

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 783 of 2018

Md. Keramatulla @ Keramat Sk. (Minor)

Versus

The State of West Bengal

For the State : Ms. Faria Hossain, Adv.
Ms. Mamta Jana, Adv.

Heard on : 26.04.2024

Judgment on : 19.07.2024

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed under Section 482 of the Code of Criminal Procedure, 1973 read with Section 102 of the Juvenile Justice (Care and Protection of Children)

Act, 2015 challenging the propriety, legality and correctness of an order dated 12.03.2018 passed by the Learned Additional District Judge, Special Court, 2nd Court at Malda in POCSO Case No. 39 of 2018 arising out of Kaliachak Police Station Case No. 154 of 2018 dated 10.03.2018 under Section 4 of the Protection of Children from Sexual Offences Act, 2012, thereby the learned Court below rejected the plea of juvenility of a son, namely, Md. Keramatulla @ Keramat Sk.

2. The factual matrix, leading to filing of this instant Criminal Revisional application, is as under:

2a. Petitioner being the father of the accused contended that his son was a minor and comes within the classification of child in conflict with law and the petitioner being the father and the legal guardian as representative capacity filed this revisional application stating therein that his son was born on 01.01.2002 and on the date of alleged incident on 10.03.2018 the petitioner's son was aged 16 years, 2 months and 9 days exactly.

2b. It is further case of the petitioner that his minor son was arraigned as an accused in connection with the instant case being Kaliachak Police Station Case No. 154 of 2018 dated 10.03.2018

under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (corresponding to POCSO Case No. 39 of 2018) which was registered for investigation on the basis of an FIR lodged by the de-facto complainant/mother of the victim girl alleging, inter alia, as follows:

“That the accused boy used to disturb the de-facto complainant’s minor daughter who was subsequently threatened for marriage by the accused minor boy. Although on 04.01.2018 at around 07.00 pm the accused boy allegedly ravished the minor daughter of the complainant in a garden and the girl was threatened to be killed with her family members by that accused boy. The victim girl did not speak anything about the incident to the family members. On 07.03.2018 at around 9.00 pm once again the accused boy grabbed the minor girl and tried to go inside the garden. Hearing the shout of the minor girl, the villagers rushed to the spot and they caught the minor boy on spot.”

Though the case of the petitioner is that all such allegations, as disclosed in the complaint, are false, fabricated and manufactured one. There is no question of involvement of the petitioner’s minor son. It is completely apparent from the FIR.

2c. Petitioner's son was arrested and produced before the Learned Chief Judicial Magistrate, Malda and, thereafter, he was forwarded to the concerned Special Court under the Protection of Children from Sexual Offences Act, 2012 being the Court of the learned Additional District Judge, Special Court, 2nd Court at Malda wherein bail application of the petitioner's son was rejected. On 12.03.2018 the petitioner had filed an application before the learned Court raising the plea of juvenility of his son and praying for sending him to Juvenile Justice Board and providing document in support of the date of birth of his son including Aadhaar Card of the boy.

3. None appears on behalf of the petitioner on call. No accommodation was sought for even after serving administrative notice upon the petitioner.

SUBMISSION ON BEHALF OF THE STATE:

4. Learned counsels appearing on behalf of the State submitted that the age of the minor boy was 16 years 2 months and 9 days. The allegation against the minor boy is serious in nature and he is above the age of 16 years but below 18 years. In those cases, if a child is found to be accused of a heinous offence, he would designate as an adult, when he was more than 16 years 2 months on the date of incident, he should be tried as an adult in a designated Court i.e.

Child Care which was established under the Commission for Protection of Child Rights Act, 2005. Accordingly, the learned Court below has rightly rejected his prayer.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

5. Heard the submissions of the learned counsel appearing on behalf of the State and on perusal of the application and annexure thereto as well as the case diary, this Court finds victim girl was examined under Section 164 of the CrPC in connection with the aforesaid case being POCSO Case No. 39 of 2018 arising out of Kaliachak Police Station Case No. 154 of 2018 dated 10.03.2018 under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and from the perusal of her statement under Section 164 of the Cr.PC and other materials, it appears there are sufficient materials against the present adult. On the date of incident, his age was more than 16 years 2 months but less than 18 years though the claim of the father is that he was juvenile on the date of offence.

6. Under Section 2(35) of Juvenile Justice (Care & Protection of Children) Act, 2015, “Juvenile” means a child below the age of 18 years.

Under Section 2(33) of Juvenile Justice (Care & Protection of Children) Act, 2015, “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 7 years or more.

Section 15(1) of Juvenile Justice (Care & Protection of Children) Act, 2015 (w.e.f. 15.01.2016) runs as in case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of 16 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.

Section 18(3) of Juvenile Justice (Care & Protection of Children) Act, 2015 runs 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.

The most important of these changes in the new law is the creation of a “Children’s Court”, which will exercise jurisdiction over those Child in Conflict with Laws, who are aged between 16-18 years, who are accused of having committed a heinous offence and who possess the “mental and physical capacity” to commit these crimes.

Under Section 2 (20) of Juvenile Justice (Care & Protection of Children) Act, 2015, “Children’s Court” means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.

This Court is designated as Special Court under POCSO Act, so this Court has jurisdiction to try the heinous offences committed by “Child” who is aged between 16-18 years, as an adult. Learned Court below has assessed mental and physical capacity of the child while rejecting his prayer.

In this case, Md. Keramatulla @ Keramat Sk was aged more than 16 years 2 months on the date of commission of alleged heinous offence. Furthermore, he possesses mental and physical capacity. Accordingly, he should be tried as an adult.

7. Consequently, the application filed by the petitioner has devoid of merit. Accordingly, the learned Trial Court has rightly rejected his prayer treating his son as a juvenile.

8. Accordingly, **C.R.R. 783 of 2018** is, thus, **dismissed**. Connected applications, if any, are also, thus, disposed of.

9. Case Diary, if any, is to be returned to the learned Counsels for the State.

10. Interim order, if any, stands vacated.

11. Let a copy of this judgment be sent to the learned Court below for information and taking necessary action in this regard.

12. Parties shall act on the server copies of this order uploaded on the website of this Court.

13. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)