

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Revision No. 407 of 2018.

Date of decision: 28.05.2019.

State of Himachal Pradesh

...Petitioner.

Versus

Happy

...Accused/Respondent.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? **No**

For the Petitioner : **Mr. Vinod Thakur and Mr. Sudhir Bhatnagar, Additional Advocate Generals with Mr. Bhupinder Thakur, Deputy Advocate General and Mr. Ram Lal Thakur, Assistant Advocate General.**

For the Respondent : **Mr. Balbir Singh Ranta, Advocate.**

Tarlok Singh Chauhan, Judge (Oral)

The State has assailed the judgment of acquittal passed by the Principal Magistrate, Juvenile Justice Board, Bilaspur, H.P. on 30.10.2017, in Case No.4/3 of 2010, whereby she acquitted the juvenile under Sections 20 & 29 of the Narcotic Drugs and Psychotropic Substances Act (for short 'Act').

2. Even though the judgment has been assailed on merits, however, the moot question is as to whether the Principal Magistrate while sitting singly could have finally decided/disposed of the case. The

Whether reporters of Local Papers may be allowed to see the Judgment ? yes

case was instituted on 28.09.2010 when the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'Act of 2000') was in operation.

3. Section 2 (c) defines Board in the following terms:

“(c) “Board” means a Juvenile Justice Board constituted under Section 4.”

4. Section 2(l) of the Act of 2000 reads thus:

“juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.”

5. Only sub-section (2) of Section 4 is relevant for the determination of the instant lis and reads thus:

“(2). A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973, on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class and the Magistrate on the Board shall be designated as the Principal Magistrate.”

6. Thus, it is clear that a Juvenile Justice Board is to be three members Board consisting of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and

every such Bench has been vested with the powers conferred by the Code of Criminal Procedure, on a Metropolitan Magistrate or, as the case may be, or a Judicial Magistrate of the first class and the Magistrate on the Board is to be designated as the Principal Magistrate.

7. As regards the procedure etc. to be followed by the Board, the same is provided in Section 5 and sub section (3) thereof reads as under:

“3”. A Board may act notwithstanding the absence of any member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings:

Provided that there shall be at least two members including the principal Magistrate present at the time of final disposal of the case.”

8. It is not in dispute that the case was decided at the time when the Act of 2000 was repealed and the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short Act of 2015) had come into force.

9. It would be noticed that even under this Act, the Board has been defined in Section 2 (10) in the following terms:

“(10). “Board” means a Juvenile Justice Board constituted under Section 4.”

10. Section 2 (13) of the Act of 2015, reads thus:

“child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

11. It would further be noticed that even though there are some changes in the qualifications of the Members of the Board. However, the composition remains the same and such Board is to comprise of three Members as provided in sub-section (2) of Section 4, which reads thus:

“(2). A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973, on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.”

12. Likewise, the procedure in relation to the Board has been provided under Section 7 of the Act of 2015 and sub section (3) whereof is *pari-materia* with sub section (3) of Section 5 of the Act of 2000 and reads thus:

“(3). A Board may act notwithstanding the absence of any member of the Board, and no order passed by the Board

shall be invalid by the reason only of the absence of any member during any stage of proceedings:

PROVIDED that there shall be atleast two members including the Principal Magistrate present at the time of final disposal of the case or in making an order under subsection (3) of Section 18.”

13. At this stage, the Court is not going into the thicket of the controversy as to which of the Acts would govern the proceedings. However, in view of the legal provisions extracted above, it is abundantly clear that under both the Acts, the cases of “juvenile in conflict with law” and “child in conflict with law”, as the case may be, can be disposed of finally only by at least two members including the Principal Magistrate present at the time of disposal of such case. No individual Member including the Principal Magistrate and no two Members excluding the Principal Magistrate can finally dispose of the case.

14. The Principal Magistrate could not have finally disposed of the case in contravention of the provisions of the Act(s) supra and, therefore, the order passed by it is *coram non judis* and being nullity is void, ab initio.

15. It is well settled and needs no authority that “*where a Court takes upon itself to exercise a jurisdiction it has not possessed its decision amounts to nothing*”. Consequently, any order passed by the Court having no jurisdiction is *non est* and its invalidity can be set

up when it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. Any order passed by such authority is *coram non judis*.

16. This aspect of the matter has been considered by the Hon'ble Supreme Court in **Hasham Abbas Sayyad vs. Usman Abbas Sayyad and others**, AIR 2007 (SC) 1077, wherein it was held as under:

"[21] The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice being a nullity, the same ordinarily should not be given effect to.

[22] This aspect of the matter has recently been considered by this Court in Harshad Chiman Lal Modi V/s. DLF Universal Ltd. and Another, 2005 7 SCC 791, in the following terms :

"We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement

of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity."

See also Zila Sahakari Kendrya Bank Maryadit v. Shahjadi Begum & Ors., 2006 (9) SCALE 675 and Shahbad Co-op.Sugar Mills Ltd. v. Special Secretary to Govt. of Haryana & Ors. 2006 (11) SCALE 674 para 29]

[23] We may, however hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Sec. 21 of the Code of Civil Procedure; and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with."

17. Consequently, the Criminal Revision is allowed and the impugned judgment passed by the Principal Magistrate, Juvenile Justice Board, Bilaspur, on 30.10.2017, in Case No.4/3 of 2010 is *coram non judis* and is accordingly quashed and set aside. The case is remanded to the Juvenile Justice Board, Bilaspur, for deciding the case afresh in accordance with law after hearing both the parties.

18. Hearing expedited to be completed as expeditiously as possible and preferably by **30th September, 2019**. Registry is directed to send the records of the case back to the concerned Court forthwith.

19. The revision petition is disposed of in the aforesaid terms.

28th May, 2019.
(krt)

(Tarlok Singh Chauhan)
Judge

High Court of H.P.