

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: January 24, 2024
Pronounced on: January 30, 2024

CRM-M-19151-2023

Master Laksh (CNCP)

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Abhishek Jindal, Advocate for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

Mr. Robin Gill, Advocate for
Mr. Ajaivir Singh, Advocate for respondent No.6.

DEEPAK GUPTA, J.

Petitioner – Master Laksh is a 10 years old child, who has approached this Court through his mother Smt. Minakshi. By way of this petition filed under Section 482 Cr.P.C., petitioner prays to issue direction to respondent No.3 - SHO, Police Station Indri, District Karnal, to register an FIR under Sections 323/506/34 of IPC, besides relevant provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No.2 of 2016) (hereinafter referred as 'the JJ Act') and to conduct the investigation in a fair and proper manner.

2.1 According to the petitioner, marriage of his mother/guardian Smt. Minakshi was solemnized on 10.07.2011. Petitioner was born on

04.10.2012. Due to matrimonial discord and atrocities on the part of her in-laws, mother of the petitioner started residing at her parental home at Village Khera, Tehsil Indri, District Karnal since 2019.

2.2 It is alleged that on 07.11.2022 at about 8 p.m., when petitioner had gone in the street for an evening walk, his uncles Vikrant (respondent No.6) and Vipin (respondent No.7) gave slaps to him, threatened to kill him and grabbed him by neck with an intention to asphyxiate him. His clothes were also torn. On coming home, petitioner narrated the incident to his mother and also disclosed that on earlier occasions also, family members of respondent Nos.6 and 7 had threatened to kill him if he is seen in the street again. On hearing this incident, mother of the petitioner immediately called the police. On the asking of the police, medico legal examination of the petitioner was conducted in Civil Hospital, Nilokheri.

2.3 Complaint (Annexure P-2) was made to the police. It is alleged that on next date, i.e. 08.11.2022, Priyanka w/o respondent No.6 in order to save respondent Nos.6 and 7 and to put pressure upon the petitioner, made a complaint against Minakshi, the mother of the petitioner. Because of the political clout of respondent No.7, his brother being the President of BJP in Karnal Circle, police authorities did not take any action on the complaint dated 07.11.2022 given to the SHO, Police Station Indri. Mother of the petitioner then approached the Superintendent of Police, Karnal by moving application on 10.11.2022, but instead of registering the FIR against respondent Nos.6 and 7 under the relevant

provisions of law, respondent No.6 was simply detained under Sections 107/151 Cr.P.C.

2.4 Mother of the petitioner then moved an application to the Chairman, Child Welfare Committee (CWC), Karnal – respondent No.4, who referred the matter for counselling. Counselling report dated 21.11.2022 was submitted and based thereon, directions were issued by CWC, Karnal, vide memo No.6057 dated 15.12.2022 to the SHO, Police Station, Indri to conduct appropriate proceedings as per law and submit the report. Despite the said order of CWC, no action was taken by SHO, Police Station Indri.

2.5 Under the legal advice, petitioner then submitted an application to the Chairman, Child Welfare Committee, Karnal, i.e. respondent No.4 for passing appropriate orders under the J.J. Act to recommend the matter to the Juvenile Justice Board for issuing directions to respondent No.3 to register the FIR against the private respondents. However, no action was taken by respondent No.4.

2.6 With all these allegations, petitioner has prayed for issuing directions to respondent No.3 to register the FIR under the relevant provisions of law and conduct fair investigation; or in the alternative to pass appropriate orders under Section 37 of the J.J. Act by recommending the matter to respondent No.4 for issuing directions to respondent No.3 to register the FIR and to conduct investigation in fair and proper manner and file the challan in the Court concerned.

3.1 Reply by way of affidavit dated 25.04.2023 of Shri Mukesh Kumar, Deputy Superintendent of Police (Headquarter), Karnal has been filed on behalf of respondent Nos.1 to 3 – State, in which moving of the complaint dated 07.11.2022 by Minakshi, the mother of the petitioner; and the conducting of the medico legal examination of the petitioner have been admitted.

3.2 However, it is submitted that Priyanka, resident of Village Khera had moved an application stating that she was contesting the election of Sarpanch in Panchayat Elections. She with her husband Vikrant- respondent No.6 were affixing posters in the neighborhood in the village, when they noticed a young child tearing the posters behind them. Her husband, i.e. Vikrant stopped the child from tearing the posters, who started weeping loudly and while going home, started saying that he had been beaten. At the same time, Rohit and Minakshi, maternal uncle and mother of the petitioner came with *lath* and tried to attack Priyanka, but other people intervened.

3.3 Police reply further states that both the applications i.e. one moved by Minakshi and other moved by Priyanka were found suspicious. General diary entry was made on 08.11.2022. Inquiry was then conducted in the village by Sub Inspector Shamsheer Singh, in which several villagers were joined and it was found that there was only exchange of hot words between the two parties. The allegations regarding giving beating to petitioner – Laksh were found to be false. Therefore, only proceedings under Section 107/151 Cr.P.C. were initiated against respondent No.6, who

was arrested and produced before the SDM, Indri.

3.4 It is further submitted that memo dated 15.12.2022 was received from Child Welfare Committee, Karnal, to take action against respondent Nos.6 and 7, but since the inquiry had already been conducted in the matter by SI Shamsheer Singh and the allegations of beatings to the petitioner were found to be false, so no action was deemed necessary on the application received from CWC, Karnal. Still further, it is submitted that another memo No.7022 dated 27.12.2022 was received from CWC, Karnal, not to take any action against respondent Nos.6 and 7, pursuant to the earlier memo dated 15.12.2022, as that order has been amended.

3.5 Reply also states that respondent No.7 is not a healthy person, being handicapped (hearing) to the extent of 97%. Submitting that allegations made by the petitioner through his mother were found to be false during inquiry, prayer is made for dismissal of the petition.

4. Service of respondent No.5- Juvenile Justice Board was dispensed with. Nobody turned up for respondent No. 7 to contest the petition, despite service. Respondent No.6 adopted the reply as filed by respondent Nos.1 to 3- State. No instructions were conveyed by learned State counsel on behalf of respondent No.4.

5. It is contended by learned counsel for the petitioner that petitioner is a child in need of care and protection within the meaning of Section 2(14) of the J.J. Act and since he has been wronged on the part of respondent Nos. 6 and 7, who gave beatings to him, threatened him and

tried to asphyxiate him on account of which he is still having nightmares, so this Court should intervene to direct the authorities to take action against the culprits, as neither police has taken any action, nor the Child Welfare Committee has performed its role. Learned counsel has specifically pointed out that though vide its earlier memo dated 15.12.2022, CWC recommended to take action against respondent Nos.6 and 7 to the SHO, Police Station, Indri but later on, it made somersault vide a subsequent memo dated 27.12.2022 by asking the police not to take any action. Learned counsel further contends that the inquiry conducted by the police was biased and under the pressure of respondent No.7, whose brother has a political clout in the area.

6. On the other hand, learned State counsel has submitted that proper and fair inquiry was conducted in the complaints made by both the parties and that necessary action was taken. Learned State counsel also points out that both the offences i.e., under Section 323 as well as under Section 506 IPC are non-cognizable and so, FIR even otherwise cannot be registered by the police and petitioner, if he so desires, may approach the Court of Jurisdictional Magistrate.

7. I have considered submissions of both the sides and have appraised the record.

8. Petitioner is undoubtedly a child within the meaning of Section 2(12) of the J.J. Act having not completed the age of 18 years. The J.J. Act has categorized the children, who are covered under this Act under two categories, i.e. 'Child in conflict with law' as defined under Section

2(13); and ‘Child in need of care and protection’ as defined under Section 2(14) of the J.J. Act. A ‘child in conflict with law’ means a child, who is alleged or found to have committed an offence. Petitioner is not covered under the said definition.

9. Petitioner claims to be the ‘child in need of care and protection’. Section 2(14) of the J.J. Act reads as under:-

“2.(14) child in need of care and protection means a child—

(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or

(ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or

(iii) who resides with a person (whether a guardian of the child or not) and such person—

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or

(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage”

10. As the various clauses of Section 2(14) of the J.J. Act would reveal that a ‘child in need of care and protection’ is mainly divided into two categories. The first category comprises the child, who is not having any guardian or parents or any home or settled place of abode. In the second category falls that child, who though has a parent or a guardian, but either such a parent or guardian is incapable to take care of the child or incapacitated or such parent or guardian himself is subjecting the child to one or the other kind of atrocity. Petitioner does not fall in any of the clauses as are mentioned in Section 2(14) of the J.J. Act, as he is living with his mother, who is fighting for him.

11. When learned counsel for the petitioner was confronted as to how the petitioner falls in any of the clauses described under Section 2(14) of the J.J. Act, learned counsel has referred upon **“Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India & Ors.” Law Finder Doc Id # 854879**, wherein it was held by Hon'ble Supreme Court that a definition of the expression ‘child in need of care and protection’ under Section 2(14) of the J.J. Act should not be

interpreted as an exhaustive definition; that said definition is illustrative and the benefits envisaged for children in need of care and protection should be extended to all such children requiring State care and protection.

12. After going through the cited authority, this Court finds that the same is not applicable to the present case. In the cited case, the Hon'ble Supreme Court was dealing with the problem of sexual abuse of children, especially in Government Institutions and it was in that context that it was held by Hon'ble Supreme Court that a child victim of sexual abuse or sexual assault or sexual harassment, is a child in need of care and protection and similarly, in a given case, even a child, accused of an offence and brought before the Juvenile Justice Board or any other Authority, might be a child in need of care and protection. Hon'ble Supreme Court held further that since J.J. Act is intended for the benefit of children and is intended to protect and foster their rights, the definition of a child in need of care and protection must be given a broad interpretation and so, it will be unfortunate if certain categories of children are left out of the definition, even though they need as much care and protection as the categories of children specifically enlisted in the definition.

13. Having regard to the observations of Hon'ble Supreme Court in specific context in which these were made, it is held that the case of petitioner, in the facts and circumstances of this case, does not fall within the scope of 'child in need of care and protection'.

14. Moving ahead, various functions and responsibilities of the Child Welfare Committee are enumerated in Section 30 of the J.J. Act,

which also include taking cognizance on receiving the children produced before it; conducting inquiry on all issues relating to and affecting the safety and well-being of the children under the J.J. Act. What is important to notice is that the Child Welfare Committee has to perform its functions with regard to the child, who falls within the scope of child in need of care and protection. As noticed above, petitioner does not fall in that scope.

15. The powers, functions and responsibilities of the Juvenile Justice Board, who deals with matters pertaining to a 'child in conflict with law', are enumerated in Section 8 of the J.J. Act. Although, almost all the powers of the Board pertain to the child in conflict with law, but under Section 8(3)(l) of the J.J. Act, the Board may order the police for registration of First Information Report for offences committed against any child in need of care and protection under this Act or any other law for the time being in force, on a written complaint by the Committee in this regard.

16. Thus, the pre-requisites for the Juvenile Justice Board to order the police for registration of the FIR is that the board has received a written complaint by the Committee; and that it should be regarding offence(s) against any child in need of care and protection.

17. In the present case, as has been observed earlier that petitioner does not fall within the scope of a child in need of care and protection and therefore, the Child Welfare Committee could not have made any such complaint to the Juvenile Justice Board for ordering registration of the FIR.

18. Apart from above, as is evident from the reply submitted by respondent Nos.1 to 3 - State, the complaint made by petitioner through his mother Minakshi; and the complaint made by Priyanka wife of respondent No.6 regarding the alleged occurrence were duly enquired into by the police by visiting the village and after making necessary inquiries, it was found that except for exchange of hot words between the two parties, nothing else had happened and that the allegations regarding giving beatings to the petitioner, were found to be false.

19. Not only above, both Section 323 as well as 506 IPC, under which petitioner wants action to be taken against respondent Nos.6 and 7 by getting the FIR registered, are non-cognizable and so, police cannot register the FIR except under the orders to be made by the Magistrate as per Section 155 Cr.P.C.

20. Having regard to all the aforesaid discussion, no direction is required to be issued to any of the official respondents. This petition is hereby dismissed. However, it is made clear that petitioner will be at liberty to avail alternative remedies available to him, in accordance with law, including approaching the Jurisdictional Magistrate.

January 30, 2024

Sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking:

Whether reportable:

Yes/No

Yes/No