

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**DATED THIS THE 23RD DAY OF SEPTEMBER, 2019**BEFORE****THE HON'BLE MR.JUSTICE K. N. PHANEENDRA****CRIMINAL APPEAL NO. 1597/2018****BETWEEN**

SRI PUNEET S
S/O SOMASHEKAR
AGED 20 YEARS
R/O SANJAY NAGAR
II CROSS, # 896
NEAR GARADI MANE
DODDABALLAPUR
BENGALURU RURAL DISTRICT - 56203

... APPELLANT

(BY SRI VEERANNA G. TIGADI, ADV.)

AND

STATE OF KARNATAKA
REP BY CIRCLE INSPECTOR OF POLICE
MULBAGIL POLICE STATION
MULBAGIL, DIST: KOLAR
REP BY STATE PUBLIC PROSECUTOR
HON'BLE HIGH COURT OF KARNATAKA
BENGALURU - 560 001

... RESPONDENT

(BY SRI HONNAPPA, HCGP.)

THIS CRIMINAL APPEAL IS FILED UNDER
SECTION 101 OF JUVENILE JUSTICE (CARE AND
PROTECTION OF CHILDREN) ACT, 2015 PRAYING TO
SET ASIDE THE IMPUGNED ORDER DATED 8.08.2018

PASSED IN S.C.NO.97/2016 BY THE LEARNED II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KOLAR.

THIS CRL.A HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.09.2019 COMING ON FOR '**PRONOUNCEMENT OF JUDGMENT**', THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The present appeal is preferred against the order passed by the II Addl. District and Sessions Judge, Kolar dated 08.08.2018 under Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred to as '**JJ Act**' for short).

2. The petitioner, the sole accused is charge sheeted for the offence punishable under Sections 366A and 376 of IPC and also under Section 6 of the Prevention of Children from Sexual Offences Act (hereinafter referred to as '**POCSO Act**' for short).

3. During pendency of the proceedings, an application was filed stating that the accused was not completed the age of 18 years as on the date of the alleged incident and he was a Juvenile as his date of birth is 28.04.1999 and the incident happened between

21.04.2016 to 30.04.2016, alleging that the accused has kidnapped and abducted the victim girl from Mallasandra village to Bengaluru on his Motorcycle and he had committed sexual intercourse with her during the above said period. The learned Sessions Judge, on 16.01.2018 has passed an order that the accused was below the age of 18 years and above 16 years of age and if he is aware of the consequences of the act and committed the heinous offence, then the Sessions Court can try the appeal. Therefore, the application filed by the accused was rejected.

4. The said order was challenged before this Court in Criminal Appeal No.445/2018 and this Court vide order dated 20.06.2018 has allowed the said appeal and this court has directed that the Sessions Court has to enquire into the claim regarding the age of the accused as to whether the matter is triable by the Juvenile Justice Board or by this Court in view of Section 14, 15 and 18 of the JJ Act. This Court in the said judgment at para 9 has observed that the order of the learned Sessions Judge does not reflect proper analysis

of the circumstances and document to come to a conclusion regarding age of the appellant-accused as to whether he was below 18 years or there was any enquiry in this connection. After the remand, the learned Sessions Judge has passed the impugned order dated 08.08.2018. In the said order, the learned Sessions Judge has in fact considered the age of the boy, under the provision of Section 34 of the JJ Act and after perusal of the Aadhaar Card and also the Birth Certificate. Both shows that the date of birth of the accused as 23.04.1999. Therefore, the trial Court has come to the conclusion that, the accused has completed the age of 16 years and he was below the age of 18 years and he was a minor as on the date of the alleged incident.

5. Though the learned Sessions Judge has come to the conclusion that the accused was above the age of 16 years and below the age of 18 years, but without referring to the provisions of Sections 15 and 18 of the JJ Act, he himself has simply stated that the accused has committed the heinous offence and it is purely

conferred on the Special Court to decide the age u/s.34 of the JJ Act, and therefore, the Sessions Court has got jurisdiction to proceed with the trial of the case. Accordingly, again the said application was dismissed. Against which order, the present appeal is preferred.

6. Of course, the learned Sessions Judge has got ample power u/s.34 of the JJ Act to determine the age of the Juvenile as on the date of the incident. There is no dispute that the Sessions Judge has enquired into the matter considering the Birth Certificate and the Aadhaar Card, and came to a definite conclusion that the accused was above the age of 16 years and below the age of 18 years. But without referring to Sections 15 & 18 of the Act, the provisions are mechanically mentioned in the order. Further, the learned Sessions Judge has not even cared to look into meticulously the contents of the said provisions. Only on the ground that, the offence is heinous in nature, the Sessions Judge has got power to proceed with the Trial.

7. In this background, it is just and necessary for this court to have the meticulous look at Sections 15

and 18 of the JJ Act to consider whether the Sessions Judge has got any power to pass such an order holding that the offence is heinous in nature and that the accused can be tried by the Sessions Court itself.

8. Sections 15 and 18 of the JJ Act have to be extracted for proper analysis with reference to the facts of this case. The above said provisions reads thus: -

"Section 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- 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,—

Xxxxxxxxxx

xxxxxxxxxx

(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."

9. Section 15 of the JJ Act is a procedure to conduct a Preliminary assessment to consider this type of heinous offence. The said provision specifically says that if the offence is heinous in nature and the accused person has completed the age of 16 years and if he is below the age of 18 years, the Board shall conduct a preliminary assessment with regard to the mental and physical capacity to commit such offence, and also the ability to understand the consequences of the offence and the circumstances in which, he allegedly committed the offence and thereafter, the Board can pass appropriate orders under sub section (2) of section 15 or under sub section (3) of Section 18 of the JJ Act.

10. For the purpose of analyzing and coming to a conclusion to pass order u/s.15 of the JJ Act, the Board has got ample power to take the assistance of an experienced psychologists or Psycho-social workers or other experts. It is also made clear that, if the Board is satisfied on the preliminary assessment and arrived at a conclusion that the Board itself can dispose of the case by following the procedure to try the accused before the

Board itself as contemplated under the provisions of the Cr.PC. and the JJ Act. In such an eventuality, the Board shall not send the Juvenile to the Sessions Court for trial. Therefore, it is crystal clear that such power is exclusively vested with the Board to pass such an order.

The main object of Section 15 is to ascertain and assess the total capacity of the accused on the basis of the facts and on the basis of the expert's opinion if necessary as contemplated under the said provisions. It is not a mechanical power entrusted to the Board. It should also be borne in mind that mere using of the words that "the accused is mentally and physically capable of committing such an offence and ability to understand the consequences and also the circumstances existed to establish the above said factors", but, the Board has to in detail examine with reference to the surrounding circumstances and if necessary after taking expert's opinion has to reason out, why the Board is coming to such a conclusion. But, this has not been taken care of by the learned Sessions Judge while passing the impugned order.

11. Be that as it may, as could be seen from the above said provision, the learned Sessions Judge or the Special Judge or the Child Friendly Court, presided over by the learned Sessions Judge have absolutely no power to pass any order u/s.15 of the Act. It is the statutory power vested with the Board. This has completely lost the sight of the Sessions Judge as could be seen from the order itself.

12. Once the Board comes to the conclusion that the Board has got jurisdiction then the Board shall follow the procedure as contemplated u/s.15 of the JJ Act and to proceed with the trial against the accused. If the Board come to the conclusion otherwise than the above, and after inquiry, the Board is of the opinion that the accused after the preliminary inquiry as contemplated u/s.15, feels that there is a need for trial of the child as an adult, then by giving reasons to the effect that the accused/juvenile is between the age of 16 and 18 years, and he was mentally and physically competent to commit such an offence and he was able to understand the consequences of the offence and also

the circumstances in which he has committed the offence, then only the Board shall pass order of transfer of the case to the Children's' Court/Sessions Court having jurisdiction to try such offence, as specified under section 18(3) of the said JJ Act.

13. Looking from the above said angle, considering the provisions of Sections 15 and 18 of the JJ Act, the II Addl. Sessions Judge, Kolar, had absolutely no jurisdiction to pass order u/s.15 of the JJ Act. The Sessions Court has not even cared to look into the provisions of the Act, but in an over enthusiasm appears to have passed the above said order. Under the above said circumstances, the order is not sustainable either in law or on facts.

14. It is also a notable point that as on the date of the offence, the JJ Act, 2015 had already in force, vide Gazette Notification in Extra Part II dated 1.1.2016. Therefore, all the provisions of the 2015 JJ Act, are applicable to the present facts and circumstances of the case.

With the aforesaid observations, **the Appeal is allowed.** Consequently, the order passed by the learned II Addl. District & Sessions Judge, Kolar in SC No.97/2016 dated 8.8.2018 is hereby set aside. The learned Sessions Judge is hereby directed to refer the matter to the Juvenile Justice Board to pass appropriate order u/s.15 and 18 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

**Sd/-
JUDGE**

PL*