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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 15th April, 2019

+ CRL.REV.P. 246/2019 & CRL.M.As.4756-57/2019

PRADEEP KUMAR Petitioner

Through: Mr. Ashok Drall and Ms. Rubi
Nigam, Advs.

versus

THE STATE NCT OF DELHI & ETC Respondent

Through: Mr.Ashish Dutta, APP

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J. (ORAL)

1. The present revision petition has been filed by the petitioner under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for setting aside the impugned order dated 14.5.2018 passed by the Juvenile Justice Board- II ('JJB- II') and impugned judgment dated 23.1.2019 passed by the learned Additional Sessions Judge-04, Dwarka Courts, Delhi ('Appellate Court') in Crl. Appeal No. 249/2018.

2. Brief facts of the prosecution case are that, on 01.05.2017 an FIR No. 153/2017 was registered at Police Station: Chhawala, South West Delhi under Sections 363, 302, 201 and 34 of the Indian Penal Code ('IPC') as a consequence of a statement made by the complainant, Pradeep Kumar ('petitioner', herein) who is the father of the deceased, Mandeep in this case. The petitioner made a complaint to the police alleging that, on the day of the incident, his son Mandeep had gone to his school at about 6:45 am but he did not come back

home. Thereafter, the petitioner made inquiries from the friends of the deceased Mandeep regarding his whereabouts and one of the friends informed the petitioner, that he had seen Mandeep going on foot along with two other boys towards a *nala*. Subsequently, the petitioner reached the school of the deceased, wherein he found the police staff of PS: Chhawla, Delhi. The police showed the photograph of the deceased to the petitioner whom he identified as his son Mandeep, and he was further informed by the police about Mandeep's murder. Thereafter, statement of the petitioner was recorded in the police station and the afore-said FIR was registered. Subsequently, the statements of the witnesses were recorded and investigation was conducted and on 14.5.2018, after going through the material on record including the preliminary assessment reports as prepared by the experts, the charge-sheet and the annexed documents, the learned JJB-II passed an order, to treat the CCLs 'R' and 'N' as children and further held that the CCLs be tried before the JJB-II itself, as children.

3. The relevant para of the said impugned order dated 14.5.2018 is reproduced hereunder:

“However, having gone through the material available on record including the charge sheet and annexed documents etc. and the age of the CCL, we are of the opinion that the circumstances do not make it as a fit case where the CCLs namely, 'R' and 'N' should be sent for trial as adults before the Children Court. We are of the opinion that they should be tried before this Board as CCLs only. Therefore, we decide the question of preliminary assessment in favour of CCLs 'R' and 'N' and against the prosecution. Let the CCLs be tried as children before this Board. However, we make it clear

that nothing expressed therein, shall tantamount to any expression on the merits of the case.”

4. Aggrieved, the petitioner challenged the aforesaid order before the Appellate Court, however, the Appellate Court after going through the order of the JJB-II, as well as the observation regarding the preliminary assessment under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (‘the Act’) upheld the order dated 14.5.2018 holding as under:

“23. ...I do not find any substance in these arguments of the Ld. counsel for the appellant. The JJ Board may take assistance of psychologist to assess the mental and physical capacity of CCL and his ability to understand the consequence of offence. It is well within the jurisdiction of the JJ Board to agree or disagree with the preliminary assessment report of the CCL submitted by such a psychologist to the JJ Board. But the circumstances, in which the alleged offence was committed has to be considered by the JJ Board independently without taking assistance of any expert. While considering the circumstances, in which the alleged offence was committed, the JJ Board has to apply a judicial mind. It is not necessary that if an expert opined that the mental and physical capacity of a CCL and his ability to understand the consequence of the offence are positive, then the JJ Board is bound by the expert opinion. Even though the JJ-B II, agreed with the opinion of an expert regarding the mental and physical capacity of CCL to commit an offence and further agreed regarding the ability of CCL to understand the consequence of the offence but still, considering the circumstances in which the alleged offence was committed the JJ Board may hold that the CCL cannot be treated as an adult.

24. The further contention of Ld. counsel for the

appellant that CCL (R) is involved into other FIRs, therefore, he is a habitual offender and cannot be given benefit of juvenility. This contention has no substance because while considering the circumstances in which the alleged offence was committed, the JJ Board has to consider the circumstances of the case in hand and not the involvement of the CCL in other cases. If the circumstances, in which the offence was committed are such that the CCL cannot be considered as an adult, therefore, his involvement in other criminal cases is quite immaterial.

25. In view of the above discussions, I do not find any infirmity or illegality in the impugned order dated 14.05.2018, passed by JJ-B II. According the order dated 14.05.2018 off JJ-B II is upheld and the appeal is dismissed”

5. Aggrieved, the petitioner has filed the present revision petition.
6. Learned counsel for the petitioner has vehemently contended that the Courts below have erred in holding that in the given facts of the present case, the CCLs be treated as children and cannot be considered as adults.
7. At the outset, I would like to reproduce Section 15 of the Act which reads as under:

“(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 sub-section (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.”

Explanation. – For the purposes of this section, it is clarified that 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.

(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.”

8. I would also like to reproduce Section 2 (33) of the Act which defines a ‘heinous offence’ and reads as under:

“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”

9. The proviso attached to Section 15 of the Act, provides that the JJ Board may take the assistance of experienced psychologist or psycho-social worker or other experts. Further, the explanation to the Section provides that preliminary assessment is not a trial but is to assess the capacity of such CCL to commit and understand the

consequences of the alleged offence.

10. The JJB-II as well as the Appellate Court has taken into consideration, all the parameters and factors mentioned in Section 15 of the Act while passing the impugned order and judgment, respectively. Further, the JJB-II has given a careful thought and consideration to the submissions of both the parties as well as the legal position in this regard. Similarly, the Appellate Court has also given careful thought and consideration to the submissions of the learned counsel for the petitioner. There is no doubt that the JJ Board may seek the opinion of an expert regarding the mental and physical capacity of a CCL to commit an offence and it is not necessary that if an expert opined that the mental and physical capacity of a CCL and his ability to understand the consequence of the offence are positive, then the JJ Board is bound by the expert opinion. It is well within the jurisdiction of the JJ Board to agree or disagree with the preliminary assessment report of the CCL submitted by such a psychologist to the JJ Board. But the circumstances, in which the alleged offence was committed has to be considered by the JJ Board independently, in which the alleged offence was committed and the JJ Board has to apply a judicial mind.

11. The scope of the revisional powers of the High Court has been discussed by the Supreme Court in the judgment titled as ***Jabar Singh vs. Dinesh and Ors.***, (2010) 3 SCR 353. In that case, the High Court had reversed the finding of the Trial Court in its revisional jurisdiction holding that the petitioner in that case is a juvenile. The Apex Court had noted that the powers of a revisional court are not that

of an appellate court. They are more restricted. An interference is not called for in a fact finding arrived at by the trial court unless there is an illegality or a perversity. Relevant para of the said judgment is reproduced hereunder:

“13. A plain reading of Section 52 of the Act shows that no statutory appeal is available against any finding of the court that a person was not a juvenile at the time of commission of the offence. Section 53 of the Act which is titled "Revision", however, provides that the High Court may at any time, either of its own motion or on an application received on that behalf, call for the record of any proceeding in which any competent authority or court of session 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. While exercising such revisional powers, the High Court cannot convert itself to an appellate court and reverse the findings of fact arrived at by the trial court on the basis of evidence or material on record, except where the High Court is not satisfied as to the legality or propriety of the order passed by the trial court. The trial court, as we have discussed, has given good reasons for discarding the evidence adduced by the Respondent No. 1 in support of his claim that he was a juvenile at the time of commission of the alleged offence and there was no scope to hold that the order of the trial court was either illegal or improper and the High Court should not have substituted its own finding for that of the trial court on the age of Respondent No. 1 at the time of commission of the alleged offence by re-appreciating the evidence.”

12. In this case, the JJB-II has agreed with the opinion of an expert regarding the mental and physical capacity of the CCLs to commit the offence and further agreed regarding the ability of the CCLs to understand the consequences of the offence but nevertheless, the JJB-II, taking into consideration the facts and circumstances of this case in which the alleged offence was committed held that the CCLs cannot be treated as adults while fully applying its judicial mind. These are concurrent findings of the JJB-II as well as the Appellate Court while upholding that the CCLs cannot be treated as adults and they should not be tried as adults before the Court.

13. I do not find any flaw or infirmity in the findings of the Courts below in holding that in the given facts of the present case, the CCLs be treated as children and cannot be considered as adults.

14. Accordingly, taking into consideration the scope of the revisional jurisdiction of this Court under Section 401 read with 482 of the Cr.P.C and the findings of fact arrived at by the Trial Court on the basis of material on record, which are further upheld by the Appellate Court, I do not find any merit in the present petition. Accordingly, the same is dismissed. The pending applications are also dismissed.

CHANDER SHEKHAR, J

APRIL 15, 2019/rk