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CrI.O.P.(MD)No.18073 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01/11/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CrI.OP(MD)No.18073 of 2023

and

CrI.MP(MD)Nos.14300 and 14301 of 2023

Arun Kumar : Petitioner/A2

Vs.

1.The Inspector of Police,
Alanganallur Police Station,
Madurai District.
(Crime No.165 of 2016) : R1/Complainant

2.Sowtharapandi : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the impugned order in CC No.82 of 2023 on the file of the Judicial Magistrate Court, Vadipatti and to quash the same as far as the petitioner is concerned and pass such other orders.

For Petitioner : Mr.S.Ramsundarvijayaraj

For 1st Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal Side)



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O R D E R

This criminal original petition has been filed seeking quashment of the case in CC No.82 of 2023 on the file of the Judicial Magistrate, Vadipatti.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that on 31/03/2016 at about 03.00 pm, a fire accident took place in the shed, wherein a van also damaged. About the occurrence, a case was registered on the file of the Alanganallur police station. Because of that, the accused were inimical towards him. On 05/04/2016 at about 03.00 pm, when he was going from Alanganallur to Iddaiyapatti near Alagapuri, the accused persons intercepted, questioned him as to how he can make a complaint; caused severe injuries with deadly weapons. He called his brother Soundarapandian. Soundarapandian was also assaulted by the accused. He also sustained grievous injuries. When the neighbours gathered, the accused fled away from that place. On the basis of the above said occurrence, a case was registered in Crime No.165 of 2016 for the offence under section 147, 148, 341, 323, 324, 506(ii) and 326 IPC. After completing the investigation, final report was filed and it was taken cognizance in CC No.82 of 2023 by the Judicial Magistrate, Vadipatti.



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3. Seeking quashment of the same, A2 has filed this petition on the ground that on the date of the alleged occurrence, he was juvenile; without noticing the same and without proper investigation, final report has been filed.

4. This ground has been made at the time of argument, but in the petition only general and bald grounds are mentioned. When this plea was raised, the petitioner has produced the birth certificate, which shows that the date of birth as 17/04/1999. To corroborate the date of birth, he has also produced the Transfer Certificate, which shows the same fact that on the date of the occurrence he was a juvenile. Without noticing or without ascertaining the correct age of the petitioner, it appears that investigation was undertaken without following proper procedure as set out under the provisions of the Juvenile Justice (Care and Protection of Children) Act.

5. Sections 4 to 7, 9, 10, 154 and 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015, read as under:-



"4. Juvenile Justice Board. -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.



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(3)No social worker shall be appointed as a member of the Board unless such person has been actively involved in health, education, or welfare activities pertaining to children for atleast seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.

(4)No person shall be eligible for selection as a member of the Board, if he--

(i)has any past record of violation of human rights or child rights;

(ii)has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;

(iii)has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;



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(iv)has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.

(5)The State Government shall ensure that induction training and sensitisation of all members including Principal Magistrate of the Board on care, protection, rehabilitation, legal provisions and justice for children, as may be prescribed, is provided within a period of sixty days from the date of appointment.

(6)The term of office of the members of the Board and the manner in which such member may resign shall be such, as may be prescribed.

(7)The appointment of any member of the Board, except the Principal Magistrate, may be terminated after holding an inquiry by the State Government, if he --

(i)has been found guilty of misuse of power vested under this Act; or



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(ii) fails to attend the proceedings of the Board consecutively for three months without any valid reason; or

(iii) fails to attend less than three-fourths of the sittings in a year; or

(iv) becomes ineligible under sub-section (4) during his term as a member.

5.Placement of person, who cease to be a child during process of inquiry.-Where an inquiry has been initiated in respect of any child under this Act, and during the course of such inquiry, the child completes the age of eighteen years, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child.

6.Placement of persons, who committed an offence when person was below the age of eighteen years.-(1) Any person, who has completed eighteen years of age, and is



apprehended for committing an offence when he was below the age of eighteen years, then, such person shall, subject to the provisions of this section, be treated as a child during the process of inquiry.

(2)The person referred to in sub-section (1), if not released on bail by the Board shall be placed in a place of safety during the process of inquiry.

(3)The person referred to in sub-section (1) shall be treated as per the procedure specified under the provisions of this Act.

7.Procedure in relation to Board.-

(1)The Board shall meet at such times and shall observe such rules in regard to the transaction of business at its meetings, as may be prescribed and shall ensure that all procedures are child friendly and that the venue is not intimidating to the child and does not resemble as regular courts.



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(2)A child in conflict with law may be produced before an individual member of the Board, when the Board is not in sitting.

(3)A Board may act notwithstanding the absence of any member of the Board, and no order passed by the Board shall be invalid by the reason only of the absence of any member during any stage of proceedings: Provided that there shall be atleast two members including the Principal Magistrate present at the time of final disposal of the case or in making an order under sub-section (3) of section 18.

(4)In the event of any difference of opinion among the members of the Board in the interim or final disposal, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Principal Magistrate, shall prevail.

9.Procedure to be followed by a Magistrate who has not been empowered under this Act.-(1) When a Magistrate, not



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empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be: Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of



the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act. Procedure to be followed by a Magistrate who has not been empowered under this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.



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10.Apprehension of child alleged to be

in conflict with law.-(1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended: Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.

(2)The State Government shall make rules consistent with this Act,-

(i)to provide for persons through whom (including registered voluntary or nongovernmental organisations) any child alleged to be in conflict with law may be produced before the Board;



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(ii)to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.

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.



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(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



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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;

(e) inquiry of serious offences shall be disposed of by the Board, by following the



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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.

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 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:



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

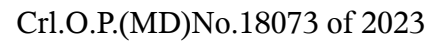
6.None of the above said provisions are followed in this matter. Final report filed against the petitioner, after completing the investigation is also bad in law.

7.On that sole ground, without going into other aspects, this criminal original petition is liable to be allowed.

8.In the result, this criminal original petition is **allowed**. The case in CC No.82 of 2023 on the file of the Judicial Magistrate Court, Vadipatti is hereby quashed against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

01/11/2023

Index:Yes/No
Internet:Yes/No
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1.The Judicial Magistrate,
Vadipatti,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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