

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 29th September, 2021

Decided on : 12th October, 2021

+

W.P.(CRL) 1894/2021

BRAJ KISHORE PANDEY & ANR.

..... Petitioners

Through : Mr.Ajay Kr Thakur, Advocate.

versus

THE STATE & ORS.

.....Respondents

Through : Ms.Avinder Singh, ASC for the
State with Mr.Karan Dhalla,
Advocate with Investigating
Officer.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. With the consent of learned counsels for parties, the petition is heard for disposal.

2. This petition is filed with the following prayers:-

a) To quash the FIR bearing no. 0234/2016 dated 29.05.2019, registered at PS Mukherjee Nagar against the Petitioners and thereby quashing every other proceeding undertaken in the said FIR.

b) Grant writ of certiorari, or any other appropriate writ or direction declaring the letter/ complaint dated 21.02.2019 bearing No.F-11(15)Vig/DWCD/2018/40536 as written by the Respondent No.2 to the concerned PS on the basis of which the FIR was registered against the Petitioners, as unconstitutional and illegal,

c) Grant writ of Mandamus thereby directing the Respondent No.2 and 3 to revoke the suspension orders against the Petitioners and re-instate/re-enlist the Petitioners on regular basis.

d) Any other Writ, Order or Direction which may be deemed fit and proper on the facts and the circumstances of the case and in the interest of justice.

3. Both petitioners filed above petition as being aggrieved by conducting of an extra-judicial disciplinary proceedings dated 31.10.2018 by the Preliminary Inquiry Committee of three members formed by Respondents No.2 & 3 for the purpose of inquiring the alleged misconduct by the petitioners, which *per se* is in contradiction to the statutory provision of Section 8 (3) (k) of The Juvenile Justice (Care & Protection of Children) Act, 2015 [hereinafter referred as *JJ Act*]. It is also alleged the said illegitimate proceedings eventually led to the registration of FIR No.234/2019 under Section 75 and 82 of the said Act before police station Mukherjee Nagar.

4. It is alleged both the petitioners were dispensing their duties in JJB, being the Welfare Officers and were suspended in exercise of the powers conferred by sub rule (1) of Rule 10 of the Central Services(Classification, Control and Appeal) Rules, 1965 vide order dated 26.10.2018 prior to the initiation of the disciplinary proceeding dated 31.10.2018.

5. The Section 8 of the JJ Act notes:-

“8. Powers, functions and responsibilities of the Board.

(1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law in the area of jurisdiction of such Board.

(2) The powers conferred on the Board by or under this may also be exercised by the High Court and the Children's Court, when the proceedings come before them under Section 19 or in appeal, revision or otherwise.

(3) The functions and responsibilities of the Board shall include-

(a) to (j) xxx

(k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act, or any other law for the time being in force, on a complaint made in this regard.

6. Thus, it is argued the said provision clearly gives power of ordering FIR to the Juvenile Justice Board in the case of any offence and not to any Committee or any other authority or an official. In the instant case the respondent No.3 purportedly received an undated complaint from few of the anonymous children in conflict with law, that the petitioners have a very questionable conduct towards them and also one of the guest teacher Deepika complained about the Petitioners regarding their inappropriate behavior towards her. Subsequently, the respondent No.3 wrote a letter dated 08.10.2018, compiling all the incidents as reported against the petitioners to the respondent No.2 and thereafter one Preliminary Inquiry Committee was constituted vide order No. f.11(15)/Vig./DWCD/2018/29668-71 dated 31.10.2018 for inquiring into the alleged misconduct of the Petitioners. The said committee submitted its report on 26.12.2018 and found the petitioners in violation of Rule 62, 66 & 75 of The Juvenile Justice(Care and Protection of Children) Model Rules, 2016 (hereinafter referred as *Rule 2016*) and Section 75 & 82 of the JJ Act. It is also alleged, even the principles of natural justice were not followed.

7. The respondent No.2 wrote a complaint dated 21.02.2019 to the SHO, Mukherjee Nagar and accordingly FIR was registered under Section 75 and 82 of the J J Act on 29.05.2019 reiterating the same set of facts as submitted by the respondent No.2. Till date, no charge sheet has been filed against the petitioners.

8. It is the case of the petitioners as per the statutory provisions of the JJ Act no such power of constituting any Committee lies with the respondents and they are not authorized to run parallel proceedings when Juvenile Justice Board is in place to look into the offences of any nature whatsoever while dealing with the issues or complaints of children in conflict with law, even otherwise the FIR is primarily based on the reports of the Committee whose constitution is not even defined in the entire Act.

9. It is alleged suspension of petitioners; constitution of the inquiry committee and pursuant to registration of FIR in question is based on hearsay evidence, is in utter disregard of the cardinal principles of law.

10. Thus, the main argument of the learned counsel for the petitioners is per Section 8(1) of the JJ Act (*supra*) it the only JJB, who can deal with the children who are in conflict with law and it has the only power to lodge the complaint /FIR per Section 8(3)(k) of the JJ Act, and no one else has the power to lodge such complaint.

11. I have heard the arguments.

12. In *Lalitha Kumari v. State of UP* (2014) 2 SCC 1, any receipt of an information regarding cognizable offence must be registered as an FIR. Admittedly letter/complaint dated 12.02.2019, disclose cognizable offence(s) and thus the FIR was registered.

13. Section 75 of the JJ Act is a cognizable offence as is confirmed by Section 86(2) of the JJ Act. It runs as under :-

75. Punishment for cruelty to child.—Whoever, having the actual charge of, or control over, a child, assaults,

abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

*Provided further that if such offence is committed by any person **employed by or managing an organisation, which is entrusted with the care and protection of the child**, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:*

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.

86. Classification of offences and designated Court. -- (1)
Where an offence under this Act is punishable with imprisonment for a term more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Childrens Court.

*(2) Where an offence under this Act is punishable with imprisonment for a term of **three years and above**, but not more than seven years, then, such offence shall be **cognizable**, non-bailable and triable by a Magistrate of First Class.*

(3) Where an offence, under this Act, is punishable with imprisonment for less than three years or with fine only, then, such offence shall be non-cognizable, bailable and triable by any Magistrate.

14. This complaint was pursuant to an inquiry conducted by a 3-member vigilance committee conducting an inquiry into the allegations against the petitioners which concluded the petitioners, on several instances used filthy, offensive, taunting and humiliating language with the children resident in Observation Home for Boys as well as were physically abusive. Pursuant to the information received vide letter dated 21.02.2019, the present FIR has been registered and investigation is ongoing.

15. Section 8(1) of the Act gives a power to the Board to deal with all proceedings under the Act relating to children in conflict. The only limitation for jurisdiction are crimes committed by children, which are subjected to the jurisdiction of Juvenile Justice Board. Pursuant to Section 8(1) the Juvenile Justice Board has exclusive jurisdiction relating to children in conflict in law; not for offences against children. Section 8(3) is inclusive which no doubt give powers to the Board besides other power to order for registration of FIR for offences committed against any child in conflict but that does not debar others to lodge such FIR. Rule 54 of JJ Rules, 2016 can be read in this context.

54. Procedure in cases of offences against children.- (1)

A complaint of an offence against a child may be made by child, family, guardian, friend or teacher of the child, children services or any other individual or institutions or organisation concerned.

(2) On receipt of information in respect of a cognizable offence against a child, the police shall register a First Information Report (FIR) forthwith.

(3) On receipt of information of a non- cognizable offence against a child, the police shall make an entry in the Daily Diary which shall be transmitted to the Magistrate concerned forthwith who shall direct appropriate action under sub-section (2) of section 155 of the Code of

Criminal Procedure, 1973.

16. The above rule prescribes a procedure for registration of FIR in cases where a complaint discloses cognizable offence against children. This Rule is in line with Section 154 of the Cr P C. Rule 54 allows inter alia, any department or organization to register a complaint with the police of offences against children. There is no bar to the police to file a chargesheet in offences against children, and there is no specific provision for a department to file a complaint before the court of law.

17. The procedure for complaint and otherwise, prescribed in the rules does not exclude the police in registering a case and carrying out investigation.

18. The petition is devoid of merits and hence is dismissed. Pending application, if any, also stands disposed.

YOGESH KHANNA, J.

OCTOBER 12, 2021

M