

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.3075 of 2018 (O&M)

Date of decision: 08.04.2019

Kuldeep

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Harikesh Singh, Advocate
for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

ANIL KSHETARPAL, J. (ORAL)

Challenge is to the order passed by the Juvenile Justice Board dated 03.08.2018 confirmed in appeal by Additional Sessions Judge, Kaithal on 21.08.2018.

Learned counsel for the petitioner has submitted that the Board passed the order on same day when child in conflict with law appeared before the Board for the first time. He submitted that preliminary assessment as required under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 has not been carried out in accordance with the provisions of the Act and Model Rules of 2016 framed thereunder. He has further relied upon a judgment passed by a Coordinate Bench in criminal revision No.2366 of 2018 titled 'Bholu Vs. Central Bureau of Investigation' dated 11.10.2018.

On the other hand, learned State counsel has submitted that the

preliminary assessment is not a trial but is to assess the capacity of such child to commit and understand the consequences of the alleged offence as per explanation added to Section 15 of the Act of 2015. Hence, he submitted that the Board has carried out preliminary assessment as required under the Act. He has further submitted that the order of the Board was after examining the report of Child Welfare Officer/Social Worker.

The explanation added to Section 15 no doubt provide that preliminary assessment is not a trial but at the same time require that 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 thereafter, passed an order in accordance with Sub-Section 3 of Section 18 of the Act.

Keeping in view the fact that the Board has not even examined the circumstances in which the child in conflict with law had allegedly committed the offence. Still further, it is not clear as to when the child in conflict with law was given opportunity to examine any witness in defence particularly when the order was passed on the same day when he appeared for the first time.

The provisions of the Act and the model rules framed thereunder have been interpreted by the Court in the case of Bholu (supra). Accordingly, this Court has reached at a conclusion that the Board failed to follow the procedure as prescribed in the Act and the rules.

Hence, the order passed by the Board on 03.08.2018 confirmed in appeal are set aside. The Board is directed to follow the procedure as prescribed under the Act and the model rules, which although are model

rules, but can be relied upon for guidance. The members of the Board would also keep in view the judgment passed in the case of Bholu (supra). However, the Board would pass a final order, within one month, from the date of receipt of a certified copy of this order.

With these observations, the revision petition is disposed of.

Parties through their counsel are directed to appear before the Board on 22.04.2019.

08.04.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No