268+645 CRM-1791-2023

IN/AND CRA-D-56-2022

DEVENDER @ SACHIN V/S STATE OF HARYANA

Present: Mr. Atul Lakhanpal, Senior Advocate, with
Ms. Caral, Advocate, and
Mr. Siddhart Chawla, Advocate,
for the appellant.

Mr. Apoorv Garg, Senior DAG/Public Prosecutor, Haryana.

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1. Present application has been filed by the applicant/appellant seeking suspension of sentence of the applicant/appellant during the pendency of the present appeal.

2. Learned Senior counsel for the accused/appellant states that the accused was a minor, and the Juvenile Justice Board had, vide order dated 15.09.2020 made a preliminary assessment in terms of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015, and held him to be triable as an adult as per Section 18 (3) of the Juvenile Justice Act, 2015.

Learned Senior counsel for the applicant/appellant submits that although the said order was not challenged, *prima facie* the order itself passed by the Juvenile Justice Board was defective as it did not comply with the requirements under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015, as no psychological assessment of the child, who was only 17 years of age, was undertaken before reaching to the said conclusion.

Learned Senior counsel for the applicant/appellant further submits that after the order was passed by the Juvenile Justice Board, it was incumbent upon the Additional Sessions Judge (Children Court), Hisar, to have again conducted a regular inquiry to reach to an independent conclusion in terms of Section 19(1) of the Act, to assess whether the child in conflict with law was having any knowledge of repercussion of his conduct and whether he was to be tried as an adult.

3. Relying upon a recent judgment passed by Hon'ble the Supreme Court in the case titled as ***"Ajeet Gurjar vs. State of Madhya Pradesh, 2024 ALL SCR (Crl) 618,*** passed in criminal appeal No.3023 of 2023 arising out of SLP (Crl.) No.4493 of 2023, learned Senior counsel submits that learned Additional Sessions Judge directly framed charges against the accused child in conflict with law and proceeded to examine witnesses. When statement of PW-1 was recorded on the same day, we find from the order sheets that the concerned Additional Sessions Judge, Hisar Mr. Ved Parkash Sirohi, after recording evidence of PW-1 on the same day reaches to a conclusion that PW-1 namely Pooja has given false evidence as her statement is contrary to the statement given by her before the police, and he has also issued show cause notices under Section 344 Cr.P.C. Not only this, he decides the show cause notice under Section 344 Cr.P.C. on that very day, and imposes fine of Rs.500/- upon PW-1 admitting her guilt to have given a false statement.

Similarly, he records the statement of PW-4 on the next date, and reaches to the conclusion that PW-4, who had turned hostile, has

given a false statement, and therefore, he also has been punished with fine of Rs.500/-.

4. We are extremely pained and shocked by the manner by which the concerned Additional Sessions Judge, Hisar, has conducted himself. We find that learned Judge has proceeded with an assumption that the statement made under Section 161 Cr.P.C. before the police is the truthful statement and the statement made in the Court is a false evidence and also proceeds to impose punishment on the concerned witness. Thus, even before the case was decided finally on 13.12.2021, the witnesses who stated in favour of the accused, have been held guilty of giving false statements, which is a course totally against the true spirit of criminal jurisprudence. It appears to us that the learned Judge requires training on the subject.

5. We do not want to make any further comment on the concerned officer, as he is not before us. However, it is a fit case where we should refer the matter to Hon'ble the Chief Justice to take appropriate administrative action, if he deems it so fit against the concerned officer.

6. On perusal of the judgment passed by Hon'ble the Supreme Court in the case of **Ajeet Gurjar (supra)**, we find following observations:-

> *"**6.** We may refer to section 15(1) of the JJ Act which reads thus:*
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> *"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 sub-section (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."*

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.*

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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 sub-section (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 sub-section (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."*

7. Thus, the proceedings initiated by the Children Court as against the appellant *prima facie* are vitiated. However, the situation does not end here. In the final judgment pronounced by another Additional Sessions Judge, who had succeeded the earlier Additional Sessions Judge/trial Judge, it would be apposite to quote the order relating to the sentence awarded to the appellant.

> *"**6.** Hon'ble Punjab and Haryana High Court in case titled as **Master Bholu versus CBI, 2018 (3) R.C.R. (Criminal) 357** discussed the provisions of Section 21 of Juvenile Justice Act. The relevant part of the said judgment is reproduced as under:*
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> > *"In the present case, the bare perusal of Section 21 of Juvenile Justice Act would reveal that any sentence other than 'death' and 'life imprisonment without the possibility of release' can be imposed upon a child in conflict with law. It is apposite to mention herein that with the passage of time, two types of life imprisonment have been recognized by our courts, which may be awarded to an accused. In this regard, reference may be made to the decision of a Constitutional Bench of Hon'ble the Apex Court in the case of **Union of India versus Sriharan, 2016(1) R.C.R. (Criminal)***

> ***334****, wherein it has been held that the imprisonment for life, in terms of Section 53 read with Section 45 IPC, means imprisonment for the rest of the life of the convict. However, it has been held that a convict, who has been awarded life imprisonment, would have right to claim remission etc., as proved under Article 72 and 61 of the Constitution of India, as the case may be. Further Hon'ble Constitutional Bench confirmed the view that the courts can, in certain case, create a special category of sentence- where, instead of 'death', they can impose a punishment of imprisonment for life- but, put the same beyond the application of the provisions of 'remission'. Thus, in certain cases, it is open for the court to grant life sentence to a convict but take away his right to seek remission etc. and thereby ruling out any possibility of release. It is such a category of 'life imprisonment' without the possibility of release that has been excluded in the case of child in conflict with law, by virtue of Section 21 of the Juvenile Justice Act. However, a sentence of life imprisonment simpliciter can always be imposed upon the child in conflict with law."*

7. *In view of the provisions of Section 21 of Juvenile Justice Act and in view of case law of* ***Master Bholu versus CBI's case (supra)****, it is clear that the child in conflict law can be awarded life imprisonment simpliciter for the offence punishable under section 302 IPC and he can be released as per Section 20 of Juvenile Justice Act, 2015 if such child has undergone reformative changes.*

8. *In view of the above discussed principles, this Court is of the considered view that the ends of justice shall be fully met if the child in conflict with law is sentenced to undergo imprisonment for life simpliciter and to pay a fine of* ***Rs.10,000/-*** *and in default of payment of fine, he would undergo simple imprisonment for a period of* ***three months*** *for the*

> *offence punishable under section **302 IPC**. He is also sentenced to undergo simple imprisonment for a period of seven years and to pay a fine of **Rs.10,000/-** and in default of payment of fine, he would undergo simple imprisonment for a period of **three months** for the offence punishable under section **25 of Arms Act**. Both the sentences shall run concurrently. The period of detention already undergone by the child-in-conflict with law during the investigation and trial of the case be set off against the substantive sentence."*

8. In view of the aforesaid order of sentence, the appellant has already undergone total sentence of 4 years 3 months and 21 days, out of which he remained in Central Jail, Hisar-1 for 1 year 6 months and 13 days, and in Place of Safety, Madhuban, for 2 years 9 months and 8 days.

9. Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2015, provides as under:-

> *"**21. Order that may not be passed against a child in conflict with law:-***
> *No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force."*

10. In the opinion of this Court *prima facie* the applicant/appellant, therefore, could not have been sentenced to life imprisonment, as the eye-witnesses had turned hostile.

11. In view of the above, as the applicant/appellant has already suffered sentence of 4 years 3 months and 21 days, we are inclined to

allow present application, and thus, suspend the further sentence of the applicant/appellant and release him on bail during the pendency of present appeal. He shall be released on bail, subject to his furnishing bail bonds in the sum of Rs.2,000/- with one surety in the like amount to the satisfaction of the concerned Chief Judicial Magistrate/Duty Magistrate.

Application stands disposed of.

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List again on 24.10.2024.

Copy of this order be sent to the Hon'ble Chief Justice on the administrative side.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

September 26, 2024
Lavisha