

**2023 LiveLaw (SC) 857**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
ABHAY S. OKA; J., PANKAJ MITHAL; J.**

September 26, 2023.

**CRIMINAL APPEAL NO.3023 OF 2023 (Arising out of S.L.P.(Crl.) No.4493 of 2023)**

**AJEET GURJAR *versus* THE STATE OF MADHYA PRADESH**

**Juvenile Justice (Care and Protection of Children) Act, 2015; Section 19(1)(i) - Children's Court must hold an inquiry to determine whether the child should be tried as an adult. (Para 9 - 12)**

(Arising out of impugned final judgment and order dated 09-02-2023 in MCRC No. 36062/2022 passed by the High Court of M.P at Gwalior)

*For Petitioner(s) Mr. Sankalp Sharma, Adv. Mr. Nishant Verma, AOR Mr. Ashish Mukhi, Adv. Ms. Shruti, Adv. Ms. Shisba Chawla, Adv. Mr. Vinay Chadda, Adv.*

*For Respondent(s) Mr. Veer Vikrant, D.A.G. Mr. Yashraj Singh Bundela, AOR Mr. Jitendra Tripathi, Adv. Mr. Pawan, Adv. Ms. Jyoti Verma, Adv.*

**J U D G M E N T**

**ABHAY S OKA,J.**

Leave granted.

2. Heard the learned counsel appearing for the parties.

3. The only issue involved in this appeal is regarding non-compliance with the requirement of clause (i) of subsection 1 of Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "JJ Act") by the Children's Court.

4. For the sake of completion, a brief reference to relevant factual aspects will be necessary. A First Information Report was registered against the accused persons including the present appellant alleging the commission of offences punishable under Sections 302, 307, 147, 148, 149, 395 and 397 of the Indian Penal Code (IPC), 11/13 of the Madhya Pradesh Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981 (MPDVPK Act) and Section 25 and 27 of Arms Act, 1959. The Charge sheet was filed on 12<sup>th</sup> September 2016. On the basis of an order passed under sub-section (3) of Section 18 of the JJ Act, the Juvenile Justice Board transferred the case to the jurisdictional Children's Court. An application was made by the appellant before the Children's Court (a Special Court constituted for trials of offences under the MPDVPK Act) seeking compliance with the requirements of Subsection 1 of Section 19 read with Sections 6 and 15 of the JJ Act. Reliance was also placed in the said application on the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (for short, "JJ Model Rules").

5. The Trial Court rejected the application. In fact, the Trial Court directed that the trial shall proceed further. Being aggrieved by the order of the Trial Court, the appellant invoked the powers of the High Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr. P.C). The High Court rejected the petition. The High Court noted that the charges have been framed against the appellant by the Children's Court. The High Court held that only after complying with the requirement of making the assessment under Section 15 of the JJ Act, an order was passed under sub-section (3) of Section 18 of the JJ Act. The High Court also noted the antecedents of the appellant and the fact that the present age of the appellant was 24 years. Moreover, the High Court held that the Special Court constituted for the trials of the offences under the MPDVPK Act is also a children's Court.

6. We may refer to section 15(1) of the JJ Act which reads thus:

**"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 subsection (3) of section 18:

Provided that for such as 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."

(Emphasis added)

7. What is required to be done by the Juvenile Justice Board is holding an inquiry for making a preliminary assessment with regard to the mental and physical capacity of the juvenile in conflict with law to commit such offence, ability to understand the consequences of the offence and circumstances in which the juvenile has allegedly committed the offence. Based on the preliminary assessment, sub-section 3 of Section 18 empowers the Juvenile Justice Board to pass an order for transferring the trial of the case to the Children's Court which has jurisdiction to try such offences. Thus, the order of transfer is based on only a preliminary assessment.

8. Section 19 of JJ Act reads thus:-

**"19. Powers of Children's Court.** - (1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that -

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18."

(Emphasis added)

9. There are two parts to sub-section 1 of Section 19. The first part requires the children's Court to decide whether there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973. If the Court is satisfied that the child needs to be tried as an adult as per the provisions of Cr.P.C., the Children's Court can proceed with the trial and thereafter pass an appropriate order subject to the provisions of sections 19 and 21 of the JJ Act.

10. Clause (ii) of sub-section 1 of Section 19 is very crucial which indicates that though the word 'may' have been used in the opening part of sub-section 1 of Section 19, the same will have to be read as 'shall'. Clause (ii) provides that after examining whether there is a need for a trial of the child as an adult, if the children's Court comes to the conclusion that there is no need for the trial of the child as an adult, instead of sending back the matter to the Board, the Court itself is empowered to conduct an inquiry and pass appropriate orders in accordance with provisions of Section 18 of the JJ Act. The trial of a child as an adult and his trial as a juvenile by the Juvenile Justice Board has different consequences.

11. Therefore, holding an inquiry in terms of clause (i) of sub-section 1 of Section 19 is not an empty formality. The reason is that if the Children's Court comes to the conclusion that there is no need to try the child as an adult, he will be entitled to be treated differently in the sense that action can be taken against him only in terms of Section 18 of the JJ Act.

12. The observation of the High Court that the order passed under sub-section (3) of Section 18 has attained finality completely ignores that the order under subsection (3) of Section 18 is not a final adjudication on the question of trying the child as an adult. The reason is that the order under sub-section (3) of Section 18 is based on a preliminary assessment made under Section 15. As such order is based only on a preliminary assessment, the law provides for a further inquiry in terms of subsection (1) of Section 19 by the competent Children's Court. Hence, the Children's Court cannot brush aside the requirement of holding an inquiry under clause (i) of sub-section (1) of Section 19.

13. The learned counsel appearing for the appellant pointed out that the Special Court under the MPDVPK Act at Gwalior, Madhya Pradesh is also trying the cases of dacoity and similar serious offences. He pointed out that in the Sessions Court at Gwalior, there is a Special Court under the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') which is also empowered to act as a Children's Court. We direct the learned Sessions Judge at Gwalior to examine this aspect, and if the Special Court under the POCSO Act is a Children's Court and is not already overburdened, he will administratively transfer the case to the said Court.

14. By setting aside the impugned orders, we direct the Special Court to comply with the requirement of subsection 1 of Section 19 of the JJ Act. We expect the Special Court to decide the issue as expeditiously as possible. While holding an inquiry as contemplated by sub-section 1 of Section 19, the concerned Court shall have regard to provisions of Rule 13 of the Modal Rules framed under the JJ Act.

15. The appeal is allowed on the above terms.

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