

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.946 of 2023

Arising Out of PS. Case No.-199 Year-2023 Thana- RAMPUR District- Gaya

=====

Arun Kumar Paswan, s/o Haricharan Pasawan Resident of Khodawandpur,
Police Station- Khodawandpur, District Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department, Govt. of Bihar
2. The Principal Magistrate, Juvenile Justice Board, Gaya
3. The 1st Member, Juvenile Justice Board, Gaya
4. The 2nd Member, Juvenile Justice Board, Gaya
5. The District Magistrate, Gaya
6. The Deputy Development Commissioner, Gaya
7. The In-Charge, Observation Home, Gaya

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Sr. Adv., Mr. Krishna Murari, Adv., Mr. Pushkar Bhardwaj, Adv., Ms. Shreyashi Raj, Adv.
For Respondent/s/State	:	Mr. Suman Kumar Jha, AC to AAG-3

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

8 05-02-2025 A counter affidavit submitted on behalf of the respondents be taken on record.

2. A very short question is involved in the instant writ petition.

3. The petitioner was In-charge of the Observation Home, Gaya during the relevant point of time.

4. The petitioner has approached this Court for the following reliefs:-



“i) For issuance of a writ in the nature of certiorari or any other appropriate writ for quashing the part of order dated 18.07.2022 passed by Juvenile Justice Board, Gaya in GR No. 301/20 and Misc. 230/21 (P.S. Case No. Delha 160/20) wherein it has been held /directed to initiate a Criminal Proceeding against the Person - In charge, Observation Home, Gaya under the relevant provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'Act') read with Bihar Juvenile Justice (Care & Protection of Children) Rules, 2017 (hereinafter referred to as 'Rules') and other relevant criminal laws.

ii) For issuance of a writ in the nature of certiorari or any other appropriate writ for quashing the consequential FIR, bearing Rampur P.S case No.199/23, dated 11.03.2023 filed under Section 75 of the said Act against the petitioner.”

5. The impugned order dated 18.07.2022, passed by the Juvenile Justice Board, Gaya is quoted below:-

“The case is fixed for Appearance of Child in Conflict with Law (hereinafter referred as CICL) Anna Kumar @ Anna Yadav @ Rohit Kumar.

Present Ld. APP for the Prosecution. Non present to represent the CICL.

Ld. APP submits that CICL went



on leave from 23.04.2022 to 30.04.2022 on the ground that his mother is diagnosed with breast cancer while father is already dead and he needs to take care of his mother and her treatment.

It is further submitted by the Ld. APP that the Probation Officer, Observation Home, Gaya, informed that the CICL reported and return to Observation Home, Gaya, many times after his sanctioned leave period got over but he was neither taken into Observation Home nor produced before the Juvenile Justice Board by the Person in-charge, Observation Home, Gaya. It is also submitted that the child was under the protective custody of Person In-charge by the order of the Board as per Juvenile Justice (Care and Protection of Children) Act, 2015, but he intentionally made to suffer the CICL by not taking him into Observation Home, Gaya, and by not producing him before the Board, which he was legally bound to do.

It is further submitted by the Ld. APP that the CICL was willfully neglected and abandoned in a manner which caused him physical as well as mental suffering. It was further submitted that this act of Person In-charge has led to obstruction in the performance of Judicial work of Juvenile Justice Board as further proceeding in the case of this CICL got stuck and could not be completed within time which is against the best interest of child & the mandate of Juvenile Justice (Care and Protection of



Children) Act, 2015.

It is prayed by Ld. APP that appropriate action be taken against the erring official of Observation Home, Gaya.

That an explanation was called by Juvenile Justice Board from Person In-charge, Observation Home, Gaya in this regard to which he accepted this fact that CICL came after the sanctioned leave period but was not taken into Observation Home, Gaya, and was not produced before the Juvenile Justice Board, Gaya.

Considering the above facts & circumstances, submissions of Ld. APP, perusal of case record, along with all the materials available on record. The Board is of the firm opinion:

i. That Person In-charge, Observation Home, Gaya has intentionally made to suffer the CICL by not taking him into Observation Home, Gaya, & by not producing the CICL before the Juvenile Justice Board, which he was legally bound to do.

ii. That the CICL was willfully neglected and abandoned in a manner which caused him physical as well as mental suffering.

iii. That the Board proceeding is hampered in this case of CICL as this act of Person In-charge led to obstruction in Judicial functions of Juvenile Justice Board. Since, further proceeding in the case of this CICL got stuck and could not be completed within time which is against the best interest



of child & the mandate of Juvenile Justice (Care and Protection of Children) Act, 2015.

In the light of above made observations the Board is of the firm opinion that a criminal proceeding as per mandate of Sec. 75 of Juvenile Justice (care and protection of children) Act, 2015 read with Rule 54 of Bihar Juvenile Justice (Care and Protection of Children) Rules, 2017, and other relevant criminal laws must be initiated against of erring official i.e Person In-charge, Observation Home, Gaya.

Therefore, The Ld. District Magistrate is requested to appoint/nominate an officer not below the rank of Deputy Collector to initiate the criminal proceeding in the relevant provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 read with Juvenile Justice (Care and Protection of children) Rules, 2017, & other relevant criminal laws against the erring official i.e Person In-charge, Observation Home, Gaya.

Furthermore, since the Board is of opinion that a criminal proceeding must be initiated against the erring official i.e Person In-charge, Observation Home, Gaya he is hereby debarred from working with the children during the pendency of criminal cases as per mandate of Rules 54(6) of Bihar Juvenile Justice (Care & Protection of Children) Rules, 2017 so that safety of children kept in Observation Home can be secured.

So far as the current proceeding



of CICL is concerned the Probation Officer attached with CICL is hereby directed to update the present status of the CICL with a request to mentoring his parents/guardian to produce him in the Juvenile Justice Board.

Let the copy of the order be forwarded to all concerned for information and necessary action. Put up on 01.08.2022 for further proceeding.”

6. The fact remains that the child in conflict with law left the Observation Home with the permission of the Board to see his ailing mother, who was suffering from cancer. He did not return on the date on which he was scheduled to return. The In-charge of the Observation Home did not inform the said fact to the Board. Subsequently, when he returned, he was not allowed to stay in the Observation Home.

7. It is contended on behalf of the petitioner by the learned Senior Counsel that the C.I.C.L. has already attained the age of 18 years and he ought to be kept in the place of safety. Under no circumstance, the C.I.C.L. could be kept in custody of the In-charge of Observation Home, Gaya.

8. I have already recorded the entire order dated 18th July, 2022. The Board found:-

“i. That Person In-charge, Observation Home, Gaya has intentionally



made to suffer the CICL by not taking him into Observation Home, Gaya, & by not producing the CICL before the Juvenile Justice Board, which he was legally bound to do.

ii. That the CICL was willfully neglected and abandoned in a manner which caused him physical as well as mental suffering.

iii. That the Board proceeding is hampered in this case of CICL as this act of Person In-charge led to obstruction in Judicial functions of Juvenile Justice Board. Since, further proceeding in the case of this CICL got stuck and could not be completed within time which is against the best interest of child & the mandate of Juvenile Justice (Care and Protection of Children) Act, 2015.”

9. On the above finding, the Board recommended initiation of criminal proceeding under Section 75 of the Act. Section 75 of the Act deals with punishment for cruelty to the child. The provision runs thus:-

“ 75. Whoever, having the actual charge of, or control over, a child, assaults,



abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.”



10. The impugned order does not make any allegation against the petitioner that the C.I.C.L. was assaulted, abandoned, abused, exposed or willfully neglected by him. The petitioner on only one occasion did not accept the C.I.C.L. to be kept in Observation Home, due to the reason as he came after one month of expiry of the leave, that too without any guardian and on at that point of time he crossed the age of 18 years. So, the petitioner was of the considered view on the basis of the provisions of the Act that he is required to be kept in place of safety.

11. So far as non-production of the C.I.C.L. before the Board, there may be error of Judgment and decision by the In-charge of the Observation Home, but this does not attract Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

12. For the reasons stated above, this Court finds that the case against the petitioner, instituted under Section 75 of the said Act, is liable to be quashed.

13. Accordingly, F.I.R. instituted against him being Rampur P.S. Case No. 199 of 2023, dated 11th March, 2023, filed under Section 75 of the said Act against the petitioner is quashed.



14. The instant writ petition is thus disposed of.

(Bibek Chaudhuri, J)

pravinkumar/-

U		T	
---	--	---	--

