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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1150-2024 (O&M)

Date of Decision:- 10.02.2025

TXXXX

....Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Rajesh Lamba, Advocate with
Mr. Narinder Pal, Advocate and
Mr. Rahul Gugnani, Advocate for the petitioner.

Ms. Ambika Sood, Addl. A.G., Haryana.

AMARJOT BHATTI, J.

1. Petitioner/child-in-conflict-with-law filed revision against judgment dated 16.04.2024 passed by Additional Sessions Judge, Fast Track Special Court for Trial of Offences under POCSO Act-cum-Children Court, Nuh vide which appeal preferred by him has been dismissed and judgment of conviction dated 27.07.2023 and disposition order dated 24.08.2023 passed by learned Principal Magistrate, Juvenile Justice Board, Nuh has been upheld wrongly and the same is erroneous and unsustainable in the eyes of law.

2. Brief facts of the case are that the complainant-‘A’ (father of the victim) filed written complaint on 16.08.2022 alleging that on that day at about 8:00 AM, his wife had gone to the fields to bring fodder and their minor daughter i.e. victim aged about 2 ½ years followed her. The child in conflict with law took the victim inside the fields and indulged in



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penetrative sexual assault with the child. The complainant was also going towards the fields and he heard the hue and cry of his daughter and he rushed to the spot. The victim was profusely bleeding whereas the child in conflict with law managed to escape. Matter was reported to the police. The victim was taken to the hospital for medical treatment. The child in conflict with law was apprehended. After completion of investigation, final report under Section 173 Cr.P.C. was presented before Juvenile Justice Board.

3. Copy of final report was supplied to child in conflict with law free of cost as envisaged under Section 207 Cr.P.C.

4. Thereafter, vide order dated 15.09.2022, notice of accusation was served upon child in conflict with law for commission of offence punishable under Section 366 of IPC and Section 6 of POCSO Act, 2012, to which he pleaded not guilty and claimed inquiry and accordingly, case was fixed for evidence of prosecution.

5. In order to prove its case, prosecution examined Father 'A' as PW-1, Mother 'S' as PW-2, Imran as PW-3, L/SI Anju as PW-4, Dr. Tantiya Atri, LMO, CHC, Nuh as PW-5, Lalit Kumar, Patwari as PW-6, Dr. Anita as PW-7, EASI Dharampal, Draftsman as PW-8, ESI Harichand as PW-9, HC Parveen Kumar as PW-10, Dr. Vinod Kumar as PW-11, L/HC Mukesh Kumari as PW-12, Sahood Mohd. Ahlmad as PW-13, Dr. Liyakat Ali as PW-14, Constable Prem Singh as PW-15, HC Mahesh Kumar as PW-16, Dr. Sangeeta, Gynecologist as PW-17, Dr. Anil Kumar as PW-18, Inspector/SHO Dayanand as PW-19, ASI Surender Singh as PW-20, Dr. Vishal Sharma as PW-21, HC Mukesh Kumar as PW-22 and Dr. Rajiv



Patra as PW-23. Thereafter, learned APP closed the evidence of prosecution.

6. Statement of child in conflict with law was recorded under Section 313 Cr.P.C. by putting all the incriminating evidence appearing against him to which he denied and further alleged that he was falsely implicated in this case.

7. No evidence was led in defence by the child in conflict with law.

8. After hearing arguments advanced by learned APP assisted by learned counsel for the complainant as well as the arguments advanced by learned counsel representing child in conflict with law present petitioner-child in conflict with law was found guilty for commission of offence punishable under Section 366 of IPC and Section 6 of POCSO Act, 2012 vide detailed judgment dated 27.07.2023. After hearing arguments, order of disposition dated 24.08.2023 was passed by learned Principal Magistrate Juvenile Justice Board, Nuh vide which the Juvenile Justice Board ordered preventive detention at Observation Home/Place of Safety for a period of one year for the offence under Section 366 of IPC and further preventive detention at Observation Home/Place of Safety for a period of three years for the offence punishable under Section 6 of POCSO Act, 2012. Both preventive detentions were ordered to run concurrently as detailed therein.

9. Feeling aggrieved of the aforesaid judgment, appeal was preferred by the appellant- child in conflict with law and the same was dismissed upholding the judgment passed by Principal Magistrate, Juvenile Justice Board, Nuh vide detailed judgment dated 16.04.2024 by learned



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Additional Sessions Judge, Fast Track Special Court for Trial of Offences under POCSO Act-cum-Children Court, Nuh.

Feeling aggrieved of the aforesaid judgment, present revision has been preferred.

10. Learned counsel representing petitioner- child in conflict with law referred to Section 3(1) of Juvenile Justice (Care and Protection of Children) Act, 2015 which runs as under:-

3.General principles to be followed in administration of Act-

The Central Government, the State Governments, 1 [the Board, the Committee, or] other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:—

(i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.....”

Principal Magistrate, Juvenile Justice Board, Nuh while holding the petitioner/child-in-conflict-with-law relied upon the provisions of Sections 29 and 30 of POCSO Act, 2012, which runs as under:-

29. Presumption as to certain offences -Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

30. Presumption of culpable mental state - (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had



no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.—In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

Therefore, learned Principal Magistrate, Juvenile Justice Board, Nuh wrongly relied upon the aforesaid provisions of POCSO Act, 2012 holding the petitioner/child-in-conflict-with-law guilty under Section 366 of IPC and Section 6 of POCSO Act, 2012. In fact under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015, any child shall be presumed to be innocent of any mala fide or criminal intent up to the age of eighteen years. Therefore, there is an error apparent on the face of judgment passed by learned Principal Magistrate, Juvenile Justice Board, Nuh and this aspect of the case has not been considered by learned Additional Sessions Judge, Fast Track Special Court for Trial of Offences under POCSO Act-cum-Children Court, Nuh.

In the light of aforesaid factual position, the aforesaid judgment of conviction and order of disposition is liable to be set aside by accepting the present revision.

Apart from this, no other argument is advanced by learned counsel representing petitioner-child in conflict with law.

11. On the other hand, learned counsel representing State pointed out that prosecution examined all material witnesses before learned



Principal Magistrate, Juvenile Justice Board, Nuh to prove the guilty mind of petitioner-child in conflict with law. The facts of the case and the evidence on record were considered in its right perspective and the petitioner/child-in-conflict-with-law was rightly held guilty for the commission of offence punishable under Section 366 of IPC and Section 6 of POCSO Act, 2012. Appeal preferred by appellant-child in conflict with law was again rightly dismissed by learned Additional Sessions Judge, Fast Track Special Court for Trial of Offences under POCSO Act-cum-Children Court, Nuh by re-appreciating the facts and the evidence on record. Stand taken by petitioner/child-in-conflict-with-law is without merits. The judgment of both the courts below do not require any interference.

12. I have considered the arguments and have gone through the record carefully. As per the facts of the case on 16.08.2022 at about 8:00 AM, the petitioner/child-in-conflict-with-law took away minor daughter of the complainant aged about 2 ½ years in the fields and committed penetrative sexual assault. The complainant who is father of the victim heard the hue and cry and rushed to the spot to rescue his daughter. Petitioner/child-in-conflict-with-law managed to escape. Police was informed immediately and written complaint was also filed, on that basis present FIR was registered and the investigation started in this case. Petitioner/child-in-conflict-with-law was served with notice of accusation under Section 366 of IPC and Section 6 of POCSO Act, 2012. At the time of said occurrence, petitioner/child-in-conflict-with-law was about 14 years and 03 months old whereas the victim was a small child aged about 2 ½ years. Since the petitioner/child-in-conflict-with-law was less than 15



years of age, the trial was conducted by Principal Magistrate, Juvenile Justice Board, Nuh. Learned counsel for petitioner/child-in-conflict-with-law has filed revision on the ground that the Principal Magistrate, Juvenile Justice Board, Nuh while passing judgment dated 27.07.2023 has relied upon the provisions of Sections 29 and 30 of POCSO Act, 2012 whereas petitioner/child-in-conflict-with-law was to be covered under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. Therefore, judgment and order of disposition passed by Principal Magistrate, Juvenile Justice Board, Nuh and the appeal dismissed by learned Additional Sessions Judge, Fast Track Special Court for Trial of Offences under POCSO Act-cum-Children Court, Nuh have been challenged in revision.

13. I have considered the aforesaid arguments advanced by learned counsel representing petitioner-child in conflict with law. Section 1 clearly indicates that the Juvenile Justice (Care and Protection of Children) Act, 2015 came into force on 15.01.2016. Section 1(4) of the aforesaid Act runs as under:-

1. Short title, extent, commencement and application-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including —

(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of



children in conflict with law;

(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.

Section 3 deals with general principles to be followed in administration of Act and as per Section 3(1) (supra), there is principle of presumption of innocence. As a result, any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years. Since the victim was minor aged about 2 ½ years, therefore, the provisions of POCSO Act, 2012 were invoked. Petitioner/child-in-conflict-with-law was served with notice of accusation under the provisions of Section 366 of IPC as well as Section 6 of POCSO Act, 2012 as there was penetrative sexual assault on a child below 12 years of age. Under the provisions of POCSO Act, 2012, Section 29 deals with presumption as to certain offences falling under Sections 3, 5, 7 and 9 of this Act. Section 30 of POCSO Act, 2012 deals with presumption of culpable mental state. Principal Magistrate, Juvenile Justice Board, Nuh while deciding the present case has referred these provisions in para No.34 to 37 of the judgment. POCSO Act came into force on 14.11.2012. Therefore, in case of any inconsistency of provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, shall have an overriding effect on the provisions of POCSO Act, 2012.

14. In the light of this, case of present petitioner/child-in-conflict-with-law will be considered by following general principles as detailed in Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 by presuming innocence of the child of any mala fide or criminal



intent. Keeping in mind this provision, I have considered the evidence led before Principal Magistrate, Juvenile Justice Board, Nuh. Firstly, prosecution examined complainant i.e. father of the victim as PW-1 who had gone to the spot to rescue the child and had seen the child in conflict with law escaping from there. Mother of the victim as PW-2, Imran PW-3 also supported the prosecution version regarding the manner, the complainant rescued the child as well as the condition of the child after the said unfortunate incident. Ocular version of the prosecution is proved on record by examining Dr. Anita PW-7, Dr. Tantiya Atri, PW-5 and Dr. Vishal Sharma PW-21. The child was discharged on 19.08.2022. MLR (Exhibit PW5/B) and discharge summary of the child (Exhibit PW7/A) are duly proved on record. Medical condition of the victim is rightly considered and discussed in para No.13 of the judgment passed by learned Additional Sessions Judge, Fast Track Special Court for Trial of Offences under POCSO Act-cum-Children Court, Nuh. The investigation carried out by the police is further proved on record by examining ASI Harichand PW-9 and Lady Sub Inspector Anju PW-4. The child in conflict with law was produced by his father and was taken into preventive detention. He was medically examined by Dr. Liyaqat Ali PW-14. Report of Forensic Science Laboratory is Annexure PW11/A.

Therefore, there is ample evidence on record to prove the guilt of petitioner/child-in-conflict-with-law under the provisions of Section 366 of IPC and Section 6 of POCSO Act, 2012. There is direct evidence available on record in the shape of testimony of oral witnesses supported by medical record. By totally ignoring the provisions of Sections 29 and



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30 of POCSO Act, 2012, there is more than sufficient evidence available on record to establish the guilt of petitioner/child-in-conflict-with-law under Section 366 of IPC and Section 6 of POCSO Act, 2012. Petitioner/child-in-conflict-with-law has been tried under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 and order of disposition has been passed considering the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. Therefore, conclusion arrived at by the court of Principal Magistrate, Juvenile Justice Board, Nuh and impugned judgment dated 16.04.2024 passed by learned Additional Sessions Judge, Fast Track Special Court for Trial of Offences under POCSO Act-cum-Children Court, Nuh do not suffer from any illegality or irregularity, thus revision preferred by petitioner/child-in-conflict-with-law is accordingly declined.

15. Pending application(s) if any, also stands disposed of.

10.02.2025

Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No