct.

5. Perused the judgment of Single Judge of Punjab and Haryana High Court in the case of **Bholu** (*supra*). At the end of the judgment, the Single Judge has pointed out the assessment of the mental capacity of the juvenile given by the Board. In the order of the Board, it is clear that the clinical psychologist has himself suggested that if any further assessment is required, the juvenile may be sent to the Institute of Mental Health at Rohtak, however, it was ignored by the Board and the assessment is based on inappropriate tests, namely, coloured Progressive Matrics (CPM) and Malin's Intelligence Scale for India children (MISIC) meant for children between ages of 5-11½ and 5-15 years. In the present case, no such information or order passed by psychologist was available to the Board of Mental Health. If at all there would have been some suggestion or such order by the Clinical Psychologist in the present case, then it was binding on the Board of Mental Health to consider it and take steps accordingly. On this point, the facts of the present case are distinguishable.

6. To make good of the point of opportunity to cross-examine the

members of the Board of Mental Health, it is necessary for the applicant to produce the copy of the Application which was rejected by the learned Judge. In absence of such application, the Court cannot presume that the Applicant wanted to cross-examine the members of the Board of Mental Health.

7. On perusal of the orders passed by the Courts below and after going through the Mental Health Report given by the three Members of the Board, it is found that the orders are detailed and well reasoned. The main objection is raised by the learned counsel for the applicant is about the competence of the psychiatrists of the Board of Mental Health. This cannot be a ground at this stage unless it is specifically pointed out, otherwise every report given by the Board consisting three psychiatrists, if it is against the accused will raise a question of competency of the psychiatrists. There are no specific rules under the Juvenile Justice Act directing the psychiatrists what tests are to be carried out to assess the mental capacity of the child in conflict with law. Under such circumstances, unless there is a special circumstance rendering the report doubtful, this report can be accepted as expert's opinion at this stage. The submissions that the applicant/accused was not physically fit because his height was 5'2" and weight was 45 kg. is not correct. It

all depends on the facts and circumstances as to how the crime is committed. I do not find any good ground to send Child Conflict with Law given to the Board for reassessment. Hence, Criminal Revision Application is rejected.

**(MRIDULA BHATKAR, J.)**