

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 352 of 2018

Mojibul Rahaman

Vs.

Baitul @ Akidat Hussain & Anr.

For the Petitioner :Mr. Ayan Basu, Adv.
Mr. Amit Roy, Adv.
Mr. Sumit Routh, Adv.

For the State :Mr. Binoy Panda, Adv.
Mr. Subham Bhakat, Adv.

For the opposite party 1 :Mr. Kaushik Chowdhury, Adv.
Mr. Gaur Hari Das

Heard on : 20.07.2023, 18.08.2023,
24.08.2023, 04.10.2023

Judgment on : 05th October, 2023

Bibhas Ranjan De, J.

1. The judgement and order dated 13.12.2017 passed by the Court of Learned Additional Sessions Judge, Raiganj, Uttar Dinajpur is under challenge. Learned Judge dealt with an order dated 17.10.2017 passed by Learned Juvenile Justice Board (for short “JJB”) Uttar Dinajpur at Raiganj in connection with JJB Case no. 67 /2016 under Section 302/201/34 of the Indian Penal Code (for short IPC), in Criminal Appeal No. 13 of 2017.
2. JJB, by the order impugned, refused the prayer for preliminary assessment and at the same time JJB decided to deal with the case of the Child in Conflict with Law (for short CCL) involving an offence under Section 302/201/34 of IPC considering nature, conduct and other factors appearing, presumably, in view of the preliminary inquiry report.
3. In the appeal, Learned Judge returned his findings that there was no cogent reason to refuse the prayer for preliminary assessment under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short “JJ Act”) but refused the prayer of the appellant for transfer of the case to

children's Court on the ground of lacking power/ authority to transgress into the jurisdiction of JJB.

- 4.** Ld. Advocate, Mr. Ayan Basu appearing on behalf of the petitioner has contended that no preliminary assessment was conducted by the JJB, Uttar Dinajpur at Raiganj under Section 15 of the JJ Act and that was duly ratified by the impugned judgement passed by Ld. Additional Sessions Judge, Raiganj, Uttar Dinajpur in appeal no. 13 of 2017.
- 5.** Mr. Basu has further contended that Ld. Judge dismissed the appeal in spite of having enormous power under Section 101 of the JJ Act.
- 6.** Ld. Advocate, Mr. Kaushik Chowdhury appearing on behalf of the opposite party no. 1, has submitted that the petitioner took the plea of absence of assessment of age of CCL under Section 94 of the JJ Act in the revision application which was assessed by the JJB. Mr. Chowdhury has referred to the preliminary assessment conducted by the JJB and tried to make this Court understand that the Provision of Section 15 of the JJ Act was complied with.
- 7.** Mr. Binoy Panda, Ld. Advocate, representing the State, relying on the evidence collected during investigation has submitted

that there are sufficient materials regarding involvement of the CCL in the commission of heinous offence punishable under Section 302 of IPC.

8. There is no dispute that the case in hand involves heinous offence punishable under Section 302 of the IPC and it is also not disputed that the age of the CCL is more than 16 years.
9. Before delving into the issue of this revision application it would be profitable to reproduce the Provisions of Section 2 (33), Section 14, Section 15 and Section 18(3) of the JJ Act.

“ Section 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;

Section 14. Inquiry by Board regarding child in conflict with law.

(1) Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

(3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:—

(a) at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;

(b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;

(c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry;

(d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973 (2 of 1974);

(f) inquiry of heinous offences,—

(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

Section 15. 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 sub-section (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.

Section 18 (3): Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.”

- 10.** From the Conjoint reading of all those Provisions, it is clear that in case of a heinous offence alleged to have been committed by one CCL, a duty casts upon the JJB to conduct

a preliminary assessment with regard to his mental and physical capacity to commit such offence and also the ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. After being satisfied JJB **may** record an order under Section 18(3) of the JJ Act.

11. Here in this case, though JJB conducted a preliminary assessment of CCL but nowhere in the said assessment mental and physical capacity of the CCL to commit such offence or ability of the CCL to understand the consequence of the offence and other circumstances in which CCL allegedly committed the offence have been assessed. Therefore, the preliminary assessment conducted by the JJB cannot be said to be an assessment within the meaning of Section 15 of the JJ Act.

12. In the aforesaid view of the matter both the orders passed by the Learned Additional Sessions Judge in appeal no. 13 of 2017 and order of JJB dated 17.10.2017 stand set aside with direction upon the JJB, Uttar Dinajpur at Raiganj to conduct a preliminary assessment strictly in compliance with the

Provision of Section 15 of the JJ Act and to pass an order within the meaning of Section 18(3) of the JJ Act.

- 13.** With the aforesaid observation and direction the instant revision application being no. CRR 352 of 2018 stands disposed of.
- 14.** Case diary be returned.
- 15.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 16.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]