

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

236

CRR-229-2021(O&M)
Date of decision: 22.07.2022

DEV TEWATIA @ DEBU

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Akash Vashisht, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

The present revision petition has been filed against the order dated 05.02.2021 passed by the Sessions Judge, Faridabad in Criminal Appeal No.65 dated 03.12.2020 as well as the order dated 22.01.2020 (Annexure P-12) passed by the Principal Magistrate Juvenile Justice Board, Faridabad, whereby on an assessment under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the petitioner has been ordered to be tried as an adult.

Learned counsel for the petitioner contends that the appeal preferred by the petitioner against the order passed by the Principal Magistrate Juvenile Justice Board, Faridabad, has been wrongly dismissed by the Sessions Judge, Faridabad solely on the grounds of limitation. The operative part of the said order reads thus:-

“17. The conjoint reading of the above-said provisions would reveal that if a child-in-conflict with law is not satisfied with the order passed by the Juvenile Justice Board regarding his preliminary assessment, he has the remedy of filing appeal under Section 101 of the Act within 30 days from the date of

such order. Not only this, when the matter is received after preliminary assessment from the Board by the Children Court, the Children Court is required to decide as to whether there is need for trial of the child as an adult as per the provisions of Cr. P. C. and it may pass appropriate orders accordingly. So much so, if Children Court finds that there is no need for trial of the child as an adult, it may conduct the inquiry as a Board (and not as Children Court) and pass appropriate orders in accordance with the provisions of Section 18.

18. In the present case, the impugned order was passed by learned Principal Magistrate, Juvenile Justice Board on 22.01.2020, whereby after doing preliminary assessment on the basis of social investigation report, the Board exercised powers under Section 18(3) of the Act and came to the conclusion that case should be transferred to the Children Court for trial of the child as an adult. Appeal against this order dated 22.01.2020 could have been filed within 30 days as per Section 101 of the Act. However, present appeal has been filed on 03.12.2020 i.e. much beyond the period of limitation.

19. No doubt, along-with the appeal, an application for condonation of delay is moved but the reasons for delay are absolutely not tenable. It is pleaded that appeal could not be filed within prescribed period due to wrong legal advice given to the appellant, who was not explained the consequences of impugned order.

20. It is interesting to note that the child-in-conflict with law (appellant herein) was represented by Sh. Vineet M. Bajaj, Advocate ever since 04.01.2020 as is evident from the file. The social investigation report was received on 10.01.2020. On the same day, copy of challan u/s 207 Cr.PC was supplied to the child-in-conflict with law. On 22.01.2020, when the impugned order was passed by the Board, at that time also, the child-in-conflict with law i.e. appellant was represented by Sh. Vineet

M. Bajaj, Advocate. Same Advocate is now representing the appellant in this appeal. In these circumstances, the contention of the appellant that wrong legal advice was given to him or that consequences of the impugned order were not explained to him, is absolutely not tenable. As such, the application for condonation of delay deserves to be dismissed.

21. Not only the fact that appeal has not been filed within the prescribed period of limitation and there is no justification for condonation of delay, it is further important to notice that appeal has been filed after 07.02.2020. On 07.02.2020, the matter was before Sh. Anubhav Sharma, the then learned Addl. Sessions Judge, Faridabad, who was presiding over the Children Court. He considered the matter under Section 19 of the Act and found that it was an appropriate case for trial of the child as an adult. Finding a prima-facie case, charge was framed against the appellant - child-in-conflict with law. It is much after this order dated 07.02.2020 of the Children Court that present appeal was filed on 03.12.2020. It has been fairly conceded by learned counsel for the appellant before this Court that no appeal/revision has been filed against the order dated 07.02.2020 of the Children Court. Setting aside the impugned order of the Juvenile Justice Board would clearly tantamount to setting aside the order dated 07.02.2020 of the Children Court also, which in my considered opinion, will not be proper at all.

*22. The law laid down in **Bholu's case** cited by learned counsel for the appellant cannot be disputed but the facts of the present case are quite distinguishable, as it has been found that in the case before Hon'ble High Court, neither the point of limitation was raised nor the implication of the order passed by the Children Court under Section 19 of the Act was to be considered. As such, no benefit of the said authority can be given to the appellant.*

23. Consequent to above discussion, the present appeal is hereby dismissed. Appeal file be consigned to records after due compliance.”

Learned counsel appearing on behalf of the petitioner has contended that the appeal preferred by the petitioner against the order of the Principal Magistrate, Juvenile Justice Board has been dismissed primarily on the ground of limitation and justification of the dismissal of the appeal has also been sought to be supported by the fact that eventually the Children’s Court had also passed an order under Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 on 07.02.2020.

Learned counsel has argued that the provisions of Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 does not prohibit the institution of an appeal after the expiry of the period of limitation and that the Appellate Court is duly empowered to take cognizance of such an appeal preferred against an order passed under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 on the appellant showing sufficient cause. He submits that the impugned order passed by the Principal Magistrate, Juvenile Justice Board, Faridabad is dated 22.01.2020 and that the appeal in question was preferred on 03.12.2020. It is contended that it was on account of the COVID 19-pandemic that had sprung up in mid of March, 2020 leading to a lockdown with effect from 22.03.2020 that the appeal in question could not be preferred within the prescribed short span of time.

He contends that there was no reason why the Sessions Judge, Faridabad ought not to have examined the merits of the case and to have instead summarily dismissed the application as well as the accompanying appeal on the grounds of delay. It is further argued that the principle of juvenility and as to

whether a child in conflict with law is to be tried as an adult has a bearing on the vital interests and rights of a child in conflict with law and that the dismissal of the appeal in a summary manner runs contrary to the ethos of the Juvenile Justice (Care and Protection of Children) Act, 2015. An interpretation which defeats the rights aimed to be extended to a child in conflict with law ought not to be adopted.

Learned counsel for the petitioner further makes a reference to a judgment of the Hon'ble Supreme Court in the matter of **Abuzar Hossain @ Gulam Hossain vs. State of Bengal** reported as **2013 AIR (SC) 1020** to contend that the Hon'ble Supreme Court has extended the scope of Juvenile Justice (Care and Protection of Children) Act, 2015 to an extent that a juvenile in conflict with law is entitled to raise a plea of juvenility even at the stage when the matter is pending before the Supreme Court. A restricted and limited interpretation sought to be adopted by the Sessions Judge thus runs contrary to the interpretation given by the Hon'ble Supreme Court. He further submits that Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 does not prohibit the Court from taking cognizance of an appeal which is filed after the expiry of the period of limitation and that the proviso in fact empowers the Appellate Court to take cognizance of an appeal and adjudicate thereupon even after the period of expiry of limitation. Such appeals which are accompanied by application seeking condonation of delay are required to be examined on the basis of the sufficiency of cause shown by an appellant seeking condonation of delay. In any case, the petitioner was not drawing any advantage on account of delay in filing of the said appeal against the order of assessment passed under Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2015.

While advertng to the second ancillary reasoning adopted by the

Sessions Judge, Faridabad that an order was thereafter also passed under Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 on 07.02.2020 is concerned, the same cannot be made a reason to not consider the sufficiency of cause so given by the petitioner explaining the delay, at the time of preferring an appeal. In any eventuality, the integral issue which arises pertains to the assessment of the petitioner and as to whether he is to be tried as an adult or not is fundamental to the rights of the petitioner. Such vested statutory right cannot be sacrificed on the altar of technicalities. The petitioner cannot be deprived of his statutory right merely because in the ancillary proceedings, a subsequent order was also passed by the Children's Court under Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 without looking into the legality and validity of the order passed by the Principal Magistrate, Juvenile Justice Board under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

Learned counsel appearing on behalf of the State however submits that the delay was solely attributable to the act and conduct of the petitioner himself and that he cannot be permitted to take benefit of such delay. He further submits that since further proceedings have already been initiated and a subsequent order was also passed by the Additional Sessions Judge-cum-Children's Court in exercise of the powers under Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015, it would only delay the proceedings and would amount to rolling the clock back in time.

I have heard learned counsel appearing on behalf of the respective parties and perused the material on record.

Section 101 of the Juvenile Justice (Care and Protection of Children)

Act, 2015 is reproduced hereinbelow:-

- (1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Childrens Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate: Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.*
- (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.*
- (3) No appeal shall lie from,—*
- (a) any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or*
- (b) any order made by a Committee in respect of finding that a person is not a child in need of care and protection.*
- (4) No second appeal shall lie from any order of the Court of Session, passed in appeal under this section.*
- (5) Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974).*

A bare perusal of the statutory provisions as enshrined under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 would show that the statutory mandate does not scuttle or curtail right of an appellant to prefer an appeal against an order of assessment after the expiry of period of preferring an appeal so prescribed therein. The proviso specifically empowers the Appellate Court to take cognizance of an appeal once sufficient cause for such delay is shown to the Appellate Court. The Abuzar Hossain Judgment (*supra*) relied upon by the counsel for the petitioner has recently been relied upon by the Hon'ble Supreme Court in the matter of **Ram Chandra and others Versus The State of Uttar Pradesh** in SLP (Crl) No.8633/2017 dated 19.03.2021 wherein it was held that the delay in raising the claim of juvenility is no ground for rejection of such a claim. Even otherwise, a nationwide lockdown was imposed with effect from 22.03.2020 and the Hon'ble Supreme Court had extended the limitation period for filing of the cases from 15.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020 dated 23.03.2020. Such an order was also passed by the High Court of Punjab and Haryana in *suo motu* petition bearing CWP-PIL-77-2021. Hence, it can not be stated that the filing had been inadvertently delayed in circumstances when limited and restricted hearing of Court cases was being held.

The same would now lead to the next argument pertaining to the affirmation of the assessment under Section 15 of the Children's Court under Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015. It has been argued that since the said assessment stands accepted by the Children's Court, the same can not be reversed. The relevant provision of Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads thus:-

19. Removal of disqualification attaching to conviction.—

(1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.

Perusal of the said provision shows that the Children's Court decides on the basis of the assessment from the Board and may either agree or disagree with such assessment.

The assessment being the foundation of the decision by the Children's Court, cannot be held to be valid, legal and correct solely because Children's Court has proceeded ahead while adjudicating the appeal preferred against the order of assessment under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

The proceedings under Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 cannot be held to be appellate or revisional jurisdiction which are separately provided for under Section 101 and 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015. If the legislature intended the assessment under Section 15 to be subjected to the statutory review under Section 19, it would have mandated the appeal to the Children's Court against assessment under Section 15. Since the Children's Court does not exercise the appellate or a revisional jurisdiction under the statute, the power of the Appellate Court cannot be subjugated to the order passed by the Appellate Court.

The correctness of an order or judgment is examined in an appeal and

the Appellate Court would be expected to adjudicate the legality of an order on the basis of the material that formed the basis of that order and not the subsequent proceedings where the parameters, guidelines and legal obligation is at variance than the appellate or a revisional Court. Both the jurisdictions are distinct in their area of operation and are governed by separate legal principles.

Hence, the legality and legitimacy of an order passed under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 cannot be held to be affirmed merely on account of passing of a subsequent order by the Children's Court in exercise of the powers under Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

The statutory rights vested in a juvenile/child in conflict with law and the aimed object of the Juvenile Justice (Care and Protection of Children) Act, 2015 cannot be defeated by adopting an interpretation that is likely to run contrary to the scheme of the statute. Individual rights cannot be sacrificed at the altar of technicalities. The Juvenile Justice (Care and Protection of Children) Act, 2015 was enacted for catering to the needs of children and protecting the same for their development and social re-integration. The Juvenile Justice (Care and Protection of Children) Act, 2015 aims to extend protection to children and the interpretation ought to cater to the said objective.

An interpretation likely to protect the interest of children and to secure the ends of justice is required to be kept in mind by the Courts while considering the mandate of the Juvenile Justice (Care and Protection of Children) Act, 2015 so as to promote and defend the salutary objective of the said Act.

In view of the above the present revision petition is allowed. The order 05.02.2021 passed by the Sessions Judge, Faridabad is set aside. The

Criminal Appeal No.65 dated 03.12.2020 is ordered to be restored to its original number and the Sessions Judge, Faridabad is directed to pass a fresh order on merits upon due consideration of the rival submissions advanced by the respective parties.

(VINOD S. BHARDWAJ)
JUDGE

July 22, 2022

S.Sharma(syr)

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No