

26.09.2022

Item No.61
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 2620 of 2021

**Pralay Naskar alias Pappu
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure.

Mr. Souvik Mitter,
Mr. Angshuman Chakraborty,
Mr. S. S. Saha ... For the Petitioner.

Mr. Madhusudan Sur,
Mr. Dipankar Paramanick ... For the State.

It reflects from the supplementary affidavit filed on behalf of the petitioner that the Principal Magistrate, Juvenile Justice Board, South 24-Parganas by an order dated 23.08.2021 was pleased to arrive at a finding which is, *inter alia*, as follows :

“Accordingly, in view of section 15 of this Act as well as section 18(3) of the said Act, the case record is hereby transferred and placed before the Children Court at Baruipur, South 24 Parganas for further proceeding.”

Consequently, the petitioner approached the learned Special Court (POCSO Act), Baruipur in Special Case No. 138 of 2021 wherein records were transmitted by the Juvenile Justice Board and the learned Special Court by its order dated 22.09.2021 rejected the grievance of the petitioner by holding the application to be a frivolous one.

Mr. Mitter, learned advocate appearing for the petitioner submits that the learned Judge, Special Court (POCSO Act) is empowered to consider the grievance of the petitioner regarding the subject-matter of juvenility.

Mr. Sur, learned advocate appearing for the State opposes such contention and submits that when there is specific provision of appeal, then the same court which is trying the case under the POCSO Act is not entitled to consider the appeal in respect of the petitioner who claims himself to be the Child in Conflict with Law.

On consideration of the rival submissions, I find sub-Section (2) of Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which states as follows :

“101.(2) *An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under Section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.”*

Thus, the present petitioner approached a wrong forum as was advised to him by his learned advocate. Considering the fact that the fault of the lawyer cannot be considered the fault of the litigant, I grant liberty to the petitioner to prefer appeal before appropriate forum in accordance with law under Section 101(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015. Any delay, which has occurred in the meantime, would be leniently considered by

the appellate forum in view of the fact that in case the appellate court finds the petitioner to be a Child in Conflict with Law, he must have the benefit under the provisions.

Needless to state that I have not applied my mind to the merits of the case, but only allowed the petitioner to exhaust his remedy in a proper manner under the provisions of law.

The learned Appellate Court would be at liberty to arrive at its independent findings without being influenced by any of the observations made hereinabove which is restricted only to the disposal of the present revisional application.

With the aforesaid observations, the revisional application being CRR 2620 of 2021 is disposed of.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)