

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.427 of 2022

Arising Out of PS. Case No.-112 Year-2018 Thana- KADIRGANJ District- Patna

XXX Son of Sanjay Prasad R/O- Vill- Panday Bigha, P.S.- Kadirganj, Dist.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. XYZ D/O- Lal Bihari Prasad R/O- Vill- Panday Bigha, P.S.- Kadirganj, Dist.- Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Deovind Kumar Singh, Advocate
	:	Mr. Utpal Kant, Advocate
For the Respondent/s	:	Mr. Choubey Jawahar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 25-01-2023

1. Heard learned counsel appearing on behalf of the parties.

2. This criminal Revision is preferred, challenging the Judgment dated 23.03.2022, passed by learned Sessions Judge, Patna, in connection with Criminal Appeal No. 138 of 2019, arising out of J.J.B. Case No. 755 of 2018, through which the learned Sessions Judge, Patna, while allowing the prayer of Criminal Appeal No. 138 of 2019, filed by the opposite party no. 2 set aside the order dated 30.04.2019, passed by Juvenile Justice Board, Patna in J.J.B. Case No. 755 of 2018 and directed



the J.J.B. Patna to transfer the J.J.B. Case No. 755 of 2018 to the Children's Court, Patna u/s 18(3) of Juvenile Justice Act for its trial.

3. As per case of prosecution, on 20.10.2018, the informant XYZ (name withheld), aged about 17 years lodged a written complaint before the officer-in charge of Kadirganj Police station, Patna, alleging thereof that while she was cutting grass in the field, suddenly the accused/petitioner came there and after snatching Hasua from her hand, committed rape upon her. The informant further alleged that after occurrence, she came to her house and narrated occurrence to her mother, whereafter her mother went to the house of the accused Sanjay Prasad (father of the petitioner) and told him about the occurrence/offence committed by his son, on which Sanjay Prasad and his elder son Amarjeet Kumar threatened her by showing rod and pistol and asked her to leave their house, consequent upon having no option left, informant on 19.10.2018, went to police station, where written complaint was given to officer-in-charge of Kadirganj Police Station, resulting thereof, the present F.I.R. was lodged on 20.10.2018.

4. Learned counsel appearing on behalf of the petitioner submitted that the judgment dated 23.03.2022, passed



by the learned Sessions Judge, Patna in Cr. App No. 138 of 2019 is not maintainable and appears bad on the point of law as well as on the point of fact. It is submitted that the learned Appellate Court could not directly send the matter to Children Court u/s 18(3) of JJ Act, as it is the discretionary power available only with Juvenile Justice Board to transfer the case of a child to the children's court for the trial as an adult and this power cannot be taken away by the learned Sessions Judge, while exercising its Appellate Jurisdiction. It is also submitted that the learned Appellate Court has failed to consider this fact that according to Section 15 of the J.J.B. Act, the Juvenile Justice Board has passed the order in favour of the petitioner after following the all procedure as mentioned in Section 15 of the J.J.B. Act, i.e., after taking the assistance of experienced psychologist and medical expert, which is clear from the order dated 30.04.2019, passed by Juvenile Justice Board.

5. It is further submitted that learned Appellate Court has wrongly relied on the social investigation report available on record contrary to law, where no fresh psychological and medical report of child in issue was obtained. It is also submitted that the learned Appellate Court has passed its judgment against the mandatory provision of law



because section 101 of Juvenile Justice Act, provide an operational restriction, where the learned Sessions Judge must decide the appeal within a period of 30 days, but in this case, where appeal was filed on 02.07.2019, was decided on 23.03.2022 (after about 2 years and 8 months), which is against the mandatory provision of law, and on this ground alone impugned judgment is liable to be set aside.

6. It is also submitted by learned counsel that Section 101(2) of Juvenile Justice Act says that while deciding the appeal the Appellate Court may take the assistance of experienced psychologist and medical specialist other than those whose assistance has been obtained by the board in passing the order, but the learned Appellate Court without taking the assistance of any psychologist and medical experts, passed impugned order, which is on its face appears against mandate of law.

7. While travelling over the argument, learned counsel submitted that learned Appellate Court failed to appreciate the judgment passed by Karnataka High Court, in the matter of '**Sri Punit S Vs State of Karnataka**' (Cr. Appeal No. 1597/2018 dt. 23.09.2019), in which Karnataka High Court, while passing judgment observed that "*the learned Sessions*



*Judge or the special Judge or the child friendly Court presided over by the learned Sessions Judge have absolutely no power to pass any order u/s 15 of the Act. It is statutory power vested with the Board". Whereas, Madhya Pradesh High Court, while deciding CRA No. 483/2018 dated 01.11.2018, in the matter of **Sourav vs. The State of Madhya Pradesh** observed in its judgment that "as per the provisions of Section 15 of the Act, 2015, it is for the JJB to consider whether or not to pass an order u/s 18(3) of the Act, 2015. This discretion of the JJB cannot be taken away by this Court, and the discretion has to be exercised by the JJB only, that whether the child in conflict who was more than 16 years of age, on the date of commission of offence, should be tried as an adult by a Children's Court or not".*

8. While concluding the argument, it is submitted by learned counsel of revisionist that no violation of law has been committed by the Juvenile Justice Board at the time of passing the order dated 30.04.2019 and same is in accordance with the law, where Appellate Court has wrongly set aside the order of the Juvenile Justice Board, Patna without any reasonable, legal and just reason, which is likely to be set aside.

9. It would be appropriate to reproduce the



provision of **Section 15 of The Juvenile Justice (Care and Protection of Children) Act, 2000**, for better understanding of position of law and same is as:-

Preliminary assessment into heinous offences by board;

(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of Section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation- *For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.*

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board,



then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of Section 101:

Provided further that the assessment under this section shall be completed within the period specified in Section 14.

10. It is further appropriate to reproduce the provisions of **Section 101 of J.J. Act, 2015**, dealing with “Appeals” and same is as:-

(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 Children's 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 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.

(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).

(6) Any person aggrieved by an adoption order passed by the District Magistrate may, within a period of thirty days from the date of such order passed by the District Magistrate, file an appeal before the Divisional Commissioner.

(7) Every appeal filed under sub-section (6), shall be decided as expeditiously as possible and an endeavour shall be made to dispose it within a period of four weeks from the date of filing of



the appeal:

Provided that where there is no Divisional Commissioner, the State Government or Union territory Administration, as the case may be, may, by notification, empower an officer equivalent to the rank of the Divisional Commissioner to decide the appeal.

11. Now, from above discussions, two important issues of law appears before this Court to decide in the present set of facts:

Firstly, whether Session Court while deciding appeal against order passed u/s- 15(2) of JJ Act, can send the case directly to Children Court for trial u/s- 18(3) of the JJ Act, and **Secondly**, whether a fresh assistance of experienced psychologists and medical specialists are required as mandatory, while taking a different view with finding of Juvenile Justice Board.

12. From the explanation, available with S-15 of the JJ Act, it is clear that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence. Procedure of preliminary assessment is like enquiry, where if board find



that case of juvenile is to be disposed by board itself, an appeal can be preferred against said order u/s- 101(2) of JJ Act. No doubt said appeal is in continuance of the enquiry of Juvenile Justice Board conducted for preliminary assessment u/s-15 of the JJ Act. Therefore, if argument of learned counsel appearing on behalf of revisionist is accepted, then certainly every matter necessarily to be remand JJB to exercise its power u/s- 18(3) of the JJ Act, which is not appearing convincing. As appeal against “preliminary assessment and to keep the matter with JJB itself” is a continuous process of enquiry therefore, Appellate Court can send matter directly to Children Court for trial u/s- 18(3) of the JJ Act, while setting aside the order of JJB as passed u/s- 15(2) of the JJ Act. First issue allowed, accordingly.

13. Now, coming down to the fact of present case, it appears that JJB, Patna declared petitioner as “juvenile” after proper psychological assessment and help of medical professionals. No doubt JJB has all right available under law after finding juvenile between the age group of 16-18 years, to be tried by JJB itself, instead of sending the matter to Children Court u/s- 18(3) of the Act, after taking note of the understanding of juvenile regarding nature and result of offence/occurrence, alleged to be committed by juvenile.

14. From perusal of impugned judgment, particularly



Para-16, only consideration was given to earlier medical reports and Social Investigation Report of the juvenile, whereas provision of Section 101(2) of JJ Act, clearly speak as:-

Section 101(2):

(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.

15. Certainly, when Appellate Court is taking a different view, earlier medical reports and report of psychological assessment of juvenile, as done by JJB cannot be taken into consideration and it is mandatory for Appellate Court/Session Court to obtain a fresh medical report and to seek a fresh assistance of experienced psychologists, other than those, who have examined the juvenile earlier, as per provision of law available under Section 101(2) of JJ Act, and as such the word ‘may’ should not be read in casual and mechanical manner and it must be read as “shall” to give effective intention of legislator, while codifying JJ Act, where every steps to be taken in the best interest of child.

16. In present case, no such fresh reports of medical and psychological experts were obtained, while setting aside the



order of JJB dated 30.04.2019, by Appellate Court and thrust was placed only on ‘Social Investigation Report’, which is not a factor available under the law for deciding the appeal in view of Section 101(2) of the JJ Act.

17. Accordingly, present revision petition is allowed.

18. Impugned order, dated 23.03.2022 is accordingly, set aside. Court concerned is directed to decide the matter afresh in view of legal provisions, as discussed above.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27/02/2023
Transmission Date	27/02/2023

