

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**MISCELLANEOUS APPLICATION NO.381 OF 2019
IN
SPECIAL LEAVE PETITION (CRL.) NO.709 OF 2019**

**SOLEMEN SK. Petitioner (s)
VERSUS**

THE STATE OF WEST BENGAL Respondent(s)

O R D E R

The petitioner was convicted under Section 307 IPC and sentenced to three years imprisonment. The order of conviction and sentence was affirmed by the High Court.

An application under Section 9 (2) of the Juvenile Justice (care and protection of children) Act, 2015 (Juvenile Justice Act, 2015) is filed seeking a declaration that he was a Juvenile on the date of the offence in the disposed of Special Leave Petition.

By an order dated 25.2.2019, we directed the District and Sessions Judge, Berhampore, Murshidabad, West Bengal to conduct an enquiry under Section 9(2) of the Juvenile Justice Act, 2015 regarding the Juvenility of the petitioner on the date of offence i.e. 28.08.2004 and submit a report. The Report of the District and Sessions Judge, Berhampore, Murshidabad, West Bengal is placed before us. As per the report, the date of birth of the petitioner is 30.02.1987 and he was 16 years 7 months and 28 days on the date of offence i.e.

28.08.2004. On a perusal of the report, we are convinced that the enquiry was conducted in conformity with Section 9 (2) the Juvenile Justice Act, 2015.

The school records have been verified and found to be genuine and there was no other evidence to show that the school records cannot be relied upon.

Accepting the report submitted by the District and Sessions Judge, we are of the opinion that the petitioner was a Juvenile on the date of offence. Under Section 18 of the Juvenile Justice Act, on the basis of the finding that the petitioner is a Juvenile, he would be a child in conflict with law. In the normal course, he has to be referred to the Board for being dealt with suitably. The board after conducting an enquiry may pass any of the following orders:

(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, 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,–

- a. allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;
- b. direct the child to participate in group counselling and similar activities;
- c. order the child to perform community service under the supervision of an

organisation or institution, or a specified person, persons or group of persons identified by the Board;

d. order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

e. direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

f. direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

g. direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety."

As the offence was committed in 2004, we do not feel it appropriate to send the petitioner to be dealt with by the Board. Instead, we are of the opinion that the ends of justice would be met by directing the petitioner who is now a registered medical practitioner

aged 32 years, practicing in Murshidabad to perform community service. The learned counsel for the state suggested that this obligation of performing community service could be met with by a direction being to the petitioner to plant trees. We accept the suggestion made by the learned counsel for the petitioner and direct the petitioner to plant 100 trees within a period of one year.

In the aforementioned view, the sentence of the petitioner is set aside. He may be released forthwith.

Miscellaneous application stands disposed of accordingly.

.....J.
(L. NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

NEW DELHI;
12th July, 2019

ITEM NO.32

COURT NO.12

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

MA No.381 of 2019 in Petition for Special Leave to Appeal (Crl.)
No.709/2019

SOLEMAN SK.

Petitioner(s)

VERSUS

THE STATE OF WEST BENGAL

Respondent(s)

(IA No. 24824/2019 - APPLICATION U/S 7-A [9(2) old] OF JUVENILE
JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015)

Date : 12-07-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s) Mr. Pijush K.Roy,Adv.
Ms. Kakali Roy,Adv.
Mr. Rajan K. Chourasia, AOR

For Respondent(s) Mr. Suhaan Mukerji,Adv.
Ms. Astha Sharma,Adv.
Mr. Amit Verma,Adv.
Mr. Abhishek Manchanda,Adv.
Ms. Kajal Dalal,Adv.
Mr. Prastut Dalvi,Adv.
Ms. Dimple Nagpal,Adv.
M/S. PLR Chambers And Co., AOR

UPON hearing the counsel the Court made the following
O R D E R

The sentence of the petitioner is set aside. He
may be released forthwith.

M.A. stands disposed of accordingly.

(B.Parvathi)
Court Master

(Sunil Kumar Rajvanshi)
Court Master

(Signed order is placed on the file)