

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-1716-2018 (O&M)

Date of Decision: 07.01.2019

Rohit and others

.... Petitioners

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Kunal Dawar, Advocate for the petitioners.

Mr. Raj Kumar Makkar, Sr. DAG, Haryana.

Mr. Rajesh Lamba, Advocate for respondent No. 2.

RAMENDRA JAIN, J. (ORAL)

Through this revision, accused-petitioners, namely; Rohit, Sagar and Rahul, have laid challenge to the judgment dated 04.04.2018 of the Ist Appellate Court, affirming the orders dated 16.11.2017 and 17.11.2017 of the Principal Magistrate, Juvenile Justice Board, Faridabad, whereby, they were directed to be tried as adults by the Children Court, being above the age of 16 years.

Briefly, the petitioners were booked in case FIR No. 43 dated 04.02.2017, under Sections 302, 120-B, 148 and 149 IPC and Section 25 of the Arms Act, Police Station Sadar, Ballabgarh, District Faridabad. Since, they claimed themselves to be juvenile at the time of commission of crime, therefore, final report under Section 173(2) Cr.P.C., was filed against them before the Principal Magistrate, Juvenile Justice Board, Faridabad. Before, framing of charge, complainant/respondent No. 2-

Vijay, moved an application for enquiring and re-assessment the age of the petitioners under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short-'the Act'). After taking evidence from both the sides and hearing them, the Principal Magistrate, Juvenile Justice Board, Faridabad, vide separate orders of even date i.e. 16.11.2017 held that a preliminary assessment qua juvenility of the petitioners was required to be conducted under Section 15 of the Act.

Consequently, on 17.11.2017, the Principal Magistrate, Juvenile Justice Board, Faridabad, after perusing the case file and making preliminary assessment qua juvenility of the petitioners held that all the petitioners had attained sufficient mental and physical capacity to commit such offence and had sufficient maturity of understanding the consequences of their actions. Therefore, they were required to be tried by the Children Court by treating them being above the age of 16 years, but below the age of 18 years and send the case before District Sessions Judge, Faridabad, for necessary orders.

Being aggrieved by the order dated 17.11.2017, the petitioners approached the Ist Appellate Court, but remained unsuccessful, as their appeal was dismissed vide impugned order dated 04.04.2018.

Relying upon a judgment of this Court dated 11.10.2018, passed in ***CRR-2366-2018, Bholu vs. Central Bureau of Investigation***, learned counsel for the petitioners *inter alia* contends that definition of “heinous offence” has given in Section 2(33) of the Act, which includes the offences for which the minimum punishment under the Indian Penal

Code or any other law for the time being in force is imprisonment for seven years or more. Sections 14 and 15 of the Act, speaks about the enquiry to be conducted by Board regarding a child in conflict with law and preliminary assessment under the following parameters:-

- (i) mental and physical capacity to commit such offence;
- (ii) ability to understand the consequences of the offence;
- (iii) the circumstances in which he alleged committed the offence.

In the instant case, the Principal Magistrate, Juvenile Justice Board, Faridabad and the Ist Appellate Court did not make any such enquiry or preliminary assessment before sending the case of the petitioners before the District and Sessions Judge, Faridabad, to be tried by Children Court, treating their age in between 16 to 18 years. For assessing the mental capacity, the Principal Magistrate, Juvenile Justice Board, Faridabad, did not take the assistance of any expert having experience of working with children in different circumstances like psychologist or psycho-social worker. Even, the Principal Magistrate, Juvenile Justice Board, Faridabad, personally did not assess the mental capacity of any of the petitioners which was mandatorily required before sending them to Children Court for trial. Even no reason was assigned under sub-rule (4) of Rule 10A of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter referred to as 'the Rules of 2016') before sending the case petitioners to Children Court for trial.

On the other hand, learned counsel for respondent No. 2 again referring to proviso to Section 15 of the Act, contends that it was

not mandatory upon the Principal Magistrate to take assistance of a psychologist or any other expert. The Principal Magistrate Juvenile Justice Board, Faridabad, has rightly assess the mental and physical capacity of the petitioner and their understanding qua commission of crime which they have committed after recording their statements. It was also subjective satisfaction of a Principal Magistrate, Juvenile Justice Board, as to how a person claiming juvenility has to be tried.

Having given thoughtful consideration to the rival submission of both the side, this Court is of the opinion that the instant revision is completely devoid of any merit for the reasons to follow:-

It does not lie in the mouth of the petitioners or their counsel that the Principal Magistrate, Juvenile Justice Board, Faridabad, did not make any preliminary assessment qua the mental and physical capacity of the petitoners to commit such offence and their ability to understand the consequences of the offence, which they allegedly committed. The Principal Magistrate, before passing the impugned order dated 17.11.2017, sending the case of the petitioners to the learned District and Sessions Judge, Faridabad, for their trial by Children Court, treating their age in between 16 to 18 years had fully satisfied himself qua the above three aspects. For ready reference, relevant para of order dated 17.11.2017 reads as under:-

“This Board has carefully perused the case file carefully and thoroughly. Today, this Board has also examined the juveniles namely Rohit, Rahul and Sagar separately and have recorded their respective

statements. Form the said assessment, this Board is satisfied that juveniles namely Rohit, Rahil and Sagar had attained sufficient mental and physical capacity to commit such offence and had sufficient maturity of understanding the consequences of their actions and therefore, this Bord is of the considered view that there is a need for trial of the said juveniles namely Rohit, Rahul and Sagar as an adult and therefore, in exercise of the powers conferred upon the Board vide subsection (3) of Section 18 of the abovesaid Act, present case is hereby transferred to the Children Court for the trial of the above-named juveniles. Complete papers regarding juveniles namely Rohit, Rahul and Sagar be sent to Children Court on or before 22.11.2017 and juveniles namely Rahul and Sagar are also directed to appear before the Children Court on the said date and juvenile Rohit be also produced before the Children Court on the date fixed. Further, it is clarified that since there are two special courts designated at District Courts, Faridabad therefore, present enquiry file be first put up before Hon'ble District and Sessions Judge, Faridabad on 22.11.2017 at 10.00 AM sharp for further directions.”

The observations in the above para of the order of Principal Magistrate, makes it abundantly clear that he examined all the petitioners,

recorded their respective statements and also carefully and thoroughly perused the case file. The Principal Magistrate, after satisfying himself that all the petitioners have attained mental and physical capacity to commit offence and ability to understand the consequences of their actions, referred their case for trial by the Children Court.

It is needless to mention here that satisfaction of a Principal Magistrate, Juvenile Justice Board, qua mental and physical capacity of a person to commit crime and ability to understand the consequences thereof, to be tried as a juvenile or adult is a subjective satisfaction. No specific procedure can be adopted or prescribed. All the petitioners were above the age of 16 years, at the time of commission of crime. The only question which was to be determined as to whether the petitioners being above the age of 16 were to be tried by the Principal Magistrate, Juvenile Justice Board or by Children Court.

The word 'may' used in proviso to Section 15 of the Act qua taking assistance of any psychologist, psycho-social worker or other experts is directory in nature. Therefore, it was not mandatorily required for the Principal Magistrate, to take the assistance of such persons before making any preliminary assessment qua mental and physical capacity to commit such crime or ability to understand the consequences thereof and the circumstances to commit the same.

Rule 10(9) of the Rules of 2016, is only a guiding factor that the Principal Magistrate, Juvenile Justice Board, has to assign reasons by making preliminary assessment for declaration as to whether the person at the age of 16 years or above to be tried by Children Court. In the instant

case, Rule 10(9) of the Rules of 2016, is not applicable, because admittedly, on the date of commission of crime all the petitioners were above the age of 16. Therefore, no determination was required as to whether the petitioners were above the age of 16 or not.

The facts and circumstances of the judgment relied upon by learned counsel for the petitioner are quite distinguishable from the facts of instant case. Therefore, no benefit whatsoever of the same can be given to the petitioner. More so, every case has its own peculiar facts and circumstances.

I have carefully gone through impugned judgment dated 04.04.2018 of the Ist Appellate Court, affirming the orders dated 16.11.2017 and 17.11.2017 of the Principal Magistrate, Juvenile Justice Board, Faridabad and find no illegality or perversity in the same.

The instant revision being meritless is dismissed.

January 07, 2019

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No