

CRR No. 2595-2023 (O&M)

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2024:PHHC:022047

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No. 2595-2023 (O&M)

Date of Decision: 06.02.2024

SURJIT KUMAR

.....PETITIONER

Vs.

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Mohit Vashishat, Advocate,
for the petitioner.

Ms. Himani Arora, A.A.G., Punjab.

HARPREET KAUR JEEWAN J. (ORAL)

1. Challenge in the present revision petition is to the order dated 14.09.2023 passed by the Additional Sessions Judge, Ludhiana dismissing the appeal against the order dated 04.09.2018 passed by the Juvenile Justice Board, Ludhiana, whereby the dispositional order was passed against the petitioner holding that he was involved in the offence punishable under Sections 363, 366-A, 376 of the IPC (for short 'the IPC') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act') and the petitioner who was a juvenile at that point of time has been ordered to stay at Special Home for a period of 2 years under Section 363 IPC, for a period of 2 years under Section 366-A IPC, for a period of 3 years under Section 376 IPC as well as under Section 4 of POCSO Act and has been further ordered to pay Rs.1,000/- under Section 376 IPC as well as Section 4 of the POCSO Act.

2. As per the prosecution case, in brief, on 14.02.2016, the daughter of the complainant went to attend tuition classes in the school and thereafter, she did not return back home. On 17.02.2016 the complainant reported the matter to the police about missing of his daughter, who was a student of Xth standard and further informed that he came to know that the present petitioner who is his neighbour is also missing from his house. He expressed his doubts that the petitioner had enticed away his minor daughter on the pretext of solemnizing marriage with her. On 06.03.2016, the petitioner and the prosecutrix were apprehended at Ludhiana Railways Station when they came together on a train. The statement of the prosecutrix was recorded and offence under Section 376 IPC was added. The medical examination of the prosecutrix was also got conducted and after completion of investigation, the final report was presented before the Juvenile Justice Board as the present petitioner was found a juvenile.

2.1. After supplying the inquiry report and the said documents annexed therewith, from the consideration of allegations the Board served a notice of accusation under Sections 363, 366-A and 376 of the IPC and Section 4 of the POCSO Act, 2012. Thereafter, the petitioner denied the said notice and claimed trial.

2.2 The prosecution examined 14 witnesses including the victim and the complainant as well as the doctors, who examined and treated the injured and gave opinion about the injuries.

2.3 The statement of the petitioner/juvenile was recorded under Section 313 Cr.P.C. where he denied all the evidence put to him and opted not to lead any evidence in his defence.

2.4 After considering the evidence the Principal Magistrate, Juvenile Justice Board, Ludhiana, had passed the dispositional order dated 04.09.2018 and held that the petitioner was involved in the commission of offence punishable under Sections 363, 366-A and 376 IPC and Section 4 of the POCSO Act, 2012. The petitioner was ordered to be kept in Special Home for a period of 3 years vide order dated 04.09.2018.

2.5 The petitioner had filed an appeal impugning the dispositional order dated 04.09.2018. The said appeal was dismissed by the Additional Sessions Judge, Ludhiana, vide order dated 14.09.2023 whereby it was observed that there was no illegality and irregularity in the dispositional order.

2.6. The appellate Court observed that the prosecutrix was minor aged 15½ years and the juvenile took her and raped her without her consent. The ocular evidence was corroborated by medical evidence led by PW-10 Dr. Mandeep Kaur. The appellate Court further observed that the prosecution has herself supported the prosecution case, as such, it is proved that the juvenile had kidnapped the prosecutrix without her consent; he kidnapped the prosecutrix with an intention to commit rape with her and he eventually committed. It was further observed that no illegality or perversity is there in the findings recorded by the Juvenile Justice Board.

2.7 While dismissing the said appeal, the appellate Court observed that the petitioner juvenile has now become major and ordered to forward the petitioner to the Superintendent Central Jail with a direction to follow the procedure as enshrined under Sections 19 and 20 of the Juvenile Justice

(Care and Protection of Children) Act, 2015 (hereinafter referred to as Act of 2015).

2.8. A status report, dated 06.02.2024, by way of an affidavit of Sh. Shivraj Singh Nandgarh, Superintendent, Central Jail, Ludhiana, has been filed in Court today by learned State counsel along with Annexures R-1 to R-4. The same is taken on record. As per the custody certificate issued by the Superintendent Central Jail, Ludhiana, attached with the status report, the petitioner had remained in Special Home for a period of 01 month and 19 days during trial and after conviction he remained in custody for 04 months and 18 days.

3. The order of dismissal of the appeal passed by the Additional Sessions Judge, Ludhiana, on 14.09.2023 been challenged by way of filing the present revision petition.

4. After arguing for some time, learned counsel for the petitioner restricts his argument at this stage only on the issue of non-compliance of Section 20(2) of the Act of 2015. He contends that the date of birth of the petitioner is admittedly 20.01.2000 and during the pendency of the appeal before the Additional Sessions Judge, Panipat, the petitioner had turned 21 years on 20.01.2021. The appeal was subsequently decided on 14.09.2023 and without complying with the provisions of Section 20 of the Act of 2015 and petitioner was sent to jail by the appellate Court.

5. Learned State counsel has not raised any objection to the aforesaid fact. Even the custody certificate produced by the learned State counsel reveals that the petitioner is undergoing his period of sentence in jail after dismissal of appeal.

6. Learned State counsel has not disputed about the date of birth of the petitioner and to the fact that the petitioner had turned 21 years of age on 20.01.2021 during the pendency of the appeal before the Additional Sessions Judge, Ludhiana.

7. As per the factual matrix which is undisputed, the date of birth of the petitioner is 20.01.2000 and the dispositional order was passed on 04.09.2018 and the order under Section 18 of the Act of 2015 for sending the petitioner to Special Home for a period of 3 years was passed on 04.09.2018 by the Juvenile Justice Board, Ludhiana. . The petitioner was arrested on 07.03.2016 and during the pendency of the said appeal the petitioner had attained the age of 21 years on 20.01.2021. The appeal was filed in the year 2018 and was decided on 14.09.2023 as per the impugned order.

8. It is not disputed that before the petitioner had attained the age of 21 years, the dispositional order as well as order to keep him in Special Home was already passed by the Juvenile Justice Board, Ludhiana. It is also not disputed that before the petitioner had attained the age of 21 years, he remained in Special Home, Ludhiana with effect from 07.03.2016 to 26.04.2016, as per the certificate attached with the status report (Annexure R-4) issued by the Superintendent, Central Jail, Ludhiana (Punjab). At the time of confirming the order passed by the Juvenile Justice Board, Ludhiana, under Section 18 of the Act of 2015 for stay of the petitioner in Special Home for a period of 3 years, the Appellate Court did not consider the fact that the petitioner had turned 21 years of age and before that he had remained in Special Home for some period and order under Section 20 of the Act of 2015 was required to be passed.

9. The appellate Court has only given the directions to the Superintendent Central Jail, Ludhiana, to follow the procedure contained in Sections 19 and 20 of the Act of 2015. The relevant portion of the impugned order reads as under:-

“.....So, the prosecution has proved its case beyond shadow of reasonable doubt that on 14.02.2016 in the area of P.S. Daba, Ludhiana, the juvenile kidnapped prosecutrix without her consent; he kidnapped prosecutrix with intention to commit rape with her and, he committed the rape with prosecutrix, as deposed by prosecutrix herself. There is no illegality or perversity in the findings recorded by the learned Lower Court and therefore, the judgment of conviction and order of sentence is upheld. The appeal is dismissed. Accused/juvenile who now has become major be forwarded to the Superintendent, Central Jail with a direction to follow procedure as enshrined in Sections 19 and 20 of the Juvenile Justice (Care and Protection of Children), Act 2015, which are reproduced as under:-

xxxx xxxx xxxx xxxx

Record be returned along with a copy of this judgment. File be consigned to the Record Room.”

10. Now the question arises as to whether the provisions of Section 20 of the Act were required to be complied by the Children's Court before sending the person to jail on attaining his age of 21 years or these provisions were required to be complied with by the Superintendent of Jail?

11. As per the provisions of Section 20 of the Act of 2015, when a child in conflict with law attains the age of 21 years but he is yet to complete the term of stay, it is mandatory for the Children's Court to provide for a follow up by the probation officer or by District Child Development

Protection Unit or by itself in order to evaluate if the child has undergone reformatory changes or if he can be contributing member of the society. It is mandatory for the Children's Court to conduct evaluation at that point of time and for the purpose of that evaluation, the progress records of the child under Sub-Section (4) of Section 19 of the Act of 2015 along with evaluation of relevant experts are required to be taken into consideration.

12. By not passing a specific order of evaluation, after considering the progress records of the child and reports of the experts, valuable rights of the petitioner has been infringed which is provided under Sub-Section (2) of Section 20 of the Act of 2015.

13. The purpose of the Act and provisions of Section 20(2) of the Act of 2015 is for social re-integration of a person who is found in conflict with law as well as the purposes for disposal of the matter in best interest of the children for the rehabilitation through various detailed scientific processes, which have been adopted under the Act and for that purpose, the help of Child Care Institutions and NGOs is to be taken.

14. The importance of passing of an order dated 23.03.2023 under Section 20 of the Act of 2015 was dealt by the Division Bench of this Court in **Ravinder** vs. **State of Haryana** (in **CRA-D-193-2023**) and the said importance had been reiterated by the Division Bench of this Court vide order dated 12.05.2023 in **Juvenile in Conflict with Law** Vs. **State of Haryana** (in CRA-D-99-2019). The relevant portion of the decision in Juvenile in Conflict with law (supra) reads as under:-

*“7. The importance of passing an order under Section 20 of the Act has already been dealt with by us in **Ravinder's case (supra)**. The relevant portion of the said judgment reads as under:-*

"13. Section 20 (1) deals with the powers of the Children's Court with respect to the progress and evaluation of child even after he attains the age of twenty-one years and has not completed the term of stay. Under Sub-section (2) of Section 20 of the Act the Children's Court after completing the procedure provided under sub-section (1) may pass an order: -

(1) To release a child on such conditions for the remainder of the prescribed term of stay; or

(ii) pass an order that child will complete the remainder of his term in a jail:Section 20 of the Act is reproduced as under-

20. Child attained age of twenty-one years and yet to complete prescribed term of stay in place of safety.

(1) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children s Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19 along with evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children's Court may-

(1) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;

(ii) decide that the child shall complete the remainder of his term in a jail. Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed."

15. The procedure to be followed by the Children's Court, when a child attains the age of 21 years and is yet to complete the term of stay in compliance of the provisions of Section 20 of the Act of 2015 read with Rule 13(8) (vi) and (vii), which was noticed in **Ravinder's case** (supra) was also discussed by the Division Bench in **Juvenile in Conflict with law** (supra) and the relevant portion reads as under:-

"18. The procedure to be followed by the Children's Court when a child attains the age of 21 years and is yet to complete the terms of stay in compliance of provisions of Section 20 of the Act read with Rule 13(8) (vi) and (vii) has also been noticed in the aforesaid judgment and the relevant portion reads as under:-

"20. When the child who has been found in conflict with law attains the age of 21 years and is yet to complete the terms of stay, the Children's Court is required to effectively carry out a process of review under Section 20 of the Act. The Children's Court is required to interact with the child in order to evaluate as to whether the child has undergone a reformatory change. The steps to be taken in such a review as contained in Rule 13 (8) (vi) and (vii) are required to be followed, which are reproduced as under-

"13. Procedure in relation to Children's Court and Monitoring Authorities.-

(8) where the Children's Court decides that there is a need for trial of the child as adult

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(vi) When the child attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall:

a. interact with the child in order to evaluate whether the child has undergone reformatory changes and if the child can be a contributing member of the society

b. take into account the periodic reports of the progress of the child, prepared by the Probation Officer or the District Child Protection Unit or a social worker, if needed and further direct that institutional mechanism if inadequate be strengthened.

c. After making the evaluation, the Children's Court may decide to (ca) release the child forthwith, (cb) release the child on execution of a personal bond with or without sureties for good behaviour; (cc) release the child and issue directions regarding education, vocational training, apprenticeship, employment. counselling and other therapeutic interventions with a view to promoting adaptive and positive behaviour etc., (cd) release the child and appoint a monitoring authority for the remainder of the prescribed term of stay. The monitoring authority, where appointed shall maintain a Rehabilitation Card for the child in Form 14"

(vii) For the purpose of sub-rule (vi) (c) (cd) of this rule:-

(a) A Probation Officer or Case Worker or Child Welfare Officer or a fit person may be appointed as a monitoring authority

(b) The District Child Protection Unit shall maintain a list of such persons who can be engaged as monitoring authorities which shall be sent to the Children's Court along with bi-annual updates

(c) The child shall for the first quarter after release, meet with the monitoring authority on a fortnightly basis or at such intervals as may be directed by the Children's Court. The monitoring authority shall fix a time and venue for such meetings in consultation with the child. The monitoring authority will forward its observations on the progress of the child on a monthly basis to the Children's Court

(d) At the end of the first quarter the monitoring authority shall make recommendations regarding the further follow up procedure required for

(e) Where the child, after release is found to be indulging in criminal activities or associating with people with criminal antecedents, he shall be brought before the Children's Court for further orders.

(f) If it is found that the child no longer requires to be monitoring, the monitoring authority shall place the detailed report with recommendations before the Children's Court which shall issue further directions either terminating the monitoring or for its continuation.

(g) After the first quarter, the child shall meet the monitoring authority at such intervals as may be directed by the Children's Court based on the recommendations made by the monitoring authority at the end of the first quarter and the monitoring authority shall forward its report to the Children's Court which shall review the same every quarter.”

16. The importance of focus on rehabilitation and social integration of such children as observed in **Ravinder’s case** (supra) and reiterated by the Division Bench in **Juvenile in Conflict with law** (supra) reads as under:-

“19. The importance of focus on rehabilitation and social reintegration of such children has also been observed by us in the Ravinder's case (supra) and the relevant portion reads as under:-
9. The Children's Court missed taking into consideration the fact that a child-friendly approach is not merely to be applied in adjudication of the matters relating to children alleged to be in conflict with law but the focus is also on rehabilitation and social re-integration of such children. 10. The said focus is itself contained in the preamble of the Act of 2000 as well as the Act of 2015 which reads as under-"An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social reintegration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes

provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto..."

17. The reason for such re-evaluation at this stage, when the child attains the age of 21 years was highlighted in **Ravinder's case** (supra) and reiterated in **Juvenile in Conflict with law** (supra) which is as under:-

"21. The reason for such re-evaluation at the stage when the child attained the age of 21 years was also highlighted in the Ravinder's case (supra) in para Nos. 23 and 24 which reads as under:-23. The reason for such a re-evaluation at the stage when the child attains the age of 21 years and for a follow-up by the Probation Officer or by a District Child Protection Unit is to keep the focus on the rehabilitation and social reintegration of children even if they are found in conflict with law

24. Apart from adopting a child friendly approach in adjudication and disposal of the matters in the best interest of children, the preamble of the Act clearly provides that approach of all the authorities dealing with the CCL is not punitive but their rehabilitation. And, by not passing of an order under Section 19 (2) and 19 (4) of the Act and Section 20 of the Act, leads to failure of the process of rehabilitation. The CCL on attaining the age of 21 is directly mixed with the adult offenders and is exposed to the unavoidable, vulnerable circumstances there, without the monitoring by a Child Care Institution or by an NGO or by a District Child Care Protection Officer and such a procedure is against the best interest of a child."

18. The rights of the juvenile when he attains the age of 21 years but is yet to complete the prescribed term of stay in place of safety were discussed in **Juvenile in Conflict with law** (supra) which reads as under:

“24. A Juvenile would have the following rights when he attains the age of 21 years but yet to complete prescribed term of stay in place of safety when his follow up reports are evaluated and he has such rights in terms of provisions of Section 20(2) of the Act and Rule 13 (8) (vi) (c):-

(1) His release forthwith,

(2) His release on execution of personal bond with or without sureties for good behaviour,

(3) His release with directions regarding his educational, vocational training, apprenticeship, employment, counseling and other therapeutic interventions with a view to promoting adaptive and positive behaviour etc;

(4) His release appointing a monitoring authority for the remainder of the prescribed term of stay

(5) decide that child shall complete remainder of term in jail

25. Secondly, in case the Child in Conflict with Law is not satisfied with an order passed by the Children's Court under Section 20(2) of the Act then he can avail his remedy of appeal as provided under Section 101(5) of the Act.

26. An omission to pass an order under Section 20(2) of the Act is certainly detrimental to the interest of the child and such an action is contrary to the scheme and spirit of the Act. As such we are of the considered opinion that the Trial Court has failed to exercise its jurisdiction as provided under Section 20(2) of the Act which has lead to miscarriage of justice. As such we hold that compliance of the provisions of Section 20 of the Act is mandatory in nature. The second question for determination is accordingly decided.”

19. In view of the facts of the present case and ratio of the aforesaid decisions, I am of the considered opinion that by not passing an order under

Section 20(2) of the Act of 2015, the valuable rights of the petitioner has been infringed. It has already been held by the Division Bench in **Juvenile in Conflict with law** (supra) that compliance of provisions of Section 20 of the Act of 2015 is mandatory in nature.

20. The Act of 2015 was passed to make comprehensive provisions for children who were alleged and found to be conflict with law and also the children who were in need of care and protection while taking into consideration standards prescribed in the Convention on the Rights of the Child, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) and all other relevant international instruments. The purpose of the Act is for rehabilitation through the process provided under the Act with the help of various institutions and the bodies established under the Act. It is the duty of the Juvenile Justice Board, as well as the Children's Court to comply with the provisions of Section 20 of the Act by way of passing a specific order and the said duty cannot be delegated to the Superintendent Jail. The question for determination is accordingly answered.

21. Since, the Appellate Court did not comply with the said mandatory provisions which are detrimental to the interest of the petitioner, who was juvenile at the time of commission of alleged offence, as such, this Court is of the considered opinion that the matter is required to be remitted back to the Appellate Court for the purposes of passing an appropriate order in terms of Section 20 of the Act of 2015.

22. Consequently, the present revision petition is allowed and the impugned order dated 14.09.2023 passed by the Additional Sessions Judge, Ludhiana, is set aside. The matter is remitted back to Children’s Court/Additional Sessions Judge, Ludhiana, for passing an appropriate order in terms of Section 20 of the Act of 2015. In case the petitioner would be aggrieved by the said order, he would be at liberty to avail remedy of appeal under Section 101 (5) of the Act of 2015 to challenge the order under Section 20 of the Act of 2015 and would also be at liberty to raise a challenge the order passed in appeal on merits.

23. Since the petitioner has undergone a substantial period of stay of 06 months and 07 days in Special Home, Ludhiana, as such the trial Court would consider the request of the petitioner for suspension of sentence on the first date of hearing during the pendency of the proceedings under Section 20 of the Act of the 2015.

22. All pending miscellaneous application(s), if any, stands disposed of.

February 06, 2024
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No