

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

% Judgment delivered on: 15th November, 2019

+ CRL.REV.P. 24/2017

X MINOR (THROUGH HIS ELDER BROTHER)Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Mrinal Madhav with Mr. Tarunesh Kumar, Mr. Kaushikesh Kumar and Mr. Madhukant Jha, Advocates

For the Respondents: Ms. Meenakshi Dahiya, APP for the State with ASI Mool Chand.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioner impugns order dated 16.11.2016, whereby the appeal of the petitioner impugning the order of the Juvenile Justice Board dated 04.08.2016 has been dismissed.

2. The petitioner, a child in conflict with law, is an accused in FIR No.1362/2014 under Section 308/34 IPC, P.S. Madhu Vihar.

3. Petitioner sought termination of the proceedings qua him on the ground that the proceedings were not concluded within a period of 4 months and submitted that in terms of Rule 13(7) of the Juvenile

Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules), proceedings which are not concluded within a period of four months are liable to be terminated.

4. The Board by its order dated 04.08.2016 was of the view that the rules applicable were the Juvenile Justice (Care and Protection of Children) Rules, 2009 (hereinafter referred to as the 2009 Rules) and not the 2007 Rules and further under proviso to Section 14 of the Juvenile Justice (Care and Protection of Children), 2000 (*sic.2014*) (hereinafter referred to as the 2000 JJ Act), the Board could extend the period of completion of inquiry having regard to the circumstances of the case. The 2007 Rules are rules framed by the Central Government and the 2009 Rules are rules framed by Delhi Government.

5. The Board was of the view that since the matter was pending before another Board and not transferred to the said Board, keeping in view the exigencies, it was sufficient ground to extend the period for completion of the inquiry.

6. By the impugned order the appeal of the petitioner impugning the decision was dismissed noticing that several adjournments had been sought by the counsel for the petitioner and on the request of the counsel for the petitioner several witnesses were discharged un-examined and the evidence could not be concluded.

7. The Appellate Court was of the view that the petitioner who wanted to take benefit of the welfare provision had in fact delayed the progress of the trial and several public witnesses could not be examined or cross examined because of adjournments sought by the petitioner himself. Further keeping in view the number of matters pending before the Juvenile Board, the Appellate Court was of the view that there were sufficient grounds to extend the period of inquiry and directions were issued to the Board to expedite the inquiry and conclude the same at an early date.

8. Learned counsel for the petitioner contends that the petitioner is charged with a non serious offence and as such in terms of Rule 13(7) of the 2007 Rules, in all cases except where the nature of alleged offence is serious, delay beyond four to six months leads to the termination of the proceedings.

9. Learned counsel submits that even if the 2009 Rules were to be applied, Rule 13(7) of the 2009 Rules is *Pari Materia* to Rule 13(7) of the 2007 Rules, and as such the proceedings were liable to be terminated.

10. Reference may be had to the provisions of the Act as also the Rules. Section 14 of the 2000 JJ Act reads as under:

“14. Inquiry by Board regarding juvenile.

(1) Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit:

Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

(2) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.”

11. Section 14 of the 2000 JJ Act stipulates that an inquiry by the Board is to be concluded within a period of four months of its commencement unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension. The progress of the Board is to be reviewed by the Chief Judicial Magistrate or the Chief Metropolitan Magistrate every six months and such directions can be issued for increasing the frequency of its sittings.

12. Rule 13 (6) and (7) of the 2007 Rules read as under:-

“(6) Every inquiry by the Board shall be completed within a period of four months after the first summary inquiry and only in exceptional cases involving transnational criminality, large number of accused and inordinate delay in production of witnesses, the period of inquiry may be extended by two months on recording of reasons by the Board.

(7) In all other cases except where the nature of alleged offence is serious, delay beyond four to six months shall lead to the termination of the proceedings.”

13. Rules 13(6) and (7) of the 2009 Rules read as under:-

“(6) Every inquiry by the Board shall be completed within a period of four months after the first summary inquiry and only in exceptional cases involving transnational criminality, large number of accused and inordinate delay in production of witnesses the period of inquiry may be extended by two months on recording of reasons by the Board.

(7) In all other cases except where the nature of alleged offence is serious, delay beyond four to six months shall lead to the termination of the proceedings.”

14. Perusal of Rules 13(6) and (7) of both the 2007 Rules and 2009 Rules show that the proceedings of the Board have to be concluded within a period of 4 – 6 months and in all cases except where the nature of offence alleged is serious, delay beyond 4 – 6 months leads to termination of the proceedings.

15. It may be noticed that the 2000 JJ Act does not define serious or non serious cases, however, reference may be drawn to Rule 11 of the 2007 Rules particularly Rule 11(7) and 11(9) which read as under:-

“(7) The police or the Juvenile or the Child Welfare Officer from the nearest police station, shall exercise the power of apprehending the juvenile only in cases of his alleged involvement in serious offences (entailing a punishment of more than 7 years imprisonment for adults)”

“(9) For all other cases involving offences of non-serious nature (entailing a punishment of less than 7 years imprisonment for adults) and cases where apprehension is not necessary in the interest of the juvenile, the police or the Juvenile or the Child Welfare Officer from the nearest police station, shall intimate the parents or guardian of the juvenile about forwarding the information regarding nature of offence alleged to be committed by their child or ward along with his socio-economic background to the Board, which shall have the power to call the juvenile for subsequent hearings.”

(underlining supplied)

16. Reading of Rule 11(7) and (9) of the 2007 Rules show that the rules contemplate serious offences to be those offences for which punishment of more than seven years imprisonment is prescribed and non serious offences are ones entailing a punishment of less than seven years.

17. Rules 11 (1), (2) & (3) of the 2009 Rules read as under:

“(1) In dealing with cases of juveniles in conflict with law the Police or the Juvenile or the Child Welfare Officer from the nearest police station, shall not be required to register an FIR or file a charge-sheet, except where the offence alleged to have been committed by the juvenile is of a serious nature such as rape, murder or when such offence is alleged to have been committed jointly with adults; instead, in matters involving simple offences, the Police or the Juvenile or the Child Welfare Officer from the nearest police station shall record information regarding the offence alleged to have been committed by the juvenile in the general daily diary followed by a report containing social background of the juvenile and circumstances of apprehension and the alleged offence and forward it to the Board before the first hearing.

(2) The police or the Juvenile or the Child Welfare Officer from the nearest police station, shall exercise the power of apprehending the juvenile only in cases of his alleged involvement in serious offences (entailing a punishment of 7 years or more imprisonment for adults).

(3) For all other cases involving offences of non-serious nature (entailing a punishment of less than 7 years imprisonment for adults) and cases where apprehension is not necessary in the interest of the juvenile, the police or the Juvenile or the Child Welfare Officer from the nearest police station, shall intimate the parents or guardian of the juvenile about forwarding the information regarding nature of offence alleged to be committed by their child or ward along with his socio-economic background to the Board, which shall have the power to call the juvenile for subsequent hearings.

Whenever a juvenile is apprehended “apprehension memo” in Form - XXV shall be 8 9 prepared. The personal search of the Juvenile shall be conducted and Form - XXVI shall be filled with relevant information. When a juvenile or child requires to be medically examined, request for Medical Examination Report in Form - XXIV shall be prepared.”

(underlining supplied)

18. Reading of Rule 11 of the 2009 Rules, shows that the rules contemplate serious offences to be those offences for which punishment of more than seven years imprisonment is prescribed and non-serious offences are the ones entailing a punishment of less than seven years.

19. Since, neither the 2000 JJ Act nor the 2007 & 2009 Rules define serious or non-serious offences, analogy has thus to be drawn from Rule 11, where though in a different context, there is an indirect definition of non-serious offences.

20. The 2000 JJ Act also does not lay down any consequence in case the inquiry remains inconclusive for the period of six months or even after the expiry of the extended period. The provision for termination of inquiry for non-serious offences has been introduced by the Rules.

21. The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 2015 JJ Act), now divides the

offences in three categories. Petty, Serious and Heinous. Petty offences are defined as offences having a maximum imprisonment under the Indian Penal Code or any other statute as up to three years. Serious Offences as offences having imprisonment between three to seven years and Heinous offences as offences for which the minimum punishment prescribed is imprisonment for seven years or more.

22. Section 14 of the 2015 JJ Act *inter alia* reads as under:

“14.(1)*****

(2) *The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.*

(3) *****

(4) *If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:*

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

(5) *****”

23. Section 14 of the 2015 JJ Act provides for the consequence of terminations of inquiry, for petty offences, if it remains inconclusive.

24. Since the offence involved in the subject FIR is of 18.11.2014 and the 2015 JJ Act, came into force with effect from 15.01.2016, the case of the petitioner would be covered by the 2000 JJ Act and the Rules framed thereunder insofar as consideration of a beneficial provision is concerned.

25. In the present case, Petitioner has been charged for having committed an offence under Section 308/34 IPC. As per the FIR a fight took place in which the petitioner along with other co accused are alleged to have assaulted the complainant and her family with iron rods thereby causing hurt. Section 308 IPC prescribes that where an act is done with an intention or knowledge that with such intention or knowledge that if the act caused death, the perpetrator would be guilty of culpable homicide not amounting to murder, then the punishment may extend to three years and if hurt is caused to any person by such act, the punishment may extend to seven years.

26. By applying the analogy of both the 2007 Rules and 2009 Rules, since the punishment prescribed by IPC is less than seven years, the offence would fall in the category of non-serious offences.

27. As noticed hereinabove, the 2000 JJ Act does not provide for any consequence if the inquiry remains inconclusive for a period of

six months and the consequence is provided only by the Rules. The question that arises for consideration is as to whether the Rules would be directory or mandatory and whether in all cases, irrespective of the circumstances, the inquiry has to terminate.

28. In *Neeraj & Others Versus State of Haryana 2005 (4) RCR (Criminal) 71*, the Punjab & Haryana High Court has held that merely on the ground that inquiry is not concluded within a period of four months, inquiry cannot be dropped as it would result into prejudice to the general public and the offender would go free. It has further been held that the object of the statute is to hold inquiry in case of juvenile expeditiously but it is not the intention of the statute that the inquiry must be dropped in case the same is not completed within a period of 4 months and that is the reason why the Board has been empowered to extend the period by recording reasons. The right of speedy trial, though is the essence of justice, but the accused cannot be allowed to be acquitted mainly on the ground of delay in conducting the trial. In these circumstances it has been held that the provision of Section 14 of the 2000 JJ Act is directory and not mandatory.

29. I am in complete agreement with the view taken by the Punjab and Haryana High Court in *Neeraj and others (supra)* that the provision is directory and not mandatory. Termination of inquiry, will not be an automatic consequence of delay.

30. Further, it may be soon seen that Rules framed under a Statute are subservient to the Statute. A Rule cannot be in derogation to the parent Statute and lay down a provision which militates against the parent Statute. In the present case the 2000 JJ Act empowers the Board to extend the period of concluding the inquiry, for valid reasons to be recorded. The Rules cannot take away the power of the Board to extend the period of concluding the inquiry.

31. Accordingly, it is held that the Rules are directory and not mandatory. It would have to be seen in the facts and circumstances of each case as to whether such circumstances exist which would warrant termination of the inquiry. The effect of the Rule would not be automatic. The Board would have to apply its mind and consider as to whether the inquiry is liable to be terminated. One of the considerations that the board would keep in mind is as to whether the accused is himself the cause of delay in conclusion of the inquiry. If the inquiry has extended for reasons other than the circumstances created by the accused, the board may consider terminating the inquiry.

32. In the present case, the date of the alleged offence is 18.11.2014. FIR was registered on 19.11.2014. Petitioner was apprehended on 19.11.2014. Preliminary assessment was concluded on 18.02.2015 and petitioner was declared a juvenile. Thereafter notice was framed on 18.02.2015. Prosecution evidence commenced

on 02.05.2015. The proceedings were liable to be concluded in terms of the 2000 JJ Act and the Rules framed thereunder within a period of 4 – 6 months, however, the proceedings are still pending.

33. Petitioner had moved an application seeking termination of the proceedings because of delay. Said application was rejected by the Board, by the impugned order, as far back as on 04.08.2016. The Appeal of the petitioner impugning the order dated 04.08.2016, was dismissed on 16.11.2016, with a direction to the board to expeditiously conclude the inquiry, the inquiry is still inconclusive after a lapse of over three years. The Appellate Court was of the view that petitioner had himself been the cause of the delay and had prevented inquiry to proceed expeditiously.

34. Perusal of the record shows that after the dismissal of the application of the petitioner on 04.08.2016, petitioner has not been the sole cause of the delay. Petitioner was apprehended on 19.11.2014 and the inquiry has been continuing for nearly five years now.

35. When the statute provides for a maximum period of six months to conclude an inquiry, to keep an inquiry pending for five years frustrates the very object of the Statute. No ground, even delay caused by the accused, can justify continuance of an inquiry for such a long period. If the accused attempts to delay the proceedings, the Board has sufficient powers to expedite the proceedings and to ensure that such

an attempt on part of the accused is not successful and, in such circumstances, refuse to exercise powers to terminate the proceedings.

36. Keeping in view the facts and circumstances of the case as noticed hereinabove, I am of the view that it is a fit case where the inquiry should be terminated on the ground that the same has remained inconclusive for five years.

37. Accordingly, while holding that the Rule is directory and not mandatory, the inquiry against the petitioner is terminated, if not already concluded.

38. The petition is accordingly disposed of in the above terms.

39. Order *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA, J

NOVEMBER 15, 2019

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