

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 108 of 2017

Minor Munna Thakur, S/o. Kedar Singh Thakur, Aged About 17 Years, R/o. Village Kausa, Police Station Gadawa, District Chhapra Bihar, At Present R/o Shauki Nagar, Kirodimal Nagar, Police Station Kotra Road, Tahsil and District Raigarh, Chhattisgarh. Represented Through Natural Guardian Mother Smt. Malti Devi, W/o Kedar Singh Thakur, Aged About 48 Years, R/o Kausa, Police Station Gadawa, District Chhapra, Bihar. At Present Residing At Shauki Nagar, Kirodimal Nagar, Police Station, Tahsil and District Raigarh, Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh, Through : Station House Officer, Police Station Kotra Road, District Raigarh, Chhattisgarh.

-----Respondent

For Applicant	: Mr. Ashish Gupta, Advocate
For Respondent/State	: Mr. Arijit Tiwari, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

03/03/2020

1. This criminal revision has been brought being aggrieved by the order dated 03.01.2017, passed in Cr.A. No.139 of 2016, passed by the learned Additional Sessions Judge (F.T.C.), Raigarh, District – Raigarh (C.G.), dismissing the appeal filed by the applicant against the order dated 21.12.2016, passed by the Principal Judge, Juvenile Justice Board, Raigarh in Juvenile Case No.54/2016.
2. The applicant was prosecuted before the Juvenile Justice Board, Raigarh for commission of offence under Section 376, 511, 354, 324, 506 of the Indian Penal Code and Section 8 and 10 of

POCSO Act. The learned Board made an assessment regarding the applicant under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (In short “the Act, 2015”) and order dated 21.12.2016 was passed, by which the applicant was directed to be tried by the Child Court i.e. the Court of Additional Sessions Judge (FTC), Raigarh. That order has been challenged in appeal and by the impugned order, the learned appellate Court has also upheld the order of the Juvenile Justice Board.

3. It is submitted by the learned counsel for the applicant that the learned Board and the learned appellate Court both had not proceeded in accordance with the provisions under Section 15 of the Act, 2015. There had been specific requirement that in making preliminary assessment with regard to the mental and physical capacity of the child in conflict with law for commission of offence, the Court should have taken assistance of the psychologists or psycho-social workers or other experts. No such report has been called by the Board from the experts as it is mentioned in the proviso to Section 15 (1) of the Act, 2015. Therefore, the order passed is erroneous and illegal, which is liable to be set-aside.
4. State Counsel opposes the petition and the submission made in this respect. It is submitted that the applicant is charged with commission of heinous offence and the learned Board has rightly drawn conclusion that the applicant is capable to understand the nature and consequence of the crime committed by him,

therefore, he should be tried by the Child Court and not by the Juvenile Justice Board, hence, the revision petition is without any merit, which may be dismissed.

5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. Record of the Juvenile Justice Board and the Child Court has been summoned before this Court and on perusal of the same, it is found that Juvenile Justice Board had sought a report regarding the mental and physical capacity of the applicant from the panel of psychologist, which had been constituted by the District Child Welfare Committee, District – Raigarh vide order dated 03.11.2016. The report that was submitted dated 06.12.2016 mentions that the mental development of the applicant was not found in accordance with the age of the applicant. It was opined that the incident had occurred because of mental aggressiveness and also it was opined that the applicant was not aware of the consequence of the act he has committed.
7. The learned Board has mentioned the report in the order dated 21.12.2016 but thereafter the report was discarded mentioning that no reason have been mentioned regarding the observations made by the Committee. The learned appellate Court has also made no further appreciation and confirmed the order of the Juvenile Justice Board.

8. Section 15 of the Act, 2015 is not a provision for mere formality and the future of the person is on stake because of such assessment, which shall be made under this provision. It is clearly worded that the assessment has to be made in this respect, where the child above 16 years has ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. As it is a matter of making assessment of mental and physical capacity, therefore, the legislature has made the provision in the proviso to Sub-section (1) of Section 15 of the Act, 2015 that Board may take assistance of the psychologists or psycho-social workers or other experts. This provision had been made simply for the reason, that members of the Board itself are not an expert in that field. The proviso to Section 15 (1) gives option to the Juvenile Justice Board and the learned Board has made choice of the option of having the report of the experts. Therefore, after report of the expert was submitted and was present before the Juvenile Justice Board then it should not have been dismissed simply for the reason that no reasons have been assigned. The learned Juvenile Justice Board if not satisfied, should have made further query from the same Committee constituted for making assessment of the applicant and instead of that order dated 21.12.2016 was passed by the Board, which has been mechanically confirmed by the appellate Court. Therefore, I am of this view that the report submitted by the Committee of experts, before the Juvenile Justice Board should have been

followed and in accordance with that, it was not a case, in which, the applicant should have been ordered to face trial before the Child Court. Therefore, on the basis of the observations and the discussions made hereinabove, the impugned order and the order passed by the Juvenile Justice Board both are set-aside. The case is remanded back to the Child Court with a direction to remit the case to the Juvenile Justice Board for making enquiry against the applicant in accordance with the provisions of the Act, 2015.

9. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge