

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 28.02.2023
Pronounced on: 10.03.2023

Crl.A(S) No. 2/2022

Master X th. Shah WaliAppellant(s)/ Petitioner(s)

Through: - Mr. Rakesh Chargotra. Advocate
Vs.

State of J&K and another ...Respondent(S)

Through: - Mr. Vishal Bharti, Dy. AG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellant has filed the instant appeal under Section 101 (5) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred as the JJ Act) challenging order dated 17.03.2022 passed by learned Principal Sessions Judge, Samba, whereby the learned Sessions Judge has after entertaining a revision petition against order of the Juvenile Justice Board, Samba granting bail to the appellant, set aside the said order.

2) It appears that on 12.01.2021 at about 6. AM, while the victim lady aged about 65 years was walking on the road side, she was overpowered by three accused persons and was raped by them one after the other. Accordingly, FIR No. 08/2021 for offences under Sections 376-D, 366, 506, 323 and 212 IPC was registered with the Police Station, Vijaypur and the

investigation was set into motion. After conducting the investigation, the aforesaid offences were found established against accused, Mohd. Anwar, Showkat Ali, Mohd Din, Mushtaq Ahmad, Fareed Ahmad and the petitioner herein. Charge sheet against the adult accused was laid before the Principal Sessions Judge, Samba, whereas supplementary charge sheet against the petitioner, who happens to be a juvenile, was laid before the Juvenile Justice Board, Samba.

3) It appears that the petitioner herein filed an application for grant of bail before the Juvenile Justice Board, Samba and he was granted interim bail in terms of order dated 10.03.2021 passed by the Juvenile Justice Board and the said interim bail was made absolute on 22.03.2021. It is pertinent to mention here that the respondents had moved an application for cancellation of the bail before the Juvenile Justice Board, Samba and the said application was also dismissed by the Juvenile Justice Board in terms of the order dated 22.03.2021. Both the aforesaid orders came to be challenged by the respondent by way of a revision petition before the learned Principal Sessions Judge, Samba (Children's Court) and vide the impugned order, the petition was allowed and the orders passed by the Juvenile Justice Board, Samba were set aside.

4) The petitioner has challenged the impugned order primarily on the ground that the Principal Sessions Judge, Samba, while exercising the powers of the Children's Court or of a Sessions Judge did not possess the power of revision in terms of the provisions contained in the Juvenile Justice Act and as such, the impugned order passed by the learned Principal

Sessions Judge, Samba is without any jurisdiction. It has further been contended that the learned Principal Sessions Judge, Samba has set aside the order of the Juvenile Justice Board without assigning any reasons.

5) I have heard learned counsel for the parties and perused the record of the case.

6) Learned counsel for the petitioner while addressing his arguments has reiterated his contentions made in the petition. On the other hand, learned counsel for the respondent has submitted that the petitioner, even though, a juvenile, has been found involved in a dastardly crime of gang rape of a 65 years old lady, as such, he does not deserve the concession of bail.

7) Before testing the rival contentions made by the learned counsel for the parties, it would be apt to notice the legal position with regard to the maintainability of the revision petition against an order granting bail by the Juvenile Justice Board. In this regard, certain provisions of JJ Act need to be noticed.

8) Section 1 (4) of the JJ Act gives overriding effect to the provisions of the JJ Act. It reads as under:

HIGH COURT
JAMMU & KASHMIR AND LADAKH

“1(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 reintegration 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.”

9) From a perusal of the aforesaid provision, it is clear that the provisions of Juvenile Justice Act would apply to all matters concerning the children in need of care and protection and children in conflict with law.

10) So far as the powers of appeal and revision are concerned, the same are provided under Sections 101 and 102 of the JJ Act, which read as under:

“101. Appeal.—(1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children’s Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate:

Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.

(2) An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.

(3) No appeal shall lie from,—

(a) any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or

(b) any order made by a Committee in respect of finding that a person is not a child in need of care and protection.

(4) No second appeal shall lie from any order of the Court of Session, passed in appeal under this section.

(5) Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973.

102. Revision.--The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.”

11) From a perusal of the afore noted provisions, it is clear that any person aggrieved of the order of the Juvenile Justice Board made under the Act has a right to prefer an appeal before the Children's Court within a period of thirty days. It further provides that no such appeal lies from the order of Court of Sessions passed in an appeal. Sub Section (5) quoted above, provides that any person aggrieved by an order of the Children's Court has right to file appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973. Children's Court as per Section 2(20) of the JJ Act means a Court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the POCSO Act 2002. In the absence of these special Courts, it means the Court of Sessions having the jurisdiction

12) The revisional powers in terms of Section 102 of the JJ Act have been vested with the High Court and no such power is vested with the Court of Sessions or Children's Court. As already noted that Section 1(4) of JJ Act gives an overriding effect to the provisions contained in said Act. Besides this, Section 5 of the Cr. P.C. provides that nothing in the Code can affect

any special or local law or any special jurisdiction or power conferred by any other law in the absence of the provision to the contrary, meaning thereby that the provisions of the Code of Criminal Procedure would not apply to a matter which is covered by provisions contained in the JJ Act.

13) As already noted, the power of revision has been vested with the High Court in terms of Section 102 of the JJ Act. The Court of Sessions or the Children's Court has not been vested with such powers under the said Act. Thus, the applicability of provision relating to the revision i.e. Section 397 of Cr.P.C. has been ousted by Section 1 (4) of JJ Act, read with Section 5 Cr.P.C. because the matters relating to the revision are provided for in the JJ Act, which is a special legislation.

14) In view of the above, the learned Sessions Judge either in her capacity as Sessions Court or in her capacity as Children's Court has grossly fallen into an error by entertaining a revision petition against the order of the Juvenile Justice Board. Although, in the title of the impugned “revision/appeal” has been mentioned, yet the petition before the Session Judge has been registered as a revision petition and the learned Sessions Judge has treated it as a revision petition which is clear from the reference to the provisions contained in Section 397 of Cr.PC. in the impugned order. In fact, it has been specifically stated in the impugned order that revision petition is allowed. This clearly goes on to show that the learned Sessions Judge has, while passing the impugned order, exercised its revisional jurisdiction, which was not vested with her in terms of the provisions of the JJ Act. In view of the overriding effect of the provision of the JJ Act, the

learned Sessions Judge could not have invoked the provisions of Cr.P.C. to exercise revisional powers. The impugned order being without jurisdiction, is liable to be set aside on this ground alone.

15) It has been contended by the learned counsel for the respondents that in the instant case, the learned Sessions Judge has, in her capacity as Children's Court, exercised appellate jurisdiction in terms of Section 101 of the JJ Act. The argument appears to be misconceived because the order impugned cannot be termed to have been passed in exercise of the appellate jurisdiction as the limitation for filing appeal against the order passed by the Juvenile Justice Board is 30 days and unless this period is extended by the appellate court, the appeal cannot be entertained. In the impugned order, it is nowhere mentioned that the delay in filing of the appeal has been condoned, when admittedly the order of the Juvenile Justice Board had been called into question after the expiry of 30 days. This clearly goes on to show that the learned Sessions Judge has entertained the petition as a revision petition and not as an appeal. Therefore, the contention of the learned counsel for the respondents that because the learned Sessions Judge has exercised the appellate jurisdiction, as such, the instant appeal is not maintainable because it amounts to second appeal against the order of Sessions Judge, is without any merit.

16) Apart from the above, if we have a look at the impugned order passed by the learned Sessions Judge, no reasoning much less a sound reasoning has been given by her for setting aside the order of the Juvenile Justice Board. Merely repeating the contentions of the parties and quoting the case law and

the provisions of law, does not make an order well reasoned. While passing a judgment, a Court is expected to apply the statutes and precedents to the facts of that particular case and record a brief discussion in the judgment in this behalf. The learned Sessions Judge has not recorded any ground for coming to the conclusion that the order of the Board is not in accordance with law. Even though, the impugned order is running into twelve pages, but it is devoid of any reasons. Such an order cannot be sustained in the eyes of law.

17) For the foregoing reasons, the petition is allowed and the impugned order dated 17.03.2022 passed by learned Principal Sessions Judge, Samba is set aside and the petitioner is directed to be released on bail in accordance with the directions dated 10.03.2021, read with directions dated 22.03.2021 passed by the Juvenile Justice Board, Samba.

Jammu
10.03.2023
Karam Chand/Secy.

*Whether the order is speaking:
Whether the order is reportable:*

*Yes/No
Yes/No*

**(SANJAY DHAR)
JUDGE**