

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-39106-2023

Date of Decision: 22.09.2023

Arun

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sanchit Punia, Advocate, for the petitioner.
Mr. Vishal Kashyap, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a petition filed under Section 482 of the Code of Criminal Procedure for quashing the impugned order dated 16.11.2018 (Annexure P-2) passed by the learned Principal Magistrate, Juvenile Justice Board, Hisar.
2. It is submitted by learned counsel for the petitioner that vide the impugned order dated 16.11.2018 (Annexure P-2), the learned Juvenile Justice Board, Hisar has passed an order under Section 18(3) of the Juvenile Justice Act, 2015 that there is a need that the petitioner should be tried as an adult. Thereafter the matter was forwarded to the learned Additional Sessions Judge (1st), Hisar (Children's Court) for trial of the present petitioner and thereafter the trial has commenced.
3. Learned counsel for the petitioner submitted that the aforesaid order is contrary to the law laid down by the Hon'ble Supreme Court in

Barun Chandra Thakur vs. Master Bholu and another 2023(2) RCR (Cr1.) 686.

4. He further submitted that in the aforesaid judgment, it has been so observed by the Hon'ble Supreme Court that the expression "may" in the proviso to Section 15(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 would operate in mandatory form and the requirement of taking assistance of child psychologist would be obliged by the Board unless the Board itself comprises of at least one such member, i.e. a practicing professional with degree in child psychology or child psychiatry.

5. Learned counsel for the petitioner further submitted that however in the present case, none of the members of the Juvenile Justice Board, including the Presiding Officer, have any experience pertaining to their being a psychologist or psycho-social worker nor any of the members are practicing professional with a degree in child psychology or child psychiatry. He submitted that even a report was called in this regard from the concerned Juvenile Justice Board by this Court vide order dated 11.08.2023.

6. Mr. Vishal Kashyap, DAG, Haryana submitted that now the matter is pending for prosecution evidence.

7. I have heard learned counsel for the parties.

8. This Court on 11.08.2023 had directed that a report be called from the concerned Juvenile Justice Board as to whether the members were having any expertise in child psychology and child psychiatry in consonance with the aforesaid judgment of the Hon'ble Supreme Court in the case of **Barun Chandra Thakur** (supra). Now a report dated 12.09.2023 has been

received from the Principal Magistrate, Juvenile Justice Board-cum-JMIC, Hisar. As per the report submitted by the Board, it has been so stated that as per the report submitted by the members present at the Board at the time when the impugned order dated 16.11.2018 was passed, they were not having any expertise in child psychology and child psychiatry and the statements of the aforesaid concerned Members of the Board have also been attached with the report. The aforesaid is reproduced as under:-

“Statement of Sh. Atam Parkash Raheja, Advocate, Ex.Member, Juvenile Justice Board, Hisar.

Stated that when I applied for the post of Member, Juvenile Justice Board, Hisar at the time I was qualified in Law and on the basis of Advocacy I was selected as Member, Juvenile Justice Board, Hisar by the Selection Committee. At that time, I was not expert and qualified in Child Psychology and Child Psychiatry.

Sd/-”

Statement of Ms. Gurpreet Kaur Saini, Ex.Member, Juvenile Justice Board, Hisar.

Stated that when I applied for the post of Member, Juvenile Justice Board, Hisar at the time I was qualified in Social Work and on the basis of Social Work, I was selected as Member, Juvenile Justice Board, Hisar by the Selection Committee. At that time, I was not expert and qualified in Child Psychology and Child Psychiatry.

Sd/-”

9. The relevant para of the aforesaid judgment of the Hon’ble Supreme Court in the case of **Barun Chandra Thakur** (supra) is reproduced 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 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. 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.”

10. After hearing learned counsel for the parties, this Court is of the considered view that since as per the report sent by the learned Principal Magistrate, Juvenile Justice Board-cum-JMIC, Hisar that none of the members were conversant with any such psychology or child psychiatry etc., the matter deserves to be remanded to the Juvenile Justice Board, Hisar for considering the matter afresh in accordance with provisions of Section 18(3) read with Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and in accordance with law laid down by the Hon’ble Supreme Court in **Barun Chandra Thakur** (supra).

11. Consequently, the present petition is allowed. The impugned order dated 16.11.2018 (Annexure P-2) passed by the learned Principal Magistrate, Juvenile Justice Board, Hisar, is hereby quashed and the matter is remanded to the said Board 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 Juvenile Justice (Care and Protection of

Children) Act, 2015 and in consonance with the law laid down by the
Hon’ble Supreme Court in **Barun Chandra Thakur** (supra).

September 22, 2023

vcgarg

(JASGURPREET SINGH PURI)

JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No