

HON'BLE SMT. JUSTICE G.ANUPAMA CHAKRAVARTHY

CRIMINAL REVISION CASE No. 255 of 2023

ORDER:

The criminal revision case is filed seeking to set aside the order in criminal appeal No.51 of 2023 in S.C.PCS.No.380 of 2022, dated 31.03.2023 on the file of Special Judge for Trial of Protection of Children from Sexual Offences Act Cases-cum-XII Additional Metropolitan Sessions Judge for the Trial of Cases under POCSO Sexual Offences, Hyderabad confirming the order passed in C.C.No.322 of 2022 dated 30.09.2022 on the file of V Additional Chief Metropolitan Magistrate Court-cum-Principal Magistrate of Juvenile Justice Board, Hyderabad.

2. Heard Sri Vinod Kumar Deshpande, learned Senior Counsel representing Ms.Devineni Radha Rani, learned counsel for the petitioner and Sri C.Pratap Reddy, learned Public Prosecutor appearing for respondent. Perused the record.

3. It is the specific contention of the learned Senior Counsel that the orders were passed treating the Juvenile as adults and there are deviations in the orders of the learned Magistrate as well as

Member and there is non-supply of documents to the child/parent/guardian as contemplated by the Act as well as the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. Further, it is contended that petitioner was apprehended by the Police on 04.06.2022, entire Preliminary assessment report was concluded within one day in a hasty manner. It is contended by the learned Senior Counsel that the orders of the Hon'ble Supreme Court are not properly complied by the Courts below and inspite of specific directions to the Juvenile Courts as per the judgment of **Barun Chandra Thakur Vs. Master Bholu and another**¹ , wherein, it has categorically issued the guidelines to be followed by the Juvenile Justice Board as well as the Committee and the Court in view of the various crimes committed by the Juveniles.

4. On perusal of the record, it is evident that C.C.No.322 of 2022 was disposed of by V Additional Chief Metropolitan Magistrate-cum-Principal Magistrate of Juvenile Justice Board, Hyderabad on 30.09.2022. The order of the learned Magistrate clearly discloses that the Board Member has submitted preliminary

¹ 2022 SCC Online SC 870

assessment report on 28.09.2022 agreeing with the opinion of the psychiatrist that CCL Nos.1 to 4 have mental and physical capacity but deferred on the aspect of the CCLs capacity to understand the legal consequences of their actions. Further observation made by the learned Magistrate is that CCLs may have been lured by the welcoming approach of the victim and that the CCLs do not have legal education and unable to understand the legal consequences, however, learned Magistrate deferred with the observations of the Board Member. Whether the victim lured the CCLs or not, is an issue of fact and cannot be determined at this stage. It is only an enquiry to assess the physical and mental ability of the CCLs and to assess whether they understand the consequences of the offence or not. The learned Magistrate further observed that she interacted with the CCLs, and she is of the opinion that CCLs have mental and physical capacity and also understand the consequences of the offence. Therefore, the learned Magistrate has transmitted the case to XII Additional Metropolitan Sessions Judge, Nampally for further prosecution of the case under POCSO Act.

5 It is the contention of the learned Senior Counsel for the petitioner that the Board Member, Psychiatrist Member and the learned Magistrate together have come to a conclusion about the physical and mental ability of the Juveniles and it has to be completed within a period of three months. But the Board, including the learned Magistrate, has completed within a period of two months as to the physical and mental ability of the petitioner herein and they completed in hasty manner. It is further contended that as the petitioner was apprehended on 04.06.2022, the enquiry has to be completed by 04.09.2022, but as per the proceedings dated 28.09.2022, assessment was concluded in one day, which shows, the assessment has been made in a hasty manner. Therefore, prayed to set aside the order passed in calendar case as well as in the Appeal.

6. On the other hand, learned Assistant Public Prosecutor contended that there is no duty upon the Board to serve all the copies to the petitioner likewise to the other accused under Cr.P.C. and the participation of the Juvenile itself is sufficient until and unless juveniles seek for the copies of the documents.

7. Learned Senior Counsel for petitioner contended that Rule 10(5) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 prescribes that any offences alleged to have been committed by a child, who has completed the age of sixteen years, Child Welfare Police Officer shall produce the statements of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board, a copy of which shall also be given to the child or parent or guardian of the child. In the present case, no such documents were handed over to the Juveniles.

8. On the other hand, learned Public Prosecutor contended that the Juveniles have participated in the criminal enquiry and no request has been made for production of those documents and as such they were not being supplied.

9. At this juncture, learned Senior Counsel appearing for the petitioner has relied on the **Barun Chandra Thakur's case (supra)**, wherein it is held:

“81. We are conscious of the fact that the power to make the preliminary assessment is vested in the Board and also the Children's Court under sections 15 and 19 respectively. The Children's Court, on its own, upon a matter being referred to under section 18(3), would still examine whether the child is to be tried as an adult or not, and if it would come to the conclusion that the child was not to be tried as an adult then it would itself conduct an inquiry as a Board and pass appropriate orders under section 18. Thus, the power to carry out the preliminary assessment rests with the Board and the Children's Court. This Court cannot delve upon the exercise of preliminary assessment. This Court will only examine as to whether the preliminary assessment has been carried out as required under law or not. Even the High Court, exercising revisionary power under section 102, would test the decision of the Board or the Children's Court with respect to its legality or propriety only. In the present case, the High Court has, after considering limited material on record, arrived at a conclusion that the matter required reconsideration and for which, it has remanded the matter to the Board with further directions to take additional evidence and also to afford adequate opportunity to the child before taking a fresh decision.

82. In arriving at the conclusion, the High Court firstly held that there was denial of adequate opportunity to the respondent. The list of documents, copies of the documents, copies of the statement, the SIR not being provided to the respondent, was in clear violation of rule 10(5) of the Model Rules.

83. Despite specific request for cross-examining the experts who had given the report, the same was not provided to the respondent. The tests conducted by the expert psychologists were not applicable or could not have been applied to a child above the age of 15 years. It

could have been applied only for children below the age of up to 15 years in one test and up to 11.5 years in the other test. The psychologist had suggested for further assessment by a superior facility, which was not accepted by the Board without cogent reason.

84. The mental age as per the applicable formula based on the IQ of the child would be less than 16 years. The Board, provided only 30 minutes time to the child, his lawyer, his father and also to the counsel for CBI to peruse the 35 pages of the report, which was too little to peruse and comprehend and give any evidence in rebuttal. The CBI counsel had admitted that it did not have officers or the required infrastructure to conduct the investigation under the Act,2015. For all the above reasons, the High Court remitted the matter to the Board after setting aside both the orders of the Board and the Children's Court to consider afresh and assess the intelligence, maturity, physical fitness and as to how the child in conflict with law was in a position to know the consequences of the offence. The exercise was to be undertaken within a period of six weeks. The High Court further directed that while conducting the preliminary assessment afresh, opinion of the psychologist of the Government Hospital (Institute of Mental Health, University of Health Sciences, Rohtak) be obtained. This Court may not agree with the reasoning given by the High Court on all counts and also the direction given for conducting further tests. However, we have no hesitation in agreeing with the ultimate result of the High Court in remanding the matter for a fresh consideration after rectifying the errors on lack of adequate opportunity.”

10. The learned Senior counsel appearing for the petitioner, further contended that learned Magistrate ought to have considered that there was a denial of adequate opportunity for the juveniles as

the documents were not supplied as per Rule 10(5) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. The learned counsel has also relied on Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which reads as follows;

Revision: The High Court may, at any time, either on its own motion on an application received in this behalf, call for the record of any proceeding 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.

In the present case, the same is not done, and as such, opportunity was not given to the CCLs.

11. On perusal of the order passed by the learned Magistrate, it could be understood that the learned Magistrate has deferred with the findings of the Board Member that the CCLs do not have legal education, and hence, are unable to understand the legal consequences. It is specifically stated by the learned Magistrate

that she has interacted with the CCLs and came to an opinion that the CCLs have mental and physical capacity and they also understand the consequences of their acts. But, proper reasons have not been assigned by the learned Magistrate as to how she has come to an opinion that they are able to understand the consequences of their acts.

12. Considering the rival contentions made by the learned Senior Counsel appearing on behalf of the petitioner as well as the learned Public Prosecutor, it is evident that within one day the entire assessment was done and the learned Magistrate has also deferred with the Board Member's findings and came to a conclusion that on interaction she is of the opinion that the CCLs are mentally and physically fit and can be prosecuted as adults.

13. Therefore, this Court deems it appropriate to remand the matter to the V Additional Chief Metropolitan Magistrate-cum-Principal Magistrate of Juvenile Justice Board for conducting enquiry afresh as contemplated under Rule 10(5) of the Juvenile

Justice (Care and Protection of Children) Model Rules, 2016 and for passing orders afresh.

14. Accordingly, the impugned order passed by the learned Magistrate as well as the appellate Court are hereby set aside and the matter is remanded back to V Additional Chief Metropolitan Magistrate-cum-Principal Magistrate of Juvenile Justice Board for conducting fresh preliminary enquiry, after supplying copies of documents to the parties by 03.05.2023 and after giving opportunity to the CCLs as per aforesaid Rules.

15. With the above observations, this criminal revision case is disposed of.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 24.04.2023

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