

X Minor Thr. Father Natural Guardian Vs State and Others

Court: Delhi High Court

Date of Decision: April 17, 2012

Acts Referred: Constitution of India, 1950 " Article 227, 39

Criminal Procedure Code, 1973 (CrPC) " Section 227A, 363, 372, 482

Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009 " Rule 3(1), 3(2), 99

Juvenile Justice (Care and Protection of Children) Act, 2000 " Section 15, 15(1), 19(2), 21, 21(1)

Citation: (2012) 5 AD 192 : (2012) CriLJ 4482

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: A.J. Bhambhani, Ms. Bhavita Modi and Ms. Lakshita Sethi, for the Appellant; Dayan Krishnan, ASC for State with Inspector Vinod Pal PS Neb Sarai. Mr. Y.S. Chauhan and Mr. Madhav Singh for R-2 with R-2 in person, for the Respondent

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. The Petitioner is a 12 year old victim in case FIR No. 04/2009 u/s 376/342 IPC registered at PS Neb Sarai. On registration of FIR, an inquiry

for age determination of Respondent No. 2 was conducted and Respondent No. 2 was found to be juvenile at the time of committing the alleged

offence. Thus, an enquiry was conducted by the Juvenile Justice Board-II. The proceedings in the inquiry qua Respondent No. 2 culminated on 8th

July, 2011, however the Petitioner is not aware of its final outcome. The Petitioner was orally informed that Respondent No. 2 was found to have

committed the offence and was directed to be placed in the special home for the period he had already undergone, which, according to the

Petitioner, is around 2 to 3 months. The Petitioner filed an application before the Juvenile Justice Board seeking certified copy of the order dated

8th July, 2011 so that she could exercise her right of appeal/ revision against the said order. Learned Juvenile Justice Board vide impugned order

dated 11th July, 2011 declined the request of the Petitioner to give a certified copy of the order dated 8th July, 2011 in view of the fundamental

principles laid down in the Juvenile Justice (Care and Protection) Act, 2000 as amended in 2006 and the Delhi Juvenile Justice (Care and

Protection of Children) Rules, 2009 (in short "the JJ Act" and "the JJ Rules" respectively). Thus, the Petitioner is before this Court by way of the

present revision petition filed u/s 53 of the JJ Act. Learned counsel for the Petitioner contends that Section 21 of the JJ Act prohibits publication of

any report of an inquiry disclosing the name, address or school or any other particulars calculated to lead to the identification regarding a juvenile in

conflict with law or a child in need of care and protection in any newspaper, magazine, news-sheet or visual media. Sub-Section 2 to Section 21

prescribed that any person who contravenes the provisions of sub-section (1) shall be liable to a penalty which may extend to twenty five thousand

rupees. Learned counsel for the Petitioner contends that the prohibition of publication to keep the confidentiality of a juvenile is not a bar in

providing of the certified copy of inquiry to a victim/aggrieved person, who has a fundamental right to pursue the legal remedies available to her.

Even Section 51 of the JJ Act only directs that the report of the probation officer or social worker considered by the competent authority shall be

treated as confidential. Further Rule 3(2)(XI) of the JJ Rules provides that the right of privacy and confidentiality shall be protected by all means

and through all the stages of proceedings. According to the learned counsel for the Petitioner privacy and confidentiality provided under the sub-

rule does not take away the statutory right of the Petitioner to avail of her legal remedies, as in the absence of the impugned judgment, the

Petitioner cannot even decide as to what remedy, if any, is available and whether she has to avail the said remedy. According to the learned

counsel, even Rule 99 of JJ Rules which provides that the records or documents in respect of juvenile in conflict with law or child shall be kept in

safe custody for a period of 7 years and no longer, and thereafter be destroyed, does not bar the same to be given to an aggrieved party. The

provisions of the JJ Act relating to appeals and revision i.e. Sections 52 and 53 of JJ Act would become redundant in the absence of the copy of

the order being available to the aggrieved party. Further Section 54 of the JJ Act provides that while holding any inquiry appeal or revision

proceedings under this Act, the procedure as far as practicable applied will be in accordance with the Code of Criminal Procedure, 1973. Thus, in

accordance with Section 363 Cr.P.C. a copy of the judgment is required to be provided to the Petitioner.

2. According to the learned counsel for the Petitioner, the decision of the Juvenile Justice Board cannot be the final step in the legal hierarchy and

the rights available to a victim, who is also a minor, cannot be made nugatory. It is submitted that JJ Rules cannot override the provisions of JJ Act

wherein no prohibition is laid down to supplying of the copy of the order to the victim/ aggrieved person. The Act does not provide for the

confidentiality of the order or judgment of the Court. Section 52 JJ Act bars only an appeal against acquittal and appeals against all other orders

are permitted. Thus, a person aggrieved of the orders passed for rehabilitation of the juvenile in conflict with law can file an appeal before the

Court of Sessions and thereafter a revision petition before the High Court. Section 53 JJ Act enables this Court to examine the legality or propriety

of the orders passed by the Juvenile Justice Board. Section 15 of the JJ Act provides for the order that may be passed regarding juvenile. As per

the proviso to Section 15(1)(g) the Board for the reasons to be recorded, if it is satisfied that having regard to the nature of the offence and

circumstances of the case, it is expedient so to do, can reduce the period of stay to such period as it thinks fit. Thus, in the present case, as

informed, since the period of stay at special home has been reduced to the period undergone, it has to be for the reasons recorded in writing. The

Petitioner being the aggrieved party has every right to know the said reasons and challenge the same. Further the reasons being justiciable are

subject to review/ revision by a Superior Court. Relying upon Krishan Kumar Vs. State of Rajasthan and others, it is contended that the legislature

will not take away from one hand what it gave with the other. Thus, the principle of harmonious construction should be applied and the Rules

relating to privacy and confidentiality cannot be used to make the right of appeal and revision nugatory. Further in case the Juvenile Justice Board

has come to the conclusion that the juvenile in conflict with law has been found to have committed a lesser offence, then the Petitioner herein has a

right to file a statutory appeal u/s 372 Cr.P.C. In any case, a revision against the propriety and legality of the order is maintainable before this

Court. It is contended that the Act makes no distinction between providing of a final order or interim order. Though orders on age determination

are being provided by the learned Juvenile Justice Board, however the final judgments are not being provided to the victim and thus distinction is

being made by the Juvenile Justice Boards, which distinction is not provided in the Act. Thus, the petition be allowed and the Juvenile Justice

Board be directed to supply the Petitioner certified copy of the order dated 8th July, 2011 so that the Petitioner can avail of the legal remedies as

per law.

3. Learned counsel for the State on the other hand contends that the words "any person aggrieved" in Section 52 JJ Act are wide enough to

include State as well as the victim and thus the statutory remedy of filing an appeal except in the case of an acquittal is provided to a person

aggrieved. Section 21 of the JJ Act is akin to Section 227A of the Cr.P.C. In the present case, there is no challenge to vires of the JJ Rules and

thus the contention that Rule 3 (2) (XI) and 99 over-ride Sections 21 and 51 of the JJ Act is misconceived. It is further contended that the concept

of proportionality of the sentence has no application while dealing with the juvenile, as after holding that the juvenile has committed an offence, the

only consideration before the Juvenile Justice Board is the measure to be adopted to reform and rehabilitate the juvenile in conflict with law.

Relying upon Section 54(2) JJ Act it is stated that the words used in the Section are ""as far as practicable"" i.e. the provisions of Cr.P.C. would

apply as far as practicable. Thus, no provision of the Cr.P.C., which is not practically possible to be followed in view of the specific provisions of

the JJ Act can be invoked. However, a clear statutory right of an appeal being given to ""any aggrieved person"" which includes the State and the

victim and a suo-moto or on an application, power of revision vested in this Court, is a clear case of casus omisus in the Statute. Thus, this Court

should balance the public interest of maintaining the secrecy of the record of juvenile on the one hand and on the other ensure that the right of

appeal provided in the Statute is meaningful and is not rendered redundant. In this regard reference is made to Rule 21 of the Beijing Rules which

provides ""access to record shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized person"".

A victim is included in the expression ""persons directly concerned with the disposition of the case in hand"". Further the victim is also covered u/s 52

which refers to ""any person aggrieved"". It is thus prayed that in the light of apparent conflict between the abovementioned provisions relating to

appellate proceedings and the public interest with regard to confidentiality, this Court will lay down guidelines using the doctrine of casus omisus as

to how a victim can gain access to the orders passed by the Juvenile Justice Board and how an appeal or revision may be preferred in such

matters. Relying upon Maulavi Hussein Haji Abraham Umarji Vs. State of Gujarat and Another, it is contended that the Court will intervene to

reconcile these two rights. Emphasis is also laid on Section 19(2) JJ Act which directs the Board to maintain the record till the disposal of the

appeal or revision or the reasonable period.

4. Learned counsel for Respondent No. 2 on the other hand contends that Respondent No. 2 has been found to have committed the offence by

the learned Juvenile Justice Board. According to him, even if Respondent No. 2 was not found to have committed the offence alleged, the

Petitioner had no right to file an appeal against acquittal. The right to appeal is only available to the juvenile in conflict with law as he is the only

person aggrieved"". According to learned counsel, the words ""any person aggrieved"" in Section 52 of the JJ Act only relate to a juvenile in conflict

with law as no other person is aggrieved by the order passed by the Juvenile Justice Board.

5. I have heard learned counsel for the parties. The issues that arise for consideration are whether a victim has a right to challenge an order of the

Juvenile Justice Board before a Superior Court by way of an appeal or a revision and therefore a right to get a copy of the said order u/s 15 of the

JJ Act. Before advertng to the relevant provisions of the Act, it would be appropriate to note the objects of the JJ Act and the perspective in

which the Act was enacted. The Juvenile Justice (Care and Protection of Children) Act, 2000 was a re-enactment of the then existing law, the

Juvenile Justice Act, 1986 regulating the juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, United

Nations Standard Minimum Rules for the Administration of Justice, 1985 (The Beijing Rules), the United Nations Rules for the Protection of

Juvenile Deprived of Their Liberty (1990) and other relevant international instruments. On 11th December, 1992 India ratified the Convention on

the Rights of the Child (in short ""the Convention"") in the United Nations General Assembly Resolution 44/25 dated 20th November, 1989 which

prescribes a set of standards to be adhered to in order to secure the best interest of the Child. The Convention aimed at social re-integration of

juveniles without resorting to judicial proceedings. The Convention requires that all parties to the Convention shall see that the laws and rules of the

country should correspond to the Convention and that they shall undertake all appropriate measures for the practical implementation of the said

rights.

6. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (hereinafter called as ""The Beijing Rules"") aim to

further the well-being of a juvenile without the least possible intervention by judicial bodies. The Rules aim to create an atmosphere of reform and

seek to help a juvenile develop free from crime and delinquency. One of the fundamental guiding principle behind United Nations Rules for the

Protection of the Juveniles Deprived of their liberty (1990) is:

The fundamental guiding principle behind the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) (hereinafter ""the

Rules"") is that the ""placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period"" and

further adds that ""because of their high vulnerability, juveniles deprived of their liberty require special attention and protection and that their rights

and well-being should be guaranteed during and after the period when they are deprived of their liberty.

7. The Beijing Rules provide for the protection of privacy of the juveniles which have been incorporated in the JJ Rules. The relevant Rules are as

under:

6. Scope of discretion

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed

at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the

follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and

mandates.

8. Protection of privacy.

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the

process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

21. Records.

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons

directly concerned with the disposition of the case at hand or other duly authorized persons.

22.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

8. In consonance with the Beijing Rules, the JJ Act and JJ Rules provide for a number of provisions dealing with the confidentiality of the juvenile in

conflict with law. The confidentiality requirements of the Act may be culled out from Section 21 of the JJ Act, which reads as follows:

21. Prohibition of publication of name, etc., of juvenile in conflict with law or child in need of care and protection involved in any proceeding under

the Act,-

(1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of

care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the

juvenile or child nor shall any picture of any such juvenile or child be published. Provided that for reasons to be recorded in writing, the authority

holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child. (2) Any person who

contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty five thousand rupees.

9. Reference is also required to be made to Chapter II of the JJ Rules, more particularly to Rule 3(1) and Principles II, IV, XI, XII, XIII & XIV

enumerated in Rule 3(2). The said provisions and principles are extracted herein below:-

3. Fundamental principles to be followed in administration of these rules,

(1) The State Government, the Juvenile Justice Board, the Child Welfare Committee or other competent authorities or agencies, as the case may

be, while

(2) The following principles shall, inter alia, be fundamental to the application, interpretation and implementation of the Act and the rules made

hereunder

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II. Principle of dignity and worth

(a) Treatment that is consistent with the Child's sense of dignity and worth is a fundamental principle of juvenile justice. This principle reflects the

fundamental human right enshrined in Article I of the Universal Declaration of Human Rights that all human beings are born free and equal in dignity

and rights. Respect of dignity includes not being humiliated, personal identity boundaries and space being respected, not being labeled and

stigmatized, being offered information and choices and not being blamed for their acts.

(b) The juvenile's or Child's right to dignity and worth has to be respected and protected throughout the entire process of dealing with the child

from the first contact with law enforcement agencies to the implementing of all measures for dealing with the child.

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III. Principle of Right to be heard.

Every child's right to express his views freely in all matters affecting his interest shall be fully respected through every stage in the process of

juvenile justice. Children's right to be heard shall include creation of developmentally appropriate tools and processes of interacting with the child,

promoting Children's active involvement in decisions regarding their own lives and providing opportunities for discussion and debate.

IV. Principle of Best Interest:

(a) In all decisions taken within the context of administration of juvenile justice, the principle of best interest of the juvenile or the juvenile in conflict

with law or child shall be the primary consideration.

(b) The principle of best interest of the juvenile or juvenile in conflict with law or child shall mean for instance that the traditional objectives of

criminal justice, retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice.

(c) This principle seeks to ensure physical, emotional, intellectual, social and moral development of a juvenile in conflict with law or child so as to

ensure the safety, well being and permanence for each child and thus enable each child to survive and reach his or her full potential.

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XI Principle of right to privacy and confidentiality

The juvenile's or Child's right to privacy and confidentiality shall be protected by all means and through all the stages of the proceedings ad care

and protection processes.

XII. Principle of last resort

Institutionalization of a child or juvenile in conflict with law shall be a step of the last resort after reasonable inquiry and that too for the minimum

possible duration.

XIII. Principle of repatriation and restoration

(a) Every juvenile or child in conflict with law has the right to be re-united with his family and restored back to the same socio-economic cultural

status that such juvenile or child enjoyed before coming within the purview of the Act or becoming vulnerable to any form of neglect, abuse or

exploitation.

(b) Any juvenile or child, who has lost contact with his family, shall be eligible for protection under the Act and shall be repatriated and restored, at

the earliest, to his family, unless such repatriation and restoration is likely to be against the best interest of the juvenile or the child.

XIV. Principle of Fresh Start.

(a) The principle of fresh start promotes new beginning for the child or juvenile in conflict with law by ensuring erasure of his past records.

(b) The State shall seek to promote measures for dealing with children alleged or recognized as having impinged the penal law, without resorting to

judicial proceedings

b. It is submitted that Section 51 of the Act provides that the report of a probation officer or a social worker shall be confidential. It is further

submitted that Rule 18 provides for a procedure to be followed in respect of violation of Section 21.

10. Besides the International Convention and the provisions of the JJ Act it may be noted that the Constitutional guarantee for the protection of the

child is enshrined in Article 39. Article 39 reads as under:

39. Certain principles of policy to be followed by the State.

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by

economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and

youth are protected against exploitation and against moral and material abandonment.

11. Article 39 of the Constitution of India, the International Convention and the provisions of the Act thus clearly provide that maintaining

confidentiality of the proceedings in matters involving juveniles in conflict with law has an overriding public interest. However, it may be noted that

while providing for utmost confidentiality and privacy and minimizing the judicial intervention, the Conventions and the JJ Act did not take away the

right of appeal/revision permitted to an aggrieved person under the JJ Act. The relevant provisions dealing with the appeals and revision under the

JJ Act are as under:

2. Definitions.- In this Act, unless the context otherwise requires,-

(g) "competent authority" means in relation to children in need of care and protection a Committee and in relation to juveniles in conflict with law a

Board;

52. Appeals.- (1) Subject to the provisions of this section, any person aggrieved by an order made by a competent authority under this Act may,

within thirty days from the date of such order, prefer an appeal to the Court of Session:

Provided that the Court of Session 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.

(2) No appeal shall lie from-

(a) any order of acquittal made by the Board in respect of a juvenile alleged to have committed an offence; or

(b) any order made by a Committee in respect of a finding that a person is not a neglected juvenile.

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

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

proceeding in which any competent authority or Court of Session 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.

54. Procedure in inquiries, appeals and revision proceedings.- (1) Save as otherwise expressly provided by this Act, a competent authority while

holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as

far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974) for trials in summons cases.

(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this

Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

12. Though the JJ Act and the Conventions provide for minimum possible judicial intervention, however at the same time it cannot be said that an

order passed by the Juvenile Justice Board shall be final and no appeal or revision against it would lie before the superior Courts. This would be

contrary to the fundamental principle of right of access to justice. Thus, this Court is required to harmoniously construe the provisions of the JJ Act

and JJ Rules keeping in mind the parallel conflicting fundamental principles and rights. A perusal of Section 52 of the JJ Act shows that any person

aggrieved by an order made by a competent authority under the JJ Act can prefer an appeal to the Court of Session within 30 days. However, no

such appeal shall lie from an order of acquittal made by the Board in respect of a juvenile alleged to have committed an offence. Thereby meaning

that except in the case of an order of acquittal, an appeal by any aggrieved person would lie before a Court of Sessions. Learned counsel for

Respondent No. 2 has strenuously contended that the word "aggrieved person" in Section 52 would mean a "juvenile in conflict with law" who

has been found to have committed an offence by the Board and no other person. Such a restrictive meaning to the words "aggrieved person

cannot be given. If the Legislature had so intended, it would have then used the words "juvenile in conflict with law" and not "any person

aggrieved". However, at the same time it may be noted that the right of appeal is limited as no appeal against an acquittal lies. Thus, the other

orders on which the victim or the State may have the grievance like an order declaring a person juvenile, the aggrieved person would be entitled to

copy of the order for challenge before the Superior Court.

13. It may be noted that proportionality of the sentence is not known to Juvenile Justice Act as no sentence is provided to the juvenile in conflict

with law even on return of finding commission of offence. The orders passed u/s 15 of the JJ Act are for the reformation and rehabilitation of the

juvenile. However, in case the measures adopted for the rehabilitation and reformation of the juvenile adversely affects the interest of the victim or

is not beneficial to the betterment of the juvenile then it cannot be said that the victim or the State to a limited extent have no remedy available to

them. In such a situation, they can certainly approach the Court of Sessions in its appellate powers or the High Court in its power under Article

227 of the Constitution and Section 482 Cr.P.C. for redressal of their grievance. If that be the situation, then in those cases the victim or the State

would be entitled to approach the superior court, which will then call for the records of the Juvenile Justice Board and examine the legality and

propriety of the order after giving due notice to juvenile through its guardian.

14. Further while maintaining the complete confidentiality, the victim and the State being a party to the proceeding would be entitled to know the

final outcome. Thus, the Juvenile Justice Board is duty bound to inform the outcome of the inquiry to the victim and the State, besides the juvenile.

15. Applying the principles enumerated above to the facts of the present case, it may be noted that the grievance of the Petitioner in the present

case is that to the best of her knowledge Respondent No. 2, though was held to have committed the alleged offence yet has been directed to

remain in the special home for the period undergone i.e. a period of two to three months. As noted above, the concept of proportionality of

sentence is unknown to the JJ Act. In view of the fact that there is no indefeasible right of the Petitioner to file an appeal on the proportionality of

sentence, I find no ground to direct the Juvenile Justice Board to give a copy of the order dated 8th July, 2011 to the Petitioner herein. Petition is

disposed of accordingly.