

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.30 OF 2022

Digvijay Deepak Jagtap	... Applicant
V/s.	
The State of Maharashtra	... Respondent

**WITH
INTERIM APPLICATION NO.3478 OF 2022
IN
CRIMINAL REVISION APPLICATION NO.30 OF 2022**

Abbaso Dilip Sankpal	... Applicant
V/s.	
The State of Maharashtra & Anr.	... Respondents

**WITH
CRIMINAL REVISION APPLICATION NO.31 OF 2022**

Abhijit Anil Thorat	... Applicant
V/s.	
The State of Maharashtra	... Respondent

**WITH
INTERIM APPLICATION NO.3477 OF 2022
IN
CRIMINAL REVISION APPLICATION NO.31 OF 2022**

Abbaso Dilip Sankpal	... Applicant
V/s.	
The State of Maharashtra & Anr.	... Respondents

Ms. Maharukh Adenwalla with Mr. Chinmay Jawale for the applicant.

Mr. Niranjan Mundargi i/by Mr. Kunal D. Ambulkar for the intervenor in interim applications.

Ms. G.P. Mulekar, APP for the respondent no.1/State.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 19, 2022

P.C.:

1. The applicant (in both revision applications), according to him was juvenile in conflict on the date of offence, is challenging order dated 21st August 2018 passed by the Principal Magistrate, Juvenile Justice Board, Satara (hereinafter “Board”, for short) in Juvenile Case No.1 of 2018 mainly on the ground that the mandatory procedure as contemplated under the proviso to sub-section (1) of section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter “2015 Act”, for short) has not been complied with.

2. The Board in paragraph 9 of the impugned order recorded a finding that assistance of psychologist or psycho social worker while carrying out preliminary assessment is not mandatory and, therefore, on the basis of the report of psychiatrist the case was transferred to the Children Court, Satara to be tried by the Special Court.

3. Learned advocate appearing for the applicant invited my attention to the judgment of the Apex Court in Criminal Appeal No.951 of 2022 decided on 13th July 2022 (**Barun Chandra**

Thakur v. Master Bholu & Anr.). She invited our attention to paragraph 79 of the said judgment, which reads thus:

“79. Therefore, looking tot he purpose of the Act, 2015 and its legislative intent, particularly to ensure the protection of best interest of the child, the expression “may” in the proviso to Section 15(1) thereof and the requirement of taking assistance of experienced psychologists or psycho-social workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practicing professional with a degree in child psychology or child psychiatry. Moreover, in case the Board, in view of its own composition with at least one member, who is a practicing professional with a decree in child psychology or child psychiatry, chooses not to take such assistance, it would record specific reasons therefor.”

4. On perusal of the said judgment, it is clear that the Apex Court in clear terms has held that the proviso to sub-section (1) of section 15 of the 2015 Act is mandatory and, therefore, the assistance of psychologist or psycho-social worker was necessary before any conclusion was drawn by the Board.

5. Learned APP submitted that now the applicant is 20 years old and, therefore, it would not be possible for the Board to arrive at any conclusion as to what was the mental status of the applicant on the date of the offence.

6. The Apex Court in the case of **Barun Chandra Thakur** (supra) in paragraph 85 has considered the said aspect and has left it to the discretion of the Board or psychologist who may be consulted as to whether any fresh examination would be of any relevance or assistance, or not.

7. In that view of the matter, I pass the following order:

- (a) The impugned order dated 21st August 2018 passed by the Principal Magistrate, Juvenile Justice Board, Satara in Jevvenile Case No.1 of 2018 is quashed and set aside;
- (b) The impugned order dated 1st October 2021 passed by the Sessions Court (Children's Court), Karad in Appeal No.41 of 2018 is quashed and set aside;
- (c) The Board shall carry out preliminary assessment through psychologist or psycho-social worker. It is for the Board or psychologist who may be consulted as to whether any fresh examination would be of any relevance/assistance, or not.

8. Both the criminal revision applications are disposed of in above terms. No costs.

9. In view of disposal of criminal revision applications, nothing survives in the interim applications and the same stand disposed of accordingly. No costs.

(AMIT BORKAR, J.)