

Court No. - 80

Case :- CRIMINAL REVISION No. - 5908 of 2023

Revisionist :- X Juvenile

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Vishal Mohan Gupta

Counsel for Opposite Party :- G.A.,Abhilasha Singh

Hon'ble Subhash Chandra Sharma,J.

List revised.

Heard Sri Rajeev Lochan Shukla Advocate, holding brief of Sri Vishal Mohan Gupta learned counsel for the revisionist, Smt Abhilasha Singh learned counsel for the C.W.C. as well as learned A.G.A. for the State and perused the record.

The present criminal revision has been preferred by the revisionist through his mother with a prayer to allow this revision and set aside the judgment and order dated 18.01.2023 passed by learned Additional Sessions Judge/ Special Judge (POCSO Act), Kanpur Nagar in Criminal Appeal No. 13 of 2023 as well as order dated 15.10.2022 passed by Juvenile Justice Board, Kanpur Nagar. Further prayed to release the revisionist on bail in Case Crime No. 523 of 2022 under Sections 363, 366, 376, 420, 506 I.P.C. and 3/4 POCSO Act, Police Station Chakeri, District Kanpur Nagar.

Facts in brief are that in this case an order under Section 15 of the Act was passed by the learned J.J.Board on 15.10.2022 while referring the matter to the children's court for trial of the revisionist as an adult as provided under Section 18 of the Act. Against this order an appeal was filed before the learned court of Sessions which was also dismissed. Being aggrieved with the aforesaid order present revision has been preferred before this Court.

It is submitted by learned counsel for the revisionist that in this the psychological test was conducted by the learned J.J. Board on 20.09.2022 in which S.P. Mishra, Psychologist was also present. Questions were made to the revisionist by the Board to which he answered those were recorded by the Board. On the basis of that query a certificate by the psychologist was also given on the same date stating that the mental capacity of the revisionist was average and he was not capable in understanding the consequences of the offence. Thereafter, the revisionist

was examined subsequently before the learned J.J. Board on oath on 29.09.2022. Subsequently, the order in question was passed on 15.10.2022 and the learned Board formed different opinion to that of psychologist and held the revisionist to be capable of understanding the consequence of the offence committed by him. Learned appellate court did also not consider these facts while deciding the appeal but dismissed it, in this way the orders passed by learned J.J. Board as well as learned appellate court cannot be said to be lawful and in conformity with the provisions as contained under Section 15 of the Act.

Smt Abhilasha Singh learned counsel for the C.W.C. as well as learned A.G.A. for the State opposed the submission made by learned counsel for the revisionist as aforesaid and contended that in this case the revisionist was examined before the learned Board consisting of the psychologist who gave his opinion regarding capability of understanding of the revisionist but later on when the Board examined the revisionist he was found to be capable of knowing the nature and consequence of the offence that was the reason the learned Board took different view from that of the psychologist and referred the matter to the children's court for trial as an adult. In this way, the orders passed by the learned J.J. Board as well as learned appellate court cannot be said to be unlawful but this criminal revision, being devoid of merit, is liable to be dismissed.

Section 15 of The Juvenile Justice (Care and Protection of Children) Act, 2015 provides that:-

15. Preliminary assessment into heinous offences by Board.-

(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen 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: Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.-For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101: Provided further that the assessment under this section shall be completed within the period

specified in section 14.

Section 18 of The Juvenile Justice (Care and Protection of Children) Act, 2015 provides that:-

18. Orders regarding child found to be in conflict with law:-

(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,-

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home: Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the

Board may, in addition pass orders to-

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) 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.

From the language used in Section 15(1) learned Board was to consider while making preliminary assessment (i) his mental, (ii) physical capacity to commit such offence and (iii) ability to understand the consequence of the offence and the circumstances in which he allegedly committed the offence.

When the Board after making preliminary assessment as aforesaid under Section 15 is satisfied on preliminary assessment only then order is to be passed as to whether matter is to be disposed of by the Board or is to be referred to the children's court under Section 18 (3).

Considering the facts and circumstances of the case, submission made by learned counsel for the parties as well as learned A.G.A. for the State, perusal of record, the queries made by the Board including the psychologist on 20.09.2022, certificate given by the psychologist on the same date, the statement of the revisionist recorded on 29.09.2022 by the learned Board and the order passed by it on 15.10.2022 and also the order passed by the learned appellate court, it appears that as per the provisions as contained u/s 15 of the Act, while making preliminary assessment of the revisionist the learned J.J. Board may take assistance of experienced psychologists or psycho social workers or other experts to assess the capacity of such child to commit and understand the consequences of the alleged offence. The Board consisting of the psychologist made queries to the revisionist on 20.09.2022 but no any opinion was formed by the Board unanimously on that date. Separate certificate from the psychologist was given on the same date mentioning that the mental capacity of the revisionist was average and he was not capable in understanding the consequences of the offence. This conclusion was not drawn by the psychologist on any scientific basis. In this way, the parameters laid for psychological assessment were not adopted even by

the psychologist at the time of making assessment of the revisionist, as a result the certificate issued by the psychologist cannot be said to be in conformity with the requirements for psychological assessment as it does not contain any ground on the basis of which he formed such opinion regarding incapacity. It also appears that learned J.J. Board recorded the statement of the revisionist on oath subsequently on 29.09.2022 without forming any opinion on the same day when the Board examined the revisionist on 20.09.2022. Later on, the Board passed the order under Section 15 on 15.10.2022 holding the revisionist to be capable of knowing the nature and consequences of the offence said to be committed and referred the matter to the children's court for trial as an adult. The procedure adopted by the psychologist as well as the learned Board for making preliminary assessment cannot be said to be lawful and to be made on scientific basis. Learned appellate court did also not consider the aforesaid facts but dismissed the appeal which cannot be said to be lawful and in conformity with law.

As a result, this criminal revision is ***allowed*** and the orders passed by the learned J.J. Board on 15.10.2022 as well as the learned appellate court on 18.01.2023 are set aside and matter is remanded back to the learned Board to make preliminary assessment afresh in accordance with law.

Order Date :- 23.11.2023

Suraj Srivastav