

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.402 of 2021**

Arising Out of PS. Case No.-62 Year-2019 Thana- LAHERIMUHALLA District- Nalanda

Manoj Kumar, son of Kedar Nath, resident of Village - Kharadi, P.S. - Laheri,
District - Nalanda.

... .. Appellant

Versus

1. The State of Bihar
2. X 1
3. X 2
4. X 3

... .. Respondents

Appearance :

For the Appellant : Mr.Pramod Kumar Sinha, Advocate

For the Respondent-State: Mr. Manish Kumar No.2, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)**

Date : 23-08-2021

Though the respondent nos. 2 to 4 have given full description in the application, it would be inappropriate to disclose their identity in view of the statutory provisions prescribed under Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act of 2015'). They are being referred to in the cause title as X 1, X 2 and X3 respectively.

2. Registry while uploading the order on the website



shall also ensure that the cause title is reflected in similar manner.

3. By the present appeal, preferred under the proviso to Section 372 of the Code of Criminal Procedure (for short 'CrPC'), the appellant has challenged the final order dated 15th February, 2021 passed by the Juvenile Justice Board, Biharsharif, Nalanda (for short 'the Board') in JJB Case No.97 of 2019 arising out of Laheri P.S. Case No.62 of 2019.

4. After conducting inquiry, by the aforesaid order dated 15th February, 2021, the Board concluded that the prosecution successfully proved the offences punishable under Sections 302/34, 120B and 379/411 of the Indian Penal Code (for short 'IPC') against the respondent nos. 2 to 4 and directed them to be kept in a Special Home for a period of three years for each of the offences under Sections 302, 120B and 379/411 of the IPC. However, the Board further directed that the sentence awarded for each of the offences shall run concurrently and respondent nos. 2 to 4 shall be kept in Special Home for a total period not exceeding three years. The Board also directed that the period spent by respondent nos. 2 to 4 earlier in Observation Home shall be commuted.

5. The appellant, herein, was the complainant in



Laheri P.S. Case No. 62 of 2019. In his *fardbeyan*, he stated that on 8th February, 2019, at about 10 p.m., his brother Jitendra Kumar had gone out of his house telling that he will come back soon. But, when he did not return till 1 a.m. on 9th February, 2019, he and his family members went out to enquire his whereabouts. Since no clue of his brother could be found, they came back to their house. In the morning, two boys of the locality came and informed that his brother was badly assaulted and is lying in an injured condition on the flyover. On this information, when his family members went to the flyover, they came to know that the police had already taken his brother to Sadar Hospital, Biharsharif. When they reached at the Sadar Hospital, Biharsharif, looking at his condition, the doctor advised that the injured should immediately be taken to PMCH, Patna for better treatment. He further stated that when they reached to PMCH, Patna on 9th February, 2019 at 9.30 a.m., the doctor, who examined his brother declared him brought dead.

6. During investigation, on 14th February, 2019, the respondent nos. 2 to 4 were arrested and they were produced before the Board.

7. On inquiry, the age of respondent nos. 2 to 4 was determined to be 14 years and two months, 15 years and 10



months and 16 years and 9 months respectively on the date of commission of the offence by the Board. Thus, they all were declared juvenile in conflict with law.

8. One of the offences, namely, the offence under Section 302 of the IPC, under which the case was registered comes within the definition of heinous offence as defined under the Act of 2015 and the age of respondent no. 4 was found to be above 16 years and below 18 years of age. However, the Board did not find his case fit for trial as an adult. Hence, his case was not referred to the Children's Court.

9. After completion of the inquiry, culpability of respondent nos.2 to 4 was found proved. Accordingly, the Board, vide impugned order dated 15th February, 2021 passed under Section 18 of the Act of 2015 directed the respondent nos. 2 to 4 to be kept in a Special Home for a period not exceeding three years.

10. Mr. Pramod Kumar Sinha, learned counsel appearing for the appellant submitted that the order impugned passed by the Board is not sustainable in law. He contended that the Board ought to have awarded punishment of death or rigorous imprisonment for life to the respondent nos. 2 to 4. Erroneously, it has directed for lodgement of respondent nos. 2



to 4 in Special Home for a maximum period of three years only. He contended that since the prosecution has proved its case beyond doubt, at least, life imprisonment for the offence under Section 302 of the IPC should have been awarded against the respondent nos. 2 to 4.

11. In the considered opinion of this Court, the appeal preferred under the proviso to Section 372 of the CrPC seeking enhancement of punishment is totally misconceived.

12. Firstly, because proviso to Section 372 gives right to the victim to prefer an appeal when the accused is convicted for lessor offence, but not for lessor sentence.

13. Secondly, since the inquiry in case of respondent nos. 2 to 4 was made under the Act of 2015, an appeal under the proviso to Section 372 of the CrPC would not be maintainable.

14. The reason for saying so is that the Act of 2015 came into force on 15th January, 2016 with its publication in the Gazette of India. It governs children alleged and found to be in conflict with law and children in need of care and protection.

15. Under the Act of 2015, the offences under the different Acts have been put in three categories. They are : 'petty offences', 'serious offences' and 'heinous offences'.

16. 'Petty offences' include the offences for which the



maximum punishment under the IPC or any other law for the time being in force is imprisonment upto 3 years. 'Serious offences' include the offences for which the maximum punishment under the IPC or any other law for the time being in force is imprisonment between 3 to 7 years and 'heinous offences' include the offences for which the minimum punishment under the IPC or any other law for the time being in force is imprisonment for 7 years or more.

17. Section 14 of the Act of 2015 provides for inquiry by the Board regarding a child in conflict with law.

18. Section 14(1) of the Act of 2015 provides that where a child alleged to be in conflict with law is produced before a Board, then the Board shall hold an inquiry in accordance with the provisions of the Act and may pass such orders in relation to the child as it deems fit under Sections 17 and 18 of the Act of 2015.

19. Section 14(2) of the Act of 2015 provides that 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.

20. Section 14(3) of the Act of 2015 provides that a preliminary assessment in case of 'heinous offences' under Section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

21. Section 14(4) of the Act of 2015 provides that in case of 'petty' or 'serious offences', if inquiry by the Board remains inconclusive even after the extended period, the proceedings shall stand terminated. Proviso to this section provides 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.

22. Section 14(5) of the Act of 2015 provides the following steps to be taken by the Board to ensure fair and speedy inquiry.

23. Section 15 of the Act of 2015, which enumerates special provisions to tackle the child offenders committing 'heinous offences' in the age group of 16 to 18 years is equally important for us. If a child in the age group of 16 to 18 years is



alleged to have committed 'heinous offence', as defined in Section 2(33) of the Act, the Board is required to conduct a preliminary assessment.

24. In order to determine, in case of a child in the age group of 16 to 18 years alleged to have committed a 'heinous offence', whether he should be transferred to the Children's Court to be tried as an adult, the Board has to follow certain essential steps.

25. Firstly, it must conclusively determine that the child in conflict with law before it is above the age of 16 years, but below the age of 18 years on the date of commission of the offence. The determination of age is very crucial for the child as the same has the potential to expose him to the possibility of being transferred to the Children's Court to be tried as an adult.

26. Secondly, if the Board comes to the conclusion that the child before it was 16 years or above, but below the age 18 years on the date of commission of the offence, it would be required to conclusively determine whether the offence alleged to have been committed by him is a 'heinous offence' or not.

27. Thirdly, transfer of a child for trial as an adult can only be done after preliminary assessment by the Board. The word 'shall' in Section 15(1) indicates that it is mandatory for



the Board to conduct 'preliminary assessment'. The 'preliminary assessment' has to be conducted to assess :-

- (1) Child's mental and physical capacity to commit alleged offence;
- (2) Child's ability to understand consequences of the offence; and
- (3) the circumstances in which the child allegedly committed the offence.

28. Fourthly, after the preliminary assessment, the Board is required to further determine whether it would deal with the case of the child itself or transfer him to the Children's Court.

29. The aforesaid mandatory requirements are to be carefully conducted while determining whether a child should be transferred to the Children's Court to be tried as an adult or not. The legislature has provided that for the purpose of preliminary assessment the Board may take assistance of an experienced psychologist or psycho-social worker or other experts.

30. It needs to be kept in mind at this juncture that Section 14(3) of the Act of 2015 obligates that preliminary assessment in case of 'heinous offences' under Section 15



should be completed within three months by the Board from the date of first production of the child before the Board.

31. If the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board then the Board shall follow the procedures, as far as may be, for trial in summons case under the CrPC. In case, the Board after preliminary assessment under Section 15 of the Act passes an order that there is need for trial of such child as an adult, it may order for transfer of the case to the Children's Court having jurisdiction to try such offence.

32. Section 18 of the Act of 2015 provides that where the Board is satisfied on inquiry that a child, irrespective of his age, has committed a 'petty offence', or a 'serious offence', or a child below the age of 16 years has committed a 'heinous offence', then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit, pass any of the dispositional order, as discussed in clauses (a) to (g) of Section 18 (1) of the Act of 2015.

33. Additionally, the Board may also pass orders, as



indicated in Section 18(2) (i) to (v) of the Act of 2015.

34. Further Section 18(3) of the Act of 2015 provides that where the Board, after preliminary assessment under Section 15 of the Act of 2015, comes to the conclusion that there is need for trial of the child as an adult, it may order, transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

35. In the present case, it is admitted position that respondent nos. 2 and 3 were less than 16 years of age on the date of commission of the offence. It is also not in dispute that though respondent no. 4 was above 16 years of age on the date of commission of the offence, his case was not sent by the Board for trial to the Children's Court after preliminary assessment under Section 15 of the Act of 2015.

36. The orders which the Board is empowered to pass have been enumerated in sub-section (1) and (2) of Section 18 of the Act of 2015, which read as under :-

“Section 18. Orders regarding child found to be in conflict with law.-(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below



the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

- (a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;
- (b) direct the child to participate in group counselling and similar activities;
- (c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;
- (d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working,



it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being **for any period not exceeding three years;**

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being **for any period not exceeding three years;**

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill



development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre;

or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(emphasis supplied)



37. It would be evident from the aforesaid provisions of the Act of 2015 that the maximum period for which the respondent nos. 2 to 4 could have been sent to a Special Home by the Board was three years. The Board by the impugned order has directed the respondent nos. 2 to 4 to be kept in Special Home for a period of three years for each of the offences and has further directed that the period prescribed for each of the offence shall run concurrently. Hence, the statutory provision prescribed under the Special Act did not empower the Board to put a child in conflict with law in a Special Home for a period exceeding three years.

38. Section 101 of the Act of 2015 deals with appellate jurisdiction under the Act. Section 101(1) of the Act of 2015 provides that subject to the provisions of the Act, any person aggrieved by an order of the Board may prefer an appeal before the Children's Court within 30 days from the date of such order. Thus, the right to appeal is vested with the child in conflict with law, the victim and the State under the aforesaid provision.

39. Proviso to Section 101(1) of the Act of 2015 deals with the power to condone the delay caused in filing the appeal. It is clarified that Court of Sessions may entertain the appeal even after the expiry of the said period of 30 days, if it is



satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of 30 days. Hence, if an appeal is preferred after the expiry of the period of 30 days, an application for condonation of delay in filing the appeal can be filed before the Court of Sessions and not before the Children's Court. In order to ensure speedy disposal of such an application for condonation of delay, the proviso states that such an appeal should be decided within a period of 30 days.

40. Section 101(2) of the Act of 2015 makes provision for appeal against the order of the Board passed under Section 15 of the Act of 2015, after making preliminary assessment into a 'heinous offence' of a child in conflict with law. It lays down that an appeal against an order of preliminary assessment shall lie before the Court of Sessions. It provides that in deciding the appeal against the preliminary assessment findings, the Court of Sessions may take the assistance of experienced psychologists and medical specialists, but these psychologists and medical specialists should not be the same whose assistance was availed of by the Board in making preliminary assessment under the Act of 2015.

41. Section 101(3) of the Act of 2015 prohibits appeal



against an order of acquittal made by the Board except in case of a child alleged to have committed a 'heinous offence', who has completed or is above the age of 16 years.

42. Section 101(4) of the Act of 2015 prohibits filing of second appeal from any order of the Court of Sessions.

43. Section 101(5) of the Act of 2015 provides that any person aggrieved by the order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the CrPC. Thus, the right to appeal is vested with child in conflict with law, the State and the victim whosoever is aggrieved by the order of the Children's Court. It is the only provision in the Act of 2015 under which an aggrieved person can challenge any order, including order granting or rejecting an application for bail by the Children's Court.

44. The Act of 2015 is a complete code in itself. The legal proposition that a special act (the Act of 2015 in the present case) shall override the provisions of the general act (CrPC & IPC) is unexceptionable.

45. Section 1 (4) of the Act of 2015 gives an overriding effect to the Act over any other legislation or legislative provisions, i.e., inconsistent with it. It states that the provisions



of the Act shall apply to all matters of children in need of care and protection and children in conflict with law, including- (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law; (ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.

46. The *non obstante* clause gives primacy to the Act in all matters concerning a child in conflict with law and a child in need of care and protection.

47. In view of *non obstante* clause, every definition of offence, every punishment and every procedure, which is inconsistent with any of the provisions of the Act of 2015 shall have no effect in matters concerning a child in conflict with law.

48. Since a right to appeal is neither a natural nor an inherent right and is a creature of statute, there cannot be any right of appeal, unless it is expressly provided in the statute. It is a substantive right and not merely a procedural right.

49. In view of the clear language of the provisions prescribed under Section 101 of the Act of 2015, any person aggrieved by the order of the Board cannot prefer an appeal before the High Court under any circumstance.



50. For the reasons aforesaid, we do not find any merit in this appeal so far as to interfere with the impugned order passed by the Board.

51. The appeal is, accordingly, dismissed.

(Ashwani Kumar Singh, J)

(Arvind Srivastava, J)

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