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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13620-2022 (O&M)
Date of Decision: 11.08.2023

Arshdeep Singh @ Arsh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr, A.S. Brar, Advocate, for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a petition filed under Section 482 of the Code of Criminal Procedure for setting aside the order dated 20.07.2021 (Annexure P-5) passed by learned Principal Magistrate, Juvenile Justice Board, Moga.

2. Learned counsel for the petitioner has submitted that it is a case where vide impugned order Annexure P-5, the Juvenile Justice Board, Moga has passed an order in view of the provisions of Section 18(3) read with Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'J.J Act') whereby the petitioner who was a juvenile was directed to be tried as an adult and consequently his case was sent for trial to the learned Children Court. He submitted that the impugned order is in violation of the law laid down by the Hon'ble Supreme in **Barun**

Chandra Thakur Vs. Master Bholu and another, SLP (Crl.) No.10123 of

2018, decided on 13.07.2022. He submitted that the Hon'ble Supreme Court in the aforesaid judgment has observed that expression 'may' in the proviso to Section 15(1) and the requirement of taking assistance of experienced psychologists or psycho-social workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practicing professional with a degree in child psychology or child psychiatry. He submitted that in the present case none of the members of the Board including the Presiding Officer was having any experience at all pertaining to being a psychologist or being a psycho-social worker nor any of the members were practicing professional with a degree in child psychology or child psychiatry.

3. Mr. Harsimar Singh Sitta, DAG, Punjab has stated that the Hon'ble Supreme Court has interpreted the expression 'may' and now the matter is pending before the learned Children Court for prosecution evidence.

4. I have heard the learned counsel for the parties.

5. This Court vide order dated 14.07.2023 had directed that a report be called from the concerned Juvenile Justice Board, Moga with regard to the qualifications of the members and as to whether any Child Psychologist was consulted before passing the impugned order or not.

6. A report has been received from the Principal Magistrate, Juvenile Justice Board, Moga dated 28.07.2023 in which it has been stated the no Child Psychologist was consulted by the learned Predecessor of the Principal Magistrate and so far as the two members are concerned, one of the member is M.A History and the another member is B.A. M.S. The

aforesaid report is reproduced as under:-

“I have the honour to submit that in compliance of the subject cited order dated 14.07.2023, it is respectfully submitted that Mr. Jagpreet Singh Chadha, Advocate is the member of Juvenile Justice Board, Moga for the month of July, 2023, whose qualification is B.A, L.L.B. It is further respectfully submitted that the impugned order dated 20.07.2021 was passed by my learned Predecessor in the Court and at that time, Ms. Anjum Parveen Puri and Dr. Sunil Bansal were the members of the Juvenile Justice Board, Moga. It is further respectfully submitted that, as informed, qualification of Ms. Anjum Parveen Puri is M.A. History and the qualification of Dr. Sunil Bansal is B.A, M.S. It is further respectfully submitted that from perusal of the record it transpire that no Child Psychologist was consulted by my learned Predecessor in the Court before passing the impugned order”.

7. The Hon’ble Supreme Court in ***Barun Chandra Thakur (Supra)*** observed as under:-

“79. Therefore, looking to the purpose of the Act, 2015 and its legislative intent, particularly to ensure the protection of best interest of the child, the expression “may” in the proviso to [Section 15\(1\)](#) thereof and the requirement of taking assistance of experienced psychologists or psychosocial workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practicing professional with a degree in child psychology or child psychiatry. Moreover, in case the Board, in view of its own composition with at least one member, who is a practicing professional with a degree in child psychology or child psychiatry, chooses not to take such assistance, it would record specific reasons therefor”.

8. This Court is of the view that in view of the report sent by the Principal Magistrate, Juvenile Justice Board, Moga that none of the

Members or even the Presiding Officer was conversant with the child psychology or child psychiatry etc., the matter deserves to be remanded back to the Juvenile Justice Board, Moga for considering afresh in accordance with the provisions of Section 18(3) read with Section 15 of the J.J Act and in consonance with the law laid down by the Hon'ble Supreme Court in ***Barun Chandra Thakur (Supra)***.

9 Consequently, the present petition is allowed. The impugned order Annexure P-5 is hereby set aside and the case is remanded back to the Juvenile Justice Board, Moga to consider as to whether the petitioner is to be tried as an adult or not strictly in accordance with the provisions of Section 18(3) read with Section 15 of the J.J. Act and in consonance with the law laid down by the Hon'ble Supreme Court in ***Barun Chandra Thakur (Supra)*** as expeditiously as possible.

11.08.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

Whether speaking : Yes/No

Whether reportable : Yes/No