

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3475 of 2019

Date of Decision: 10.01.2020

Kxxx (minor) through his father

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Harikesh Singh, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

Challenge is to the order passed by the Juvenile Justice Board (for short “the Board”) dated 13.06.2019, affirmed in revision by the learned Additional Sessions Judge, Kaithal.

The petitioner is one of the accused in the case of murder of one Sandeep son of Balwant Singh along with four other accused. FIR No. 102 was registered at Police Station City Kaithal on 15.02.2018. As per the observations made by learned Additional Sessions Judge, petitioner was formally employed at a liquor vend from where the said Sandeep (deceased) etc. used to collect cash representing sale proceeds of the day. It is the petitioner who is alleged to have arranged for country made pistol and ammunition, which at the time of arrest, were allegedly recovered from him.

Alleged part of the looted cash was also recovered from the petitioner. As

per case of the prosecution, the petitioner is said to have planned and

committed the offence. The petitioner was, at the time of commission of offence, more than 16 years of age. The Board has ordered that petitioner be tried as an accused in terms of Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short “the Act”) along with other accused.

Initially, the Board carried out a preliminary inquiry and passed order dated 07.06.2018 holding that juvenile in conflict with law, on the date of occurrence, was able to understand the nature and consequences of the offences alleged to have been committed by him, so he be committed to Children’s Court at Kaithal. However, in appeal, learned Additional Sessions Judge, Kaithal, set aside the order after noticing inherent anomaly. The Board once again passed a fresh order on 03.08.2018 sending the case to the Court of sessions for assigning the same to the Children’s Court. Appeal filed by the petitioner was dismissed by the learned Additional Sessions Judge, Kaithal vide order dated 21.08.2018. However, in revision, the orders were set aside and the Board was directed to follow the procedure as prescribed under the Act and the model Rules and pass a fresh order within one month. Concluding part of the order passed on 03.08.2018 is extracted as under:

“The Board is directed to follow the procedures 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 judgement passed in 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.”

Thereafter, the Board referred the juvenile for psychological examination while taking assistance from the Department of Psychiatry, PGIMS, Rohtak and also called for social investigation report of the juvenile. The application moved by the juvenile for examining couple of witnesses including a member of the Board of Psychiatrists was allowed. After taking into consideration the material on record, the Board passed impugned order dated 13.06.2019 holding that the juvenile was having mental and physical capacity to commit the alleged offence. He was in position to understand the consequences. The Board found that petitioner, on the date of alleged offence, was more than 16 years and therefore, can be tried along with adults as per the provisions of the Act.

This Court has heard learned counsel for the petitioner at length and with his able assistance, gone through the paper book. Learned counsel for the petitioner submitted that the Board, which is a multi member body has not passed an order and in fact it has been passed by the Principal Magistrate only. He further submitted that petitioner was not given an opportunity to cross-examine Dr. Joginder Singh Kairon and therefore, the procedure followed by the Board is erroneous.

As regards first argument of learned counsel, it will be noticed that this contention was also raised before the Court of Sessions and the Court of Sessions, after examining the record, has found no substance in the contention. The Court of Sessions has found as under:

“But when the opening part of Para No.7 of impugned

order dated 13.06.2019 is appraised, it becomes clear that the opinion formed vide that order, was of the JJB and not exclusively of the Principal Magistrate. Even signature of member of Board is sought to be received underneath that order. There is no averment of appellant-side, that some additional member of the Board is also existing, but his/her involvement was ignored. When the previous order dated 07.06.2018 passed by JJB is perused, the same also bears the signatures of Principal Magistrate and one member, yet no such objection was raised at the time of final appeal against that order, before the then learned Appellate Court. Even at the time of filing Criminal Revision No. 3075 of 2018 before Hon'ble Punjab and Haryana High Court, against order dated 03.08.2018, any such plea about lack of corum was not raised. So, it can be well assessed that actually the appellant does not have any grievance on that aspect. More so, when proper grounds have been stated in respect of the opinion formed by JJB while passing the order dated 13.06.2019, the alleged lack of corum remains just an irregularity, not causing a miscarriage of justice".

In view of the aforesaid factual observation, factual correctness whereof is not disputed, this Court does not find substance in the first argument of learned counsel for the petitioner.

Next argument of learned counsel for the petitioner also does

not have substance because Dr. Joginder Singh Kairon was examined on the

application of the petitioner as a defence witness. The petitioner could not be permitted to cross-examine the aforesaid witness unless the aforesaid witness was got declared hostile and necessary permission from the Court had been obtained for cross-examination. Still further the learned Additional Sessions Judge has found that the prosecution had cross-examined the aforesaid witness and the doctor had stated as under:

“It is correct that as per the report of Board, no abnormality was detected in the mental status of the patient. He was also aware of nature of crime & consequence therein”.

In view of the aforesaid, this Court does not find that any prejudice has been caused to the petitioner.

In the end, learned counsel for the petitioner further submitted that Intelligent Quotient level of the petitioner is 74 according to which mental age of the petitioner, on the date of examination, comes to be 13.87 years. He further submitted that petitioner was examined after more than a year from the alleged incident and, therefore, mentally the petitioner was not of a person beyond the age of 16 years. Hence, the Board committed an error in ordering that the petitioner be tried along with other accused by the Court of Sessions. It will be noted here that from the statement of psychiatrist Dr.Joginder Singh Kairon and the opinion of the Board, no abnormality was detected in the mental status of the petitioner. He was found to be aware of the nature of crime and consequences thereof. In such situation, this Court does not find that there is any substantive error in the procedures followed or any prejudice has been caused to the petitioner.

Keeping in view the facts of the case, this Court is not inclined to interfere in the orders passed by the Board affirmed in revision by the learned Additional Sessions Judge. Hence, the present petition shall stand dismissed.

(Anil Kshetarpal)
Judge

January 10, 2020
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No