

Sr. No. 120

**CRM-15491-2019 in
CRR-1128-2019**

Sunil Kumar @ Gabbu versus State of Haryana

Present: Mr. Deepak Chaudhary, Advocate
for the petitioner(s).

For the reasons mentioned in the application, the same is
allowed.

Delay of 16 days in filing the present revision petition is
condoned.

23rd September, 2019
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Sr. No.120

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

CRR-1128-2019(O&M)

Date of decision:23.09.2019

Sunil Kumar

..... Petitioner

versus

State of Haryana

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Deepak Chaudhary, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Prayer in this case is for quashing of the Order dated 16.11.2018 passed by the Principal Magistrate Juvenile Justice Board Fatehabad, whereby, the Board had ordered, after the inquiry contemplated by Section 15 of the Juvenile Justice(Care and Protection of Children), Act, 2015 (fort short, 'the Act'), that the petitioner deserves to be tried as an adult, as provided in Section 18(3) of the Act as well as the Order dated 21.01.2019, whereby the appeal filed by the present petitioner has been dismissed.

The facts giving rise to the present petition are that FIR No.245, dated 28.07.2018 has been registered under Sections 364, 302, 201 and 34 of IPC and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act 1989 at Police Station Bhuna; in which the petitioner alongwith some other persons, who are major by age; were arrayed as accused. Shorn off any details, the nut shell allegation against the accused was that they had abducted the son of the complainant. An informant had informed the complainant about the abduction; giving the name of the persons who had abducted him. Accordingly, FIR was got

lodged qua abduction. However, subsequently the dead body of the son of the complainant was found in a canal. As a result Section 302 IPC was also added in this case.

The undisputed fact qua the petitioner is that he is of the age of more than 16 years. He was taken before the Juvenile Justice Board for proceedings against him. After conducting the inquiry, as prescribed in Section 15 of the Act, the Board passed the impugned order, whereby the Board ordered that the petitioner understood the consequences of the acts which were attributed to him, and that the petitioner was physically and mentally capable of doing the said act. Therefore, the petitioner be tried as an adult, as provided for under Section 18(3) of the Act.

Feeling aggrieved against the said order, the petitioner preferred statutory appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by the petitioner. Hence, the present revision petition has been filed.

Arguing the case, learned counsel for the petitioner has submitted that the requirements of Section 15 of the Act have not been complied with before passing the impugned order. It is further submitted that although the Juvenile Justice Board had sought Social Investigation Report as well as Psychological Report; and passed its order on the basis of those reports, however, the third factor envisaged by Section 15 of the Act, namely, the circumstances under which, the offence was committed; has not at all been considered by the Board. Hence, Order passed by the Board is not sustainable. Learned counsel for the petitioner further submits that even the lower Appellate Court has not considered the circumstances under which the Act was committed, therefore, even the Order passed by the lower

Appellate Court is not sustainable.

Having heard the learned counsel for the petitioner and perusing the case file, this Court does not find any substance in the argument of learned counsel for the petitioner. Before proceeding further, it would be appropriate to have reference to Section 15 and Section 18 of the Act, as reproduced herein-below:

**Section 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 subsection (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.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then

the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973(2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

Section 18: Orders regarding child found to be in conflict with law:-

(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,---

(a) allow the child to go home after

advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for

the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding the years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, providing reformatory services including education skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to

(g) of sub-section(1), the Board may, in addition pass orders to---

- (i) attend school; or
- (ii) attend a vocational training centre; or
- (iii) attend a therapeutic centre; or
- (iv) prohibit the child from visiting, frequenting appearing at a specified place; or
- (v) undergo a de-addiction programme.

(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.

A bare perusal of the above provisions shows that if the offence committed by the child in conflict with law happens to be heinous and the child in conflict with the law happens to be of the age of more than 16 years, then it is duty of the Board to hold an inquiry to assess whether the child in conflict with law is to be tried as a Juvenile or as an adult. The heinous offence is also defined by Section 2(33) of the Act. The same is also reproduced herein below:-

Section 2(33): "heinous offences" includes the

offences for which the minimum punishment under the Indian Penal Code(45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;

In this case, allegation is qua the offence for which the punishment ranges even upto capital punishment. Therefore, on the face of it, the offence is a heinous offence. The only question is whether the requirements of Section 15 of the Act have been complied with by the Courts below or not.

Perusal of the Order passed by the Juvenile Justice Board itself shows that the said Order is based upon the Social Investigation Report, duly submitted by the competent authorities. Even the Psychological Report had been obtained by the Magistrate. Therefore, both these requirements have been duly complied with. Although the learned counsel for the petitioner has submitted that the Juvenile Justice Board has not taken into consideration, the circumstances attending the commission of the alleged offence, however, this Court finds that even this submission is factually incorrect. The Juvenile Justice Board has specifically observed that the circumstances involved in the case show that the murder has been committed by the petitioner, after planning and in conspiracy with the other co-accused who happened to be major. Therefore, this Court does not find any illegality or perversity in the order as such.

Still further, the appeal filed by the petitioner has been considered in detail. Even the circumstances have been considered in detail qua all possible intentions, motives and the facts and the situations; which constituted the attending circumstances. The legality of the Order passed by

the Board has been duly assessed by the lower Appellate Court in the right perspective. This Court finds that the Order passed by the lower Appellate Court does not suffer from any illegality, impropriety or perversity of any kind.

Since the petitioner has been assessed to be a person who understands the act done by him and consequence of the act, and the alleged attending circumstances did support the fact that it was, allegedly, the planned murder, therefore, the Board has rightly ordered the petitioner to be tried as an adult. Orders have rightly been passed in compliance of Section 15 and 18 of the Act.

In view of the above, finding no merit in the present case, the same is dismissed.

23rd September, 2019
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*