

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. No. 3438 of 2018

Sarita Patwari @ Sarita Agarwal & Anr.

-vs-

The Central Bureau of Investigation

For the Petitioners : Mr. Satadru Lahiri

For the CBI : Mr. Atarup Banerjee
Mr. Sourav Mondal

Heard on : 29.8.2022

Judgment on : 02.09.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order dated 24th September, 2018 passed by the learned Judge, CBI Court no. 4, Bichar Bhawan Calcutta, in connection with Special Case no. 05 of 2011 arising out of RC 42(A)/98 dated 27.10.1998 under Section 120B read with Sections 420/419/467/468/471/109 of the Indian Penal Code read with Section 13 (2) and Section 13(1) (d) of the Prevention of Corruption Act, 1988, the present application has been filed under Section 401 read with Section 482 of the Code of Criminal Procedure.

2. The petitioners contended that the instant case was registered on 27.10.1998 pursuant to a source information wherein it was alleged that during the period 1988-89, one Naba Kumar Roy (since deceased) the then Branch Manager, Allahabad Bank, Chinsurah Branch, Hooghly entered into a criminal conspiracy with one Radheshyam Agarwal, Director of M/s. Chiranjee Cold Storage Pvt. Ltd. and unknown others and in furtherance of the said criminal conspiracy, cheated Allahabad Bank at Chinsurah Branch to the tune of Rs. 64,97,603.19/- by committing forgery in the process of disbursing loan sanctioned by the bank, in favour of farmers/potato growers, violating the procedures laid down by the bank.

3. It is further submitted that the investigating agency after completion of perfunctory investigation of the instant case submitted charge sheet vide charge sheet no. 48 of 2002 dated 30.9.2002 for alleged commission of offences punishable under Section 120B read with Sections 420/419/467/468/471/109 of the Indian Penal Code read with Section 13 (2) and Section 13(1) (d) of the Prevention of Corruption Act, 1988 against eight accused persons including the petitioners herein.

4. On 23.6.2017, the accused/petitioners preferred an application under Section 239 of the Code of Criminal Procedure, 1973 praying for their discharge from the instant case on the ground that there is nothing on record to establish their involvement in the alleged offence and also on the ground that at the time of alleged commission of such offence they were juvenile as per the Juvenile Justice (Care and protection) act, 2015(hereinafter called as

Juvenile Justice Act, 2015). The accused/ petitioners also produced relevant documents of unimpeachable character as well as of sterling equality in support of their contention before the learned Judge. Learned Judge was pleased to pass the order for conducting enquiry as to the viability of the contention raised by the accused petitioners as well as regarding the veracity of the documents annexed to the application dated 23.6.2017 in support of their contention that they were juvenile at the time of alleged commission of offence. The Central Bureau of Investigation (CBI) after causing necessary enquiry also submitted a report thereby upholding the contention of the accused petitioners that they were juvenile on the alleged date of commission of offence.

5. It is further submitted that the learned Judge, after hearing the learned advocates appearing for all the parties vide impugned order dated 24th September, 2018, was pleased to reject the prayer of the accused petitioners on the ground that the prayer made in the petition does not appear to be very cogent and significant. Learned court further held that accused petitioners were juvenile at the time of alleged commission of offence. However, learned Judge refused to forward them before the concerned juvenile Justice board having necessary jurisdiction for further proceeding and learned trial court pleased to hold that the present proceeding of such juvenile would continue before the regular court as earlier, along with other accused persons of the case who were not juvenile on the alleged date of commission of offence.

6. Learned advocate appearing for the petitioners submits that learned trial court while passing the impugned order thereby rejecting the accused petitioner's prayer for discharge, failed to consider and appreciate that "Court" has been defined under Section 2(23) of the said Act as a civil court which has jurisdiction in matters of adoption and guardianship and may include the District court, family court and City Civil Court, while "Board" has been defined under Section 2(10) as a Juvenile Justice board constituted under Section 4 of the Act. Accordingly, the learned Judge misconstrued Section 25 of the Juvenile Justice Act to mean that a juvenile shall be continued to be tried before a regular court or special court as an adult as if the proceedings were pending prior to the commencement of the act, whereas referred section itself speaks otherwise and has clearly and specifically referred to "Board" and "Court" to have meanings conferred by the Act.

7. He further submits that Chapter IV of the Juvenile Justice Act of 2015 deals with procedure in relation to children in conflict with law and learned Judge ought to have issued instructions for production to the accused petitioners before the Juvenile Justice Board having appropriate jurisdiction as the accused petitioners was admittedly juvenile, falling under ambit of the aforesaid act and learned trial judge erred in law and fact without appreciating that in a case where the accused have been admitted to be Juvenile under the Juvenile Justice Act, 2015, the continuation of the trial before a regular court or special court would result in a blatant violation of the said Act as well as would amount to gross miscarriage of justice. Learned Judge practically failed

to understand and interpret the true intent and purport of Section 25 of the Juvenile Justice Act, 2015 to the effect that once an application is preferred in respect of any of the accused person in connection with any criminal case pending before him to the effect that the said accused person is a juvenile or was a juvenile on the alleged date of commission of the alleged offence, the learned Judge, instead of proceeding with the case, should have conducted an enquiry as to veracity/viability of the contention as raised by the accused persons and if such contention appears to be true, he should have immediately transferred the case before the concerned board at that stage because the concerned regular court loses its jurisdiction to try the case in respect of the juvenile concerned. Accordingly, the petitioner submits that the impugned order is an unreasoned one and suffering from the vices of passing an order without jurisdiction and as such is not sustainable in the eyes of law.

8. Learned advocate for the CBI submits that the petitioner has not made any such prayer at the time of filing discharge application under Section 239 of the Code of Criminal Procedure and as such at this stage he cannot mould his prayer before the High Court. Petitioners in the trial court have only prayed for their discharge in view of investigation made by the investigating agency and now they are praying that the trial of the present petitioners cannot be conducted before the regular court, which is beyond their contention in respect of which the impugned order was passed and as such present proceeding is liable to be dismissed.

9. In view of the submissions made by both the parties, the undisputed fact emerges that both the petitioners are female accused. It also appears from the impugned order that the claim of the minority or juvenility as put forward by the petitioners has been accepted by the prosecution though prosecution vehemently opposed their prayer for discharge on the ground of insufficient materials. The petitioners also annexed the school certificates which goes to show that the petitioner Ms. Anita Agarwal's date of birth is 23.6.1972 and according to the school register, the other petitioner Sarita Agarwal's date of birth is 8.8.1973. The offence was allegedly committed by the petitioners in the month of February 1989, and accordingly the age of the petitioner Sarita Agarwal was 16 years and petitioner Anita Agarwal was 17 years at the time of alleged commission of offence.

10. As offence allegedly committed in the year 1989, the offence is guided under juvenile Justice Act 1986 and according to Section 2(h) of the said act, Juvenile means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. The petitioners being the female accused admittedly not attained the age of 18 years on the date of alleged commission of offence and as such they were minor at the relevant point of time under the prevalent law. Section 7 of the said Act provides, where a board or juvenile court has been constituted for any area, such board or court shall have power to deal exclusively with all proceedings under the said act of 1986, relating to the delinquent juveniles and the board or a juvenile court may, if it is of the opinion that it is necessary so to do having regard to the circumstances of the

case, transfer any proceeding to juvenile court or board as the case may be and Sub-section(3) of Section 7 says that the power conferred on the board or juvenile court by or under this act may also be exercised by the High Court and the court of session when the proceeding comes before them in appeal, revision or otherwise.

11. Section 24(1) of the Juvenile Justice Act 1986 starts with non obstante clause and it says notwithstanding anything contained under Section 223 of the code of criminal procedure or any other law for the time being in force, no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile.

12. Learned advocate for the CBI Mr. Atarup Banerjee has referred to Section 25 of the Juvenile Justice Act 2015, which provides that notwithstanding anything contained in this act all proceedings in respect of a child alleged or found to be in conflict with law pending before any board or court, on the date of commencement of this Act shall be continued in the Board or Court as if this Act had not been enacted and accordingly Mr. Banerjee contended that here court means the CBI court where the trial of other six accused persons is continuing. Learned trial court has also accepted this argument and was pleased to observe that Section 25 of the act is in pari materia with Section 20 of the Juvenile Justice Act 2000 and Section 26 of the Juvenile Justice Act 1986 and accordingly trial court came to the conclusion that sending present petitioners or present case record before the concerned juvenile board does not arise. The occasion for sending the case record to the

concerned Board would arise, if the court finds that the juveniles have committed any offence, then instead of passing sentence in respect of the juveniles, shall forward the juveniles to the Board, which shall pass orders in respect of juveniles. In this context learned Trial Court relied upon Apex Court judgment in ***Pratap Singh Vs. State of Jharkhand & another*** reported in **(2005) 3 SCC 551**.

13. It is true that Section 25 provides that all proceedings in respect of the child alleged or found to be in conflict with law pending before any board or court at the time of commencement of this act, shall be continued in that board or court as if this act has not been enacted but both the terms “Board” and “Court” have been defined in the said act of 2015. Here Court means a civil court which has jurisdiction in matters of adoption and guardianship and may include the district court, family court and City Civil Court. Trial Court has relied upon ***Pratap Singh vs. State of Jharkhand and Another*** reported in **(2005) 3 SCC 551** . In the said case also the question arose whether the Act of 2000 will be applicable in the case, a proceeding is initiated under the 1986 Act and pending when the Act of 2000 was enforced with effect from 01.04.2001 **(Para -7)**.

14. It was observed in Para 31 of the said judgment which may be reproduced below:-

“31. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with a non obstante clause. The sentence “notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act came into force” has great significance. The proceedings in respect of a juvenile pending in any

court referred to in Section 20 of the Act are relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term “any court” would include even ordinary criminal courts. If the person was a “juvenile” under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or the girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that court as if the 2000 Act has not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile.”

The view taken by Trial Court in this respect cannot be sustained simply because, the petitioners being female delinquent, their claim of juvenility remains same either under the Act of 1986 or under the Act of 2000 or under the Act of 2015, which defines “juvenile” as a child below the age of 18 years. Here it would not be out of context to quote Justice S.B. Sinha’s observation in Para 51 of the **Pratap Singh (Supra)** judgment, which is as follows:-

“51. The Juvenile Justice Act, 1986 is aimed at achieving the following objects:

(i) To lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up. This is being ensured by establishing Juvenile Welfare Boards and Juvenile Courts.

(ii) To provide for a specialised approach towards the prevention and treatment of juvenile delinquency in its full range in keeping with the development needs of the child found in any situation of social maladjustment.

(iii) To spell out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of the juvenile justice system. This is proposed to be achieved by establishing observation homes, juvenile homes for neglected juveniles and special homes for delinquent juveniles.

(iv) To establish norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition and care, treatment and rehabilitation.

(v) To develop appropriate linkages and coordination between the formal system of juvenile justice and voluntary agencies engaged in

the welfare of neglected or socially maladjusted children and to specifically define the areas of their responsibilities and roles.

(vi) To constitute special offences in relation to juveniles and provide for punishment therefor.

(vii) To bring the operation of the juvenile justice system in the country in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.”

15. In Para 48 of the said judgment it has been clearly observed by justice Sinha:-

“48. The purpose of the juvenile justice legislation is to provide succour to the children who were being incarcerated along with adults and were subjected to various abuses. It would be in the fitness of things that appreciation of the very object and purpose of the legislation is seen with a clear understanding which sought to bring relief to juvenile delinquents.”

16. During the course of hearing no argument has been placed before me for discharge of accused persons on the ground of insufficient materials. However, learned counsel appearing for the CBI submits that a prayer for juvenility which has not been made in the discharge petition, under Section 239 of the act, High Court can not mould the said prayer while dealing with the application filed before the trial court under Section 239 of the Code. In this context, Section 38 of the Act of 1986 is also reproduced below:

“38. Revision. - The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority of court of Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.”

17. In view of above while the trial court's observation that the petitioners are not liable to be discharged on the ground that they were juvenile at the time of commission of offence, or on the ground of insufficient material to proceed has not been interfered with by this judgment but his finding that "the present proceeding of such juveniles will be continued before the said court as earlier" is hereby set aside.

18. In view of the admitted fact that the petitioners were juvenile at the time of alleged commission of offence, learned trial court is directed to split the case record in respect of the present petitioners and to send the petitioners along with splitted case record before the concerned juvenile Justice board for adjudication, within a period of two weeks from the date of communication of this order.

CRR 3438 of 2018 is accordingly disposed of.

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

(AJAY KUMAR MUKHERJEE, J.)