

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.82844 of 2019

Arising Out of PS. Case No.-325 Year-2019 Thana- RUNISAIDPUR District- Sitamarhi

SUMIT KUMAR, aged about 17 years, Male, Son of Mohan Sahni, Resident of Village- Bhale, Post- Premnager, P.S.- Runnisaidpur, Distt- Sitamarhi, residing under guardianship of his father namely Mohan Sahni.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Devendra Kumar, Advocate.

For the Opposite Party : Mr. Rajeev Nayan, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER

8 05.02.2021

1. This application has been filed under Sections 439 and 440 of the Code of Criminal Procedure, for grant of bail to the petitioner, who is an accused in Runnisaidpur P.S. Case No. 325 of 2019 registered under Section 376 of the Indian Penal Code and Section 6 of the POCSO Act.

2. The prosecution case, in brief, is that the petitioner on 17.08.2019 around 12 P.M. entered into the house of the victim (informant) where she was alone, and committed rape on her. On her protest, he threatened to kill her, with knife on her neck.

3. Learned counsel for the petitioner submitted that the petitioner has been declared juvenile by the Special Court, POCSO Act, vide order dated 01.10.2019, as his age on the



alleged date of occurrence has been assessed as 17 years 11 months and 07 days. It has also been submitted that the petitioner is in the 'Observation Home', Muzaffarpur, since 18.08.2019.

4. A supplementary affidavit has been filed by the petitioner bringing on record the order dated 01.10.2019, passed by the learned A.D.J.-I, Sitamarhi. On 21.08.2019, a petition on behalf of the accused having been filed before the learned court below contending that on the date of the commission of the alleged occurrence, the accused had not completed eighteen years of age, thus, his case be transferred to the Juvenile Justice Board, Sitamarhi, for trial and disposal. Whereupon, the learned court below itself conducted an inquiry as prescribed under Section 34 of the POCSO Act and has determined the age of the petitioner to be 17 years 11 months and 07 days on the date of alleged occurrence, thus, declared him a 'child in conflict with law'.

5. The relevant part of the said order dated 01.10.2019 passed by the Ist A.D.J., Sitamarhi is extracted hereunder:-

“From the record, it appears that the date of birth of the accused Sumit Kumar is 10.09.2001 (Ext. 1) which has also supported by the Xerox copy of S.L.C. of the said accused issued by the Headmaster of the Government Middle School, Bhale. Date of



occurrence is 17.08.2019 and on calculation, the accused was 17 years 11 months and 07 days on the alleged date of occurrence. Thus, he appears to be more than 16 years and below 18 years, accordingly, he is declared 'child in conflict with law' (C.C.L.). The C.C.L. Sumit Kumar be tried as adult as per the provision of the Juvenile Justice (Care and Protection of Children) Act, 2015.

Put up on 18.10.19, awaiting F.F. and C.C.L. Sumit Kumar is remanded back to the Jail, Sitamarhi, with a direction to the Superintendent of Jail, Sitamarhi, to send him to the 'Observation Home', Muzaffarpur, and also to produce him before this court on the date fixed."

6. The petitioner moved for grant of bail before the Additional District and Sessions Judge Ist-cum-Special Court, POCSO Act, Sitamarhi, which was heard and rejected, vide order dated 14.11.2019. Thereupon, the petitioner has moved before this Court for grant of bail in connection with the said case, filing the instant application.

7. At this stage, in the facts and circumstances stated above, before delving into the merits of the case for the purpose of considering bail of the petitioner, this Court would primarily like to consider the issues involved, incidentally, in this case, which are as under:

(i) Whether the Special Court designated under POCSO Act, 2012, after determination of the age of the petitioner, thereupon, holding him 'child in conflict with law' was under statutory obligation to forward the



child to the Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2015.

(ii) Whether the Children's Court established under the Commission for Protection of Child Rights Act, 2005, or the Special Court, designated under POCSO Act, in absence of any order regarding preliminary assessment of a child by the Juvenile Justice Board as contemplated under sub section (3) of Section 18, of Juvenile Justice Act, 2015, can proceed for trial of the child as an adult as per the provision of Cr. P.C. and pass appropriate orders.

8. In order to consider the issues indicated above, it would be worthwhile to first take notice of the relevant provisions of law, as well as and decisions of the Hon'ble Supreme Court and other High Courts.

Section 34 of the POCSO Act, lays down the procedure to be followed, in case of commission of any offence under the POCSO Act, by a child. It also deals with the power of determination of age of a person by the Special Court under POCSO Act. The same is quoted hereunder:

“Section 34- Procedure in case of commission of offence by child and determination of age by Special Court-

“(1) Whether any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)

(2) If any question arises in any proceeding before the Special Court whether a person is



a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reason for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that age of a person as determined by it under sub-section (2) was not the correct age of that person.”

A bare perusal of Section 34(1) of the POCSO Act makes it clear that in case of commission of an offence under the POCSO Act, by a child, he shall be dealt with under the provisions of the Juvenile Justice Act, 2015. However, Section 34(2) of the POCSO Act, stipulates that if any question regarding the age of a person arises, it shall be determined by the Special Court after satisfying itself about the age of such person recording reasons for such determination.

9. At this juncture, it is also pertinent to discuss the relevant provisions of the Juvenile Justice Act, 2015. Section 9 of the Juvenile Justice Act, 2015, reads as under:

“Section 9-Procedure to be followed by a Magistrate who has not been empowered under this Act-

(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having



jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not on affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."

10. The aforesaid provisions of law as contained in sub-section (2) and (3) of Section 9 of the Juvenile Justice Act, clearly indicate that if the issue regarding age of a person accused of an offence arises, and he claims to be a child, before



a court other than a Board constituted under the Juvenile Justice Act, 2015, the said court is required to make an enquiry by taking evidence as necessary for determination of age of such person, and if, it is found that the person who committed the offence was a child on the date of commission of such offence, it shall be incumbent upon such court to forward the child to the Board for passing appropriate orders.

11. It is worth to explain here that later part of Section 9(3) of the Juvenile Justice Act further clarifies that once the court finds that offender was child on the date of commission of offence, in that case, the sentence, if any, passed by the court, shall be deemed a nullity. Therefore, this Court is of the considered view that any order relating to a juvenile passed by any court shall have no effect in the eyes of law, if the same be passed, in non-conformity with the provisions of Juvenile Justice Act, 2015. Therefore, the order dated 14.11.2019, rejecting the prayer for bail of petitioner by the Special Court, POCSO Act, shall be deemed to have no effect.

12. It is of utmost importance to discuss here the provision of preliminary assessment into heinous offences alleged to have been committed by a child, which has been stipulated in Section 15 of the Juvenile Justice Act, 2015.



“Section- 15. Preliminary assessment into heinous offences by Board-(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.”

13. This Court would gainfully refer and quote the observations made by the Hon’ble Supreme Court, regarding Section 15 of the Juvenile Justice Act. The Hon’ble Apex Court



in paragraph 16 of the judgment rendered in **Shilpa Mittal Vs. State of NCT of Delhi and Ors; reported in (2020)2 SCC 787; 2020 (1)PLJR SC 352**, observed as under:

“This Section provides that if the child offender has committed a heinous offence, the Juvenile Justice Board shall conduct a preliminary assessment with regard to the mental and physical capacity of such child to commit such offence, the ability of the child to understand the consequence of the offence and the circumstances in which the said offence was allegedly committed. The Board is entitled to take the help of experienced psychologists, psycho-social workers or other experts in the field. The explanation makes it clear that the preliminary assessment is not to go into the merits of the trial or the allegations against the child. The inquiry is conducted only to assess the capacity of the child to commit and understand the consequence of the offence. If the Board is satisfied that the matter can be disposed of by the Board, then the Board shall follow the procedure prescribed in summons cases under the Code of Criminal Procedure. ”

14. In view of the provisions stipulated under sub-section (1) of section 34 of the POCSO Act, any offence committed by a child under the Act, shall be dealt with under the provisions of Juvenile Justice Act, 2015. The Special Court POCSO Act, has been conferred power to determine the age of a person, whether he is child or not.

Sub-section (3) of Section 9 of Juvenile Justice Act says that if a court other than the Board finds that a person was



child on the date of commission of the offence, it shall forward the child to the Board for passing appropriate orders. In the case of heinous offence committed by a child, who is above the age of 16 years, the Board shall conduct a preliminary assessment in terms of Section 15 of the Act, thereupon the Board may pass an order in accordance with the provisions of sub-section (3) of Section 18 for the purpose of trial of the said child as an adult and may transfer the case to the Children's Court having jurisdiction to try such offences. Thereafter only the Children's Court may exercise its power as provided under Section 19 of the Act. It is worth to quote: Sections 18 and 19 of the Juvenile Justice Act, 2015, which read as under:

“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 organization 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 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.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

19. Powers of Children's Court.--(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that--

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer of the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to



the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is as periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required."

15. This Court would also like to refer a judgment delivered by the Hon'ble Karnataka High Court in **Criminal Appeal No. 1597 of 2018 (Puneet S. Vs. State of Karnataka)** reported in **2019 SCC OnLine Kar 1835; (2020) 1 KCCR 649**, wherein a similar issue had been cropped up. The said appeal was filed before the Karnataka High Court assailing the order of learned Sessions Judge, wherein, the learned Sessions Judge had without taking into consideration the provisions as stipulated in Sections 15 and 18(3) of the Juvenile Justice Act, proceeded with trial of the petitioner on the ground that the age of the petitioner after inquiry was determined to be between 16 to 18 years and the said alleged offence was heinous in nature. The Single Judge Bench of Karnataka High Court, while allowing the appeal by setting aside the order under challenge, passed by learned Sessions Judge, held as under:-

"11. Be that as it may, as could be seen from



the above said provision, the learned Sessions Judge or the Special Judge or the Child Friendly Court, presided over by the learned Sessions Judge have absolutely no power to pass any order u/s. 15 of the Act. It is the statutory power vested with the Board. This has completely lost the sight of the Sessions Judge as could be seen from the order itself.

12. Once the Board (sic) comes to the conclusion that the Board has got jurisdiction then the Board shall follow the procedure as contemplated u/s.15 of the J.J.Act and to proceed with the trial against the accused. If the Board come to the conclusion otherwise than the above, and after inquiry, the Board is of the opinion that the accused after the preliminary inquiry as contemplated u/s. 15, feels that there is a need for trial of the child as an adult, then by giving reasons to the effect that the accused/juvenile is between the age of 16 and 18 years, and he was mentally and physically competent to commit such an offence and he was able to understand the consequences of the offence and also the circumstances in which he has committed the offence, then only the Board shall pass order of transfer of the case to the Children's' Court/Sessions Court having jurisdiction to try such offence, as specified under Section 18(3) of the said J.J.Act.

13. Looking from the above said angle, considering the provisions of Sections 15 and 18 of the J.J.Act, the II Addl. Sessions Judge, Kolar, had absolutely no jurisdiction to pass order u/s. 15 of the J.J.Act. The Sessions Court has not even cared to look into the provisions of the Act, but in an over enthusiasm appears to have passed the above said order. Under the above said circumstances, the order is not sustainable either in law or on facts.”

16. Now, considering the provision of law and the



decisions referred above, this Court is of the considered opinion that the court of learned Additional District and Sessions Judge Ist-cum-Special Court, POCSO Act, after arriving at the finding that the petitioner was a child on the date of commission of the alleged offence, was under statutory obligation as per section 9(3) of the Juvenile Justice Act to forward the petitioner alongwith the records of the case to the Board. However, from the order dated 01.10.2019, it is apparent that the court below did not forward the petitioner and the records of the case to the Juvenile Justice Board, rather exceeded its jurisdiction and usurped the power vested in the Board under Section 15 of the Act and retained the matter before it and held that the petitioner be tried as an adult, which is in gross contravention of Sections 15 and 18(3) of the Juvenile Justice Act, 2015. It is to be borne in mind, that the Special Courts created under special laws, gain power from the various provisions contained in the enactments. They cannot and should not transgress the jurisdiction prescribed under the special laws. It is settled law that an order passed by the court beyond its the jurisdiction is a nullity.

17. In the present case, a very peculiar situation having been arisen that the learned Special Court, POCSO Act, Sitamarhi, determining the age of the petitioner, thereupon



holding him 'child in conflict with law', did not forward the petitioner to the Juvenile Justice Board but retained the matter before it and proceeded for trial as an adult and also refused the prayer for bail made on behalf of the petitioner vide its order dated 14.11.2019 passed in Runnisaidpur P.S. Case No. 325 of 2019. It is worth to take note of the fact that the learned court below has further proceeded in this matter and one of the prosecution witness has also been examined in this case, which is evident from the deposition of the witness having been brought on record by way of supplementary affidavit filed by the petitioner. Thus, the trial proceedings going on before the learned Special Court, POCSO Act, requires to be interfered with to secure the ends of justice.

18. At this juncture, this Court would gainfully refer to the decision rendered by a Five Judges Bench of this Hon'ble Court in the case of **Surendra Singh and Ors. Vs. The State of Bihar and Ors, reported in 1990 (2) PLJR 693**, wherein while dealing with the scope of Article 227 of the Constitution of India, it has been said as under:

“ 10. Now, so far the Full Bench decision of this Court in the case of **Ramesh Kumar Ravi alias Ram Prasad v. The State of Bihar and 3 others** (1987 PLJR, 650) the correctness whereof is under challenge, it may be pointed out that the question under



consideration was as to whether the judicial orders of a criminal court (stricto sensu) under the Code of Criminal Procedure, are amenable to quashing by a writ of certiorari ? ”

The Full Bench came to the following conclusion-

If the larger principle laid down in Mirajkar's case is that no writ would lie against the judicial process established by law, then plainly the judgments and orders of the Judicial Magistrate and the court of session would be totally out of the purview of a writ of certiorari and amenable only to the process of appeal, revision or the inherent jurisdiction of the High Court under section 482 of the Code and thereafter by way of a special leave to their Lordships of the Supreme Court.”

While answering the question aforesaid it was said as follows-

“In the light of the foregoing discussions the answer to the question no. (iv) posed at the very outset is rendered in the negative and it is held that the judicial orders of a criminal court stricto sensu under the Code of Criminal Procedure are not amenable to quashing by a writ of certiorari.”

With due respect for the Hon'ble Judges, who were members of the aforesaid Full Bench, in view of the judgments aforesaid of the Supreme Court and earlier Full Bench judgments of this Court it is difficult to hold that orders of Judicial Magistrates and the courts of session would be totally out of the purview of a writ of certiorari. If it is brought to the notice of this Court that a court has passed an order assuming jurisdiction although statute in question has not vested such jurisdiction or a court is conducting its proceeding in flagrant violation of the principles of natural justice because of which grave injustice is likely to be done, can such order and proceeding be allowed to continue



when ample power has been vested in this Court by framers of the Constitution ? The answer is in negative.”

“12. Any attempt to obliterate the power of this Court under Article 227 of the Constitution, by any statutory provision or a judicial pronouncement shall be a futile attempt because that will amount to abridging or curtailing the power, which flows from the Constitution itself. But at the same time it has to be borne in mind that the extraordinary power vested in the High Court under Article 227 of the Constitution is to be exercised only to keep the courts subordinate to the High Court within the bounds of their authority so that they may perform their duties and do not exceed their jurisdiction.” In the case of Miss. Maneek Custodji Surjarji V. Sarafazali Nawabali Mirza (AIR 1976 Supreme Court, 2446) it was pointed out:-

“It must be realised that the jurisdiction under Article 227 of the Constitution is an extraordinary jurisdiction which is to be exercised sparingly and in appropriate cases and it is not to be exercised as if it were an appellate jurisdiction or as if it gave unfettered and unrestricted power to the High Court to do whatever it liked.”

19. It is also relevant to refer to the case of **Surya Devi Rai Versus Ram Chander Rai & Ors; reported in (2003) 6 SCC 675**, wherein the Hon’ble Apex Court while discussing the scope of Article 227 of the Constitution has held in the following terms that:

“Supervisory jurisdiction under Article 227

“22. Article 227 of the Constitution confers on every High Court the power of



superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by clauses (2) and (3) of Article 227 with which we are not concerned hereat. It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised *suo motu*. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.”

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.



(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e., when a subordinate court is found to have acted (i) without jurisdiction- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction-by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or



patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but



cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

20. It is important to mention here that the Hon’ble Apex Court in the case of **Radhey Shyam and Ors. Versus Chhabi Nath and Ors., reported in (2015) 5 SCC 423** by a Three Judges Bench decision has overruled the part of the **Surya Devi Rai (Supra)** judgment wherein observation was made that judicial orders of civil court are amenable to writ jurisdiction under Article 226 of the Constitution. Three Judges Bench also held that jurisdiction under Article 227 is distinct from jurisdiction under Article 226. This Court finds the need to clarify here that, so far as the observations regarding scope and powers of Article 227 is concerned, the observations made in the case of **Surya Devi Rai (Supra)** has not been overruled by Three Judges Bench and the same still occupies the field.

21. In view of the foregoing observations made by the Hon’ble Supreme Court in the case of **Surya Devi Rai (Supra)** and the decision of this Court in the case of **Surendra Singh**



(Supra), this Court finds the case in hand, being an appropriate one for *suo motu* invoking and exercising the extraordinary jurisdiction power enshrined under Article 227 of the Constitution of India, to curb the illegal proceedings going on before the Special Court, POCSO Act, by assuming such jurisdiction which being not vested in it under the law.

22. In addition to the powers conferred under Article 227 of the Constitution of India to this Court, Section 482 of the Code of Criminal Procedure, preserves inherent power of the High Court, which can be exercised *ex-debito justitiae*, i.e., for doing real and substantial justice. Section 482 of the Cr. P.C., starts with the expression “Nothing in this Code”, which means this having been an overriding provisions. The language of this section is quite explicit and the expressions used leave no doubt that none of the provisions of the Code can limit or restrict such inherent powers. Since no legislative enactment dealing with procedure, however exhaustive, provide solution of all questions and situations that can possibly arise. The legislature is not capable of contemplating all possible circumstances which may arise in future. The saving of the High Court’s inherent power is designed to achieve a salutary public purpose of securing justice and to prevent abuse of process of law. It cannot be said that



courts having no power to do justice or redress a wrong simply because there is no express provision in the Code. Thus, inherent powers are in addition to the powers specifically conferred by the legislation. Section 482 of the Cr. P.C. is self explanatory that High Courts are not merely courts of law, but also courts of justice and possess inherent powers to undo injustice.

23. In the case of **State of Punjab Vs. Kasturi Lal (2004) 12 SCC 195**, the Hon'ble Supreme Court of India observed that it cannot be disputed that no law can foresee all the contingencies which may arise in future and in spite of all precautions, there may be situations never contemplated by the law makers and a court of law is called upon to deal with them. In such exceptional cases, a High Court exercises inherent powers to do justice. These powers, on the other hand, provide claws to laws to prevent abuse of process of law, and on the other hand, they seek to secure the ends of justice. It is settled law that powers under this section are required to be exercised to do real, full and complete justice between the parties for the administration of which alone courts exist.

24. As held by the Hon'ble Supreme Court in the case of **State of Karnatka Vs. Muniswamy, A.I.R. 1977 SC 1489**,



the saving of High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose that a court proceedings should not be permitted to degenerate into a weapon of harassment and persecution. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature.

25. In the case of **Popular Muthiah Vs. State (2006)**

3 SCC (Cri) 245, the Hon'ble Supreme Court of India, considering the issue regarding *suo motu* exercise of power under Section 482 of the Cr. P.C. by the High Court while exercising its criminal appellate jurisdiction, held as under:

“27. While exercising its appellate power, the jurisdiction of the High Court although is limited but, in our opinion, there exists a distinction but a significant one being that the High Court can exercise its revisional jurisdiction and/or inherent jurisdiction not only when an application therefor is filed but also *suo motu*. It is not in dispute that *suo motu* power can be exercised by the High Court while exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of Parliament, while making the new law the emphasis of Parliament being “a case before the court” in contradiction from “a person who is arrayed as an accused before it” when the High Court is seized with the entire case although would



exercise a limited jurisdiction in terms of Section 386 of the Code of Criminal Procedure, the same, in our considered view, cannot be held to limit its other powers and in particular that of Section 482 of the Code of Criminal Procedure in relation to the matter which is not before it.

29. The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.

30. In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that:

(i) Power can be exercised *suo motu* in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(iii) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts *ex debito justitiae*. It can, thus, do real and substantial justice for which alone it exists.”

26. In the case of **Rajiv Thapar & Ors Vs Madan**

Lal Kapoor (2013) 3 SCC 330, the Hon’ble Supreme Court of



India held that the discretion vested in the High Court under Section 482 of the Cr. P.C. can be exercised *suo-motu* to prevent the abuse of process of a court, and/or to secure the ends of justice.

27. Looking into the facts and circumstances of the present case, this Court is also of the view that self-restraint can be lifted for *suo-moto* exercise of inherent jurisdiction contemplated under Section 482 of the Cr. P.C. as to secure the ends of justice by giving effect to the above referred provisions of the POCSO Act and Juvenile Justice Act.

28. In view of the discussions undertaken hereinabove, this Court is of the considered view that the learned court below i.e., the Special Court, POCSO Act, after determining the age of the petitioner and holding him 'child in conflict with law' was under statutory obligation in terms of Section 34(1) of the POCSO Act, 2012 and Sections 9(2) & (3) of the Juvenile Justice Act, 2015, to forward the petitioner to the Board for passing appropriate order, and only after preliminary assessment by the Board as stipulated under Section 15 of the Juvenile Justice Act, if the Board would have passed an order transferring the trial of the case to the Children's' Court in terms of Section 18(3) of the Act, thereupon, the Children's Court or



Special Court, POCSO Act, could have proceeded and decided in terms of Section 19 of the Juvenile Justice Act. Thus, the issues indicated above and involved in this case are answered accordingly.

29. This Court would further proceed to test the propriety of the order dated 14.11.2019 by which the prayer for bail made on behalf of the petitioner having been refused by learned Special Court, POCSO, Sitamarhi.

In view of the foregoing observations, made above, especially in the background that the petitioner who was a child on the date of commission of the alleged offence, has not been dealt with under the provisions of the Juvenile Justice Act, 2015, and the Special Court, POCSO, Sitamarhi, while passing the order dated 14.11.2019, has not taken the conditions envisaged under Section 12 of the Juvenile Justice Act, 2015, into consideration, therefore, the order dated 14.11.2019 is not sustainable in the eye of law, accordingly, quashed.

30. Since, the petitioner is in the 'Observation Home', Muzaffarpur, since 18.08.2019 and the unprecedented pandemic situation due to Covid-19 is still prevailing, therefore, the court of the learned Additional Sessions Judge-Ist-cum-Special Court, POCSO Act, is hereby directed to forward the petitioner



forthwith to the Juvenile Justice Board as per Section 9(3) of the Juvenile Justice Board, so that appropriate orders may be passed by the Board.

31. This Court directs the Registrar General, Patna High Court, to place this order before the Hon'ble Chief Justice of Patna High Court in administrative side, so that necessary directions/instructions may be issued after approval of the Hon'ble Chief Justice to all the judgeships of Bihar and the Registry of Patna High Court.

(Sudhir Singh, J)

U.K./- A.F.R.

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