

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 8th OF JULY, 2024

CRIMINAL REVISION No. 3086 of 2022

(SAURABH

Vs

THE STATE OF MADHYA PRADESH AND OTHERS)

Appearance:

(SHRI LAKHAN SINGH PANWAR – ADVOCATE FOR PETITIONER)

(SHRI MUKESH SHARMA – G.A./P.L. FOR RESPONDENT NO.1/STATE)

(NONE FOR RESPONDENT NOS.2 AND 3)

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ORDER

1] None for the respondent Nos.2 and 3 who are juvenile, hence, without disclosing their names, they are being referred to as RV and GS, despite service of notice and despite the fact that earlier, counsel for the respondent No.3 had also filed his Vakalatnama, but has not appeared since last many dates and his right to file the reply has also been closed on 14.12.2023.

2] Heard finally.

3] This criminal revision has been filed under Section 397 read with Section 401 of Cr.P.C. against the order dated 15.06.2022 passed by XIII Additional Sessions Judge, Special Court, Protection of Children from Sexual Offences Act, 2012 in Criminal Appeal No.349 of 2019 arising out of order dated 28.11.2019, passed in Case No.104

of 2019 by Juvenile Justice Board, Indore whereby the application filed by the complainant under Section 15 of The Juvenile Justice (Care and Protection of Children) Act, 2015 (in short ‘the Act of 2015’) has been rejected and it is held that the case does not deserve to be referred to the Children’s Court and can be tried by Juvenile Board only.

4] In brief, the facts of the case are that on 21.02.2019 an FIR was lodged by complainant Sourabh Chouhan to the effect that when he came back to his house at around 11:15 in the night, he heard some voices in the colony and saw that his brother, the deceased Shivam was being assaulted with knife by accused Karan, whereas the other accused persons caught hold of the deceased, including the present respondent No.3. Thus, a report was lodged against four persons, namely, 1. Karan, 2. Bhola Madrasi, 3. RV (the respondent No.2) and 4. GS the respondent No.3 herein. Since the respondent No.2 RV and respondent No.3 GS were aged 14 years 7 months and 16 years 11 months, respectively, hence, their cases were sent to Juvenile Justice Board, where an application under Section 15 of the Act of 2015 was filed by the complainant to try their cases in the Children’s Court. However, the aforesaid application has been dismissed by the Juvenile Justice Board vide order dated 28.11.2019, and being aggrieved, an appeal was preferred under Section 101 of the Act of 2015 before the Sessions court, which was also dismissed, and being aggrieved, the present criminal revision has been preferred.

5] Counsel for the petitioner/complainant has submitted that so far as the respondent No.2 is concerned, admittedly, he was less than 16

years old, hence, the petitioner is not pressing this criminal revision against the respondent No.2, however, so far as the respondent No.3 is concerned, even according to the prosecution case, he was 16 years and 11 months and thus, Section 15 would be applicable in his case considering his mental and physical capacity to commit the offence.

6] Counsel has also drawn the attention of this Court to the preliminary report prepared by the Juvenile Justice Board, including the medical report dated 18.03.2019, submitted by the M. Y. Hospital, Indore wherein it is opined that the subject has the mental and physical capacity to commit the offence. Whereas, as per the Probationary Officer's report dated 15.04.2019, in paras 46 and 48 he has also clearly opined that the physical and mental capacity of the child in conflict with law is good. Counsel has also drawn the attention of this Court to para 44 of the Probationary Officer's report in which he has also observed that earlier a case at Crime No.1769 of 2018 under Sections 354/354D/323/506/34 of IPC and under The Protection of Children from Sexual Offences Act, 2012, Police Station Aerodrome, Indore was also registered against the respondent No.3 in which he has also resided in the *Baal Sampreshan Grah (Children's home/Juvenile home)* for around 20 days.

7] Counsel has also drawn the attention of this Court to various facebook posts of the respondent No.3 in which even prior to, and also subsequent to the offence, his mindset can be seen as he appears to have a propensity to commit offence and takes pride in dominating others. Thus, it is submitted that the learned Member of the Juvenile Justice Board has erred in holding that the respondent No.3 deserves a

chance and an opportunity can be given to him to remedy his mistakes, despite holding that earlier also in a case registered u/s. 354 of IPC, he has resided in the Children's home/juvenile home for around twenty days. Counsel has submitted that the aforesaid approach adopted by the Juvenile Board cannot be sustained as the same is not reasonable and is liable to be set aside. It is also submitted that the learned Judge of the District Appellate Court has also affirmed the order of the Juvenile Board holding that an opportunity to correct his behavior can be given to the juvenile.

8] In support of his submissions, Counsel for the petitioner has relied upon a decision rendered by the Co-ordinate Bench of this Court in the case of **Ojef Khan Vs. State of M.P.** passed in **Cr.R. No.2071 of 2021 dated 21.09.2021** paras 15, 19 and 22.

9] Counsel for the State has submitted that specific allegations have been levelled against the respondent No.3 in the FIR itself and looking to the documents filed on record, it appears to be a just case which can be tried by the Children's Court, instead of Juvenile Justice Board.

10] Heard counsel for the parties and perused the record.

11] So far as Sections 15 and 18 are concerned, which are relevant for the present case, the relevant excerpts of the same read as under:-

“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.

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, [or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter] 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,—

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(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."

(Emphasis Supplied)

12] From the record, it is found that, admittedly, a named FIR has been filed against the respondent No.3 and the other accused persons, and it is not denied that the respondent No.3 was 16 years and 11 months old at the time of incident, and in his medical report he is stated to be mentally capable of committing the offence, whereas in the report submitted by the Probationary Officer, it is also stated that the respondent No.3 is competent to commit the offence physically

and mentally, and it is also observed that he is in bad company and also that earlier he has also been charged under Sections 354 of IPC.

13] Record also reveals that a case at Crime No.1769 of 2018 was registered against the applicant under Sections 354/354D/323/506/34 of IPC and under the POCSO Act, 2012 Police Station Aerodrome, Indore, thus, it was not merely a case u/s.354 of IPC but other offences were also involved including that of POCSO Act. It is also found that other accused in the present case namely, Bhola Madrasi whose criminal antecedents are also provided in the same case, against him as many as four cases have been registered under various provision of IPC and Arms Act. Thus, admittedly, the respondent No.3 was in a bad company and has indulged in criminal activities since he was around 15 years old when he committed an offence u/s.354 of IPC and also under POCSO Act for which he has also spent around twenty days in the Children's home/juvenile home.

14] So far as the facebook posts of the respondent No.3 are concerned, which have been filed on record and have not been rebutted by the respondent No.3 despite service of notice, this Court finds the same to be proof of his demeanor and the lack of respect for law. It is also apparent from the facebook posts that the respondent No.3 who wants to dominate the other likeminded person of his age, as he has even referred to Section 302 in the facebook post dated 02.05.2019.

15] In such circumstances, when the aforesaid copies of the facebook posts were also filed before the Juvenile Justice Board, while arriving at its finding regarding the respondent no.3 u/s.15 of

the Act of 2015, it ought to have taken into consideration the said conduct of the respondent no.3, coupled with the fact that a case u/s.354 of IPC, *i.e.*, outraging the modesty of a woman was also registered against him a year ago.

16] This Court is the considered opinion that when a child in conflict has already committed an offence under Sections 354/354D/323/506/34 of IPC and provisions of the Protection of Children from Sexual Offences Act, 2012 and has already spent twenty days in children's home/juvenile home, and subsequently commits the offence under Section 302 of IPC, any sympathy shown to him is nothing but a misplaced sympathy, resulting only in further promoting his misdemeanor. Thus, no further leniency can be shown to such child in conflict with law to rectify his behavior.

17] In such facts and circumstances, the impugned orders dated 15.06.2022 and 28.11.2019, are hereby set aside and the application filed by the petitioner/complainant under Section 15 of the Act of 2015 is hereby allowed and it is directed that the respondent No.3 be tried before the Children's Court as provided under Section 18(3) of the Act of 2015.

18] With the aforesaid, present criminal revision is **allowed** and **disposed of**.

(SUBODH ABHYANKAR)
JUDGE

Pankaj