

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(117)

CRR-569-2022 (O&M)
Date of Decision: 06.04.2022

Arpandeeep

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present:- Mr. Kuldeep Singh Siwach, Advocate
for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

RAJESH BHARDWAJ.J (Oral)

This petition has been preferred by the petitioner against the order dated 22nd February, 2022 whereby the learned Additional Sessions Judge, Palwal has accepted the revision filed by the State against the order dated 08.10.2021 passed by the learned Principle Judge, Juvenile Justice Board, Fatehabad.

Adumbrated facts of the case are that the complainant lodged an FIR wherein it is alleged that the victim girl is living with the complainant and is a student of 5th class. The complainant used to drop her for tuition. Whenever she (complainant) used to remain busy, she used to go to tuition on her own. During that time, some miscreants used to tease her while finding her alone. She was intimated and they took her to many places and done wrong act with her. The victim narrated the incident in detail to the complainant. They were stunned after hearing the same. Hence, the FIR was lodged to take the legal action against the culprits.

On the commencement of the investigation, the complicity of the petitioner was revealed during recording of statement under Section 164

Cr.P.C of the victim who was 13 years of age. On investigation, it was found that the petitioner is less than 17 years of age and hence, being less than 18 years of age, the provisions of Juvenile Justice Act (hereinafter to be referred as an 'Act') were made applicable to him. The application under Section 15 of the Act was filed for the preliminary assessment into the heinous offences by the Board. The respondent-State filed reply to the same and the arguments were heard by the Principal Magistrate Juvenile Justice Board, Fatehabad. The arguments raised by the State before the Juvenile Justice Board was that the juvenile-petitioner is involved in heinous offence as Section 376 DA provides imprisonment for life and therefore, the juvenile was liable to be sent to the Children Court for trial after the assessment. On the other hand, the arguments raised by counsel for the petitioner was that he has committed no offence and there was no allegation of rape against the juvenile and therefore, provision of Section 15 of Act is not attracted. Learned Principal Juvenile Justice Board after hearing the parties observed that the juvenile had been served with the notice of accusation in the inquiry under Section 376 DA read with Section 511 of IPC and Section 18 of POCSO Act. In the circumstances, the minimum punishment provided for both these offences is not 7 years and therefore, the offence in question does not fall within the ambit of heinous offence as defined under the Act and, therefore, there was no need for passing order regarding preliminary assessment under Section 15 of the Act. Resultantly, the application filed was dismissed vide order dated 08.10.2021. Aggrieved by this order, the State preferred the revision petition impugning the orders dated 03.09.2021 and 08.10.2021 in the Court of Additional Sessions Judge, Fatehabad. On the basis of the arguments raised by counsel for the

petitioner-State that the revision filed be treated as an appeal and decided accordingly. Learned Additional Sessions Judge, after hearing counsel for both the parties, held that the petitioner, juvenile, had been ordered to be tried under Section 376-DA read with Section 511 of IPC and Section 18 of POCSO wherein he can be convicted for more than 7 years and hence, the view taken by the learned Principal Magistrate, Juvenile Justice Board was held to be illegal and hence reversed by the learned Additional Sessions Judge vide its order dated 22.02.2022. Aggrieved by the same, the petitioner has approached this Court impugning order dated 22.02.2022.

Learned counsel for the petitioner has vehemently argued that the view taken by the Appellate Court is totally illegal being in violation of the statutory provisions of the Act and that of the law settled by the Hon'ble Supreme Court. It has been argued by counsel for the petitioner that admittedly, the petitioner is less than 18 years of age and hence, he is a juvenile. That being so, the provisions of the Act are applicable to him. It has been argued that the petitioner has been charged with the offence under Section 376 DA read with Section 511 IPC and Section 18 of POCSO Act. He argued that for the decision of the case, the appreciation of Section 2(33) of the Act is of utter importance. Section 2(33) of the Act reads as follows:-

“2(33) 'heinous offences' includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.”

Learned counsel has submitted as the petitioner has not committed any heinous offence in view of Section 2(33) of the Act, hence, the provisions of Section 15 of the Act would not be applicable to the petitioner as the offence committed by him does not fall in the category of a

heinous offence. He submits that reading of Section 2(33) of the Act makes it clear that there is no minimum punishment provided for the offence i.e. Section 376 DA read with Section 511 IPC and 18 of POCSO Act, the petitioner charged with and, hence, the same would be out of the purview of the heinous offence. He argued that once the offence alleged to have been committed by the juvenile is not heinous, the provisions of Section 15 of the Act are not applicable to him and hence, the view taken by the learned Principal Magistrate, Juvenile Justice Board was legally sustainable. However, learned Appellate Court had fallen in error in reversing the same and holding that the petitioner is liable to be assessed as per Section 15 of the Act.

Learned counsel for the petitioner has further argued that as per Section 14(2) of the Act, the inquiry against the juvenile has to be completed within a period of four months from the date of the production of the child before the Board, whereas, as per Section 14(3) of the Act, a preliminary assessment in case of heinous offences under Section 15 shall be concluded within three months from the date of production of child before the Board. He submits that as the requisite period has already been lapsed, so on account of that also, the impugned order suffers from illegality.

Learned counsel for the petitioner has placed reliance upon the law laid down by the Hon'ble Supreme Court in Shilpa Mittal Vs. State of NCT of Delhi and another, 2020(1) RCR (Criminal) 582. He submits that Hon'ble the Supreme Court while exercising the powers conferred under Article 142 of Constitution of India, has directed that from the date when the Act of 2015 came into force, all the children who have fallen in

4th category, shall be dealt within the same manner as the children who have committed serious offence. Hon'ble the Supreme Court has held that the offence which does not provide a minimum sentence of 7 years, cannot be treated to be a heinous offence. He further submits that as the offence for which the petitioner has been charged does not provide for minimum punishment of seven years therefore, the case of the petitioner is squarely covered by the ratio laid down by the Hon'ble Supreme Court in Shilpa Mittal's case (supra) and therefore, the impugned order being unsustainable in the eyes of law, deserves to be *set aside*.

On the other hand, learned State counsel has opposed the submissions made by counsel for the petitioner tooth and nail. It has been submitted that the petitioner has been charged for the offence under Section 376 DA IPC. Section 376 DA IPC provided imprisonment for life which shall mean imprisonment for remainder of that person's natural life. He has submitted that even if the charge under Section 376 DA read with Section 511 IPC is appreciated then also in view of Section 57 IPC, the punishment applicable to the petitioner would be more than seven years and hence, the order passed by the Appellate Court suffers from no illegality. He submits that the petition being devoid of any merits deserves to be dismissed.

I have heard learned counsel for the parties and perused the records.

Admittedly, the petitioner is a juvenile who falls within the age group between 16 to 18 years and thus, amenable to Juvenile Justice Act i.e. provisions of Section 14(5) (f)(ii) of the Act. The precise issue raised by the counsel for the petitioner is the provisions of Section 2(33) of the Act, according to which, the minimum punishment provided for considering the

offence as heinous is 7 years and as the petitioner has not been charged for the offence in which the minimum punishment of 7 years has been provided, the provisions of Section 15 of the Act are not applicable to him. As already discussed, he has placed reliance upon the Hon'ble Supreme Court judgment in *Shilpa Mittal's case (supra)*. On perusal of the statutory provisions of the Act, the POCSO Act and the law laid down by the Hon'ble Supreme Court, this Court finds no merit in the arguments raised by counsel for the petitioner. Admittedly, the petitioner has been charged for the offence under Section 376 DA read with Section 511 IPC and Section 18 of POCSO. Learned Additional Sessions Judge has appreciated the same in the light of Section 57 IPC and hence, the punishment provided for the offences would be more than 7 years. Hon'ble Supreme Court in the judgment passed in *Shilpa Mittal's case(supra)* held as under:-

“27. Mr. Luthra, drew our attention to the speech of the Minister while introducing the Bill in relation to the Act of 2015. We need not repeat the speech in detail but reading of the same clearly indicates that the Minister while dealing with the issue of ‘heinous offences’ wherein the children could be tried as adults mainly made reference to the offences of murder, rape and terrorism. There are some other speeches that have been referred to by Mr. Luthra, but we are not referring to the same because the intention of the Legislature as a whole cannot be gauged from the speeches of individual members, some of whom supported the Bill and some of whom did not support the Bill. The main reliance could only be made on the objects and reasons and introduction of the Bill by the Minister which basically makes reference to offences like murder, rape, terrorism, where the minimum punishment is more than 7 years.

28. There can be no quarrel with the submission made by Mr. Siddharth Luthra that in a given circumstance, this Court can even add or subtract words from a statute. However, this can be done only when the intention of the Legislature is clear. We not only have to look at the principles of statutory interpretation but in the present case, the

conundrum we face is that how do we decipher the intention of the Legislature. It is not necessary that the intention of the Legislature is the one what the judge feels it should be. If the intention of the Legislature is clear then the Court can get over the inartistic or clumsy wording of the statute. However, when the wording of the statute is clear but the intention of the Legislature is unclear, the Court cannot add or subtract words from the statute to give it a meaning which the Court feels would fit into the scheme of things.

29. There can be no manner of doubt that if the intention of the Legislature is absolutely clear from the objects and reasons of the Act then the Court can correct errors made by the person who drafted the legislation and may write down or omit/delete/add words to serve the purpose of the legislation and ensure that the legislation is given a meaning which was intended to by the Legislature. The issue is whether in the present case we can clearly hold what was the intention of the Legislature.

30. We must also while interpreting an Act see what is the purpose of the Act. The purpose of the Act of 2015 is to ensure that children who come in conflict with law are dealt with separately and not like adults. After the unfortunate incident of rape on December 16, 2012 in Delhi, where one juvenile was involved, there was a call from certain sections of the society that juveniles indulging in such heinous crimes should not be dealt with like children. This incident has also been referred to by the Minister in her introduction. In these circumstances, to say that the intention of the Legislature was to include all offences having a punishment of more than 7 years in the category of 'heinous offences' would not, in our opinion be justified. When the language of the section is clear and it prescribes a minimum sentence of 7 years imprisonment while dealing with heinous offences then we cannot wish away the word 'minimum'."

A conjoint reading makes it clear that the intention of the legislature has been considered to be doubtful where the legislature was to include all offences having a punishment of more than seven years in the category of heinous offence like the offences pertaining to affect the human body, offences against property etc. So far as the offences like rape, dacoity and murder are concerned, there has never been any conflict or confusion in considering these offences as the heinous offence. The amendment in

Section 376 IPC has taken place after Nirbhaya Case. Thus, it is beyond comprehension that the offences like rape would fall outside the category of the heinous offence, in the situation that if the punishment for an accused facing the charge of rape appears to be less than the minimum sentence of 7 years as provided under Section 2(33) of the Act then he would be though prosecuted for the offence of rape but that would not fall under the heinous offence. This would be nothing but a travesty of justice to hold the offence of attempt to rape, not a heinous offence, as the minimum punishment is not provided in the statute as per Section 2(33) of the Act. So far as argument pertaining to the assessment of the petitioner beyond three months is concerned, the same is not sufficient enough to exonerate the petitioner from the applicability of the provisions of Section 15 of the Act. Admittedly the petitioner falls between the age group of 15 to 18 years and hence, as per the Act, provision of Section 14(5)(f)(ii) is applicable to him. Even otherwise the assessment of the petitioner in accordance with Section 15 of the Act would not prejudice him. Learned counsel for the petitioner fails to convince this court that how the order passed by the Appellate Court, in carrying out his assessment as per Section 15 of the Act, would prejudice him.

In the overall facts and circumstances, this Court finds no merit in this case and, hence, the same is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

06.04.2022
m.sharma

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No