2024 INSC 387

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2024
(Arising out of Special Leave Petition (Crl.) No. 3033 of 2024)

CHILD IN CONFLICT WITH LAW THROUGH HIS MOTHER **... Appellant (s)**

VERSUS

THE STATE OF KARNATAKA AND ANOTHER **... Respondent(s)**

J U D G M E N T

Rajesh Bindal, J.

Leave granted.

BRIEF FACTS

2. The present appeal has been filed by Child in Conflict with Law[1] impugning the order[2] passed by the High Court[3].

[1] Hereinafter referred to as "CCL".
[2] Order dated 15.11.2023 passed in Criminal Revision Petition No. 1243 of 2023.
[3] High Court of Karnataka at Bengaluru.

3. Vide aforesaid order, the High Court set aside the order dated 10.04.2023 passed by the Board[4].

4. Briefly, the facts as available on record are that FIR[5] was registered against the CCL for commission of offences under sections 376(i), 342 IPC and sections 4, 5, 6, 7 and 8 of Protection of Children from Sexual Offences Act, 2012[6]. After his apprehension on 03.11.2021, the CCL was produced before the Board. On 09.11.2021, he was released on bail. After completion of investigation, charge-sheet was filed. The Board was called upon to decide the issue as to whether the CCL is to be tried by the Board or as an adult by the Children's Court. The arguments in the matter were heard on 29.03.2022 by the Principal Magistrate and a Member of the Board. The matter was adjourned to 05.04.2022 for order.

4.1 On 05.04.2022, the Principal Magistrate of the Board passed an order holding that as per preliminary assessment report and the social investigation report, the CCL is to be tried as an adult by the Children's Court. The record was directed to be transferred to the Court concerned. However, when the file was put up before the Member of the

[4] Additional Juvenile Justice Board, Bangalore City.
[5] Crime No. 239/2021 dated 03.11.2021.
[6] Hereinafter referred to as "2012 Act".

Board for signatures, he recorded: "*I am having a dissenting view to abovesaid order. I will pass detailed order on next date of hearing*.". The matter was adjourned to 12.04.2022. No separate order, as recorded by the Member of the Board on 05.04.2022, was passed by him. On 12.04.2022 the matter was apparently heard afresh by two Members of the Board without there being the Principal Magistrate. Order was passed that as per the preliminary assessment report and the social investigation report, the enquiry regarding the alleged offence committed by the CCL has to be conducted by the Board as a juvenile.

4.2 An application under Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015[7] dated 18.10.2022 was filed by the complainant/mother of the victim before the Board for termination of proceedings and transferring the matter to the Children's Court, to which objections were filed by the CCL.

4.3 Vide order dated 10.4.2023, the Board dismissed the application.

4.4 Impugning the aforesaid order, revision petition[8] was filed by the Complainant before the High Court, which was allowed. The

[7] Hereinafter referred to as "the Act"
[8] Criminal Revision Petition No. 1243 of 2023

impugned order dated 10.04.2023 passed by the Board was set aside. The Board was directed to transmit the record to the Children's Court for trial.

4.5 The aforesaid order is under challenge before this Court by the CCL.

ARGUMENTS OF THE APPELLANT

5. Mr. Sidharth Luthra and Mr. S. Nagamuthu, learned senior counsel appearing for the CCL, submitted that the practice of passing order while stating that the reasons will follow has been deprecated by this Court. It deprives the party concerned to avail of his appropriate remedy, when no reasons are available. In the case in hand, firstly the Principal Magistrate mentioned that the order was being passed by him and another Member of the Board. However, the Member of the Board did not sign the same. He only mentioned that he dis-agrees with the views of the Principal Magistrate and will pass a detailed order on the next date. The matter was kept for 12.04.2022. In support of the arguments, reliance was placed upon the judgment of this Court in

Balaji Baliram Mupade and Another v. State of Maharashtra and Others[9].

5.1 It was further argued that the order passed on 05.04.2022 is not an order in the eyes of law. The matter being listed on 12.04.2022, the arguments were heard by two Members of the Board including the Member who had earlier not signed the order. An order was passed directing that the enquiry into the offence shall be conducted by the Board, treating the CCL as juvenile. He further referred to the documents placed on record with Crl. M.P. No. 28749 of 2024 that even the Principal Magistrate was present in Court on that date. He had also heard the arguments but did not sign the order. There was a well-considered order passed on 12.04.2022, against which the only remedy available to the victim was to file an appeal. However, the same was not availed of within the period provided for under Section 101 of the Act.

5.2 It was further submitted that after the commencement of trial before the Board, nearly six months thereafter an application was filed for terminating the proceedings before the Board and transferring the matter to the Children's Court, to which objections were filed by the

[9] (2021) 12 SCC 603

CCL. The Board appreciated the position of law correctly and dismissed the application filed by the mother of the victim.

5.3 It was submitted that even if for arguments' sake it is assumed that the order passed on 12.04.2022 cannot be legally sustained. It may, at the most, revive the order dated 05.04.2022 against which the CCL has a remedy of filing an appeal. However, in view of the developments which had taken place since the passing of the order on 12.04.2022, the CCL has been deprived of his remedy of appeal. If this Court is of the view that the order passed on 05.04.2022 was an order, the CCL be given liberty to avail remedy of appeal against the same, as with the passing of the impugned order by the High Court, the CCL has been left remediless against the order.

5.4 Section 15(1) of the Act provides for preliminary assessment regarding mental status and physical capacity of the CCL, who had allegedly committed heinous offence. In case the Board is satisfied, that enquiry into the matter has to be conducted by the Board, it shall follow the procedure as prescribed. However, an order can also be passed in terms of Section 18(3) of the Act for trial of the CCL by the Children's

Court. It is only the assessment, as to whether the Board or the Children's Court has to hold inquiry or conduct trial.

5.5 Section 18(3) of the Act provides that after preliminary assessment under Section 15 of the Act, the Board shall pass an order that there is a need for trial of the CCL as an adult. The records of the case have to be transferred for trial to the Children's Court having jurisdiction.

5.6 Section 17 of the Act provides for procedure in relation to the Board. It was submitted that the Board as such is not a court and any proceeding conducted by the Board are not to be treated as an order. It is merely an opinion. The Board, as defined in section 2(10) of the Act, means the Board as constituted under section 4 thereof. It shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class, not being the Chief Metropolitan Magistrate or Chief Judicial Magistrate with at least three years' experience and two social workers selected in the manner prescribed, one of them has to be a woman.

5.7 Section 7(3) of the Act provides that there shall be at least two members including the Principal Magistrate present at the time of final disposal of a case or make an order under Section 18(3) of the Act.

5.8 It was further submitted that the appeal against an order passed under Section 18(3) of the Act by the Board, directing trial of the CCL by the Children's Court would lie to the Court of Sessions.

5.9 The term Children's Court has been defined in Section 2(20) of the Act. It means a Court established as such under the Commissions for Protection of Child Rights Act, 2005[10] or a Special Court under the 2012 Act, and where such Courts have not been designated, the Court of Sessions having jurisdiction. The argument is, that two separate authorities have been mentioned in sub-sections (1) and (2) of Section 101 of the Act, otherwise separate provisions were not required. This is the spirit of the law.

5.10 Section 19 of the Act deals with the powers of Children's Court. After receipt of the preliminary assessment from the Board under Section 15, the Children's Court may decide that the child is to be tried as an adult or that there is no need for trial of the CCL as an adult. An order passed by the Children's Court is appealable before the High Court in terms of Section 101(5) of the Act.

[10] Hereinafter referred to as "2005 Act"

5.11 Reference was made to Rule 10A of the **Juvenile Justice (Care and Protection of Children) Model Rules, 2016** [11] which prescribes the procedure for preliminary assessment regarding the age of the CCL under Section 14, and inquiry by the Board or trial by the Children's Court under Section 15 of the Act.

5.12 Referring to the aforesaid scheme of the Act, it was submitted that an assessment under Section 15 of the Act does not envisage passing of an order. It is merely a satisfaction recorded, and there is no final satisfaction recorded by the Board on 05.04.2022 as next date of hearing had been given. The matter had to be considered by the Board subsequently. In fact, no order had been passed under Section 18(3) of the Act. Subsequent orders passed by the Board showed that the inquiry had already commenced. It was at a later stage that the Complainant filed an application for termination of proceedings before the Board, which was dismissed on 10.04.2023. The order was appealable under Section 101(1) of the Act. However, no appeal was filed. A revision was filed before the High Court under Section 397 read with Section 399 of the Cr.P.C., which was not maintainable.

[11] Hereinafter to be referred as "the 2016 Rules"

5.13 It was further argued that in terms of Section 14(3) of the Act preliminary assessment under Section 15 thereof, has to be made within a period of three months from the date of first production of CCL before the Board. In the case in hand, the child was produced before the Board for the first time on 03.11.2021. The period of three months expired on 02.02.2022. No order could possibly be passed by the Board on 05.04.2022. The result thereof is that the CCL is to be tried by the Board and no order for his trial by the Children's Court could be passed thereafter.

5.14 Reliance was placed upon the judgment of this Court in **Barun Chandra Thakur vs. Master Bholu & Anr.**[12] to submit that this Court opined that the timelines provided for under the Act have to be adhered to. If the time provided for in Section 14(3) for preliminary assessment under Section 15 cannot be extended, no order for trial of the CCL by the Children's Court can be passed. Reliance was also placed upon judgment of this Court in **Shilpa Mittal vs. State (NCT of Delhi)**[13].

[12] 2022 INSC 716: (2022) 10 SCR 595
[13] (2020) 2 SCC 787: 2020 INSC 25: (2020) 2 SCR 478

ARGUMENTS OF RESPONDENTS

6. On the other hand, learned counsel for the State submitted that even after the order is passed by the Board transferring the matter to the Children's Court for trial of the CCL, it can be reconsidered by the Children's Court under Section 19(1) of the Act. Any order passed by the Children's Court is appealable under Section 101(5) of the Act. The scope of Section 101(1) and 101(2) is different. Sub-section (1) deals with final orders, whereas sub-section (2) deals with preliminary assessment. The trial of the offence is only by the Children's Court.

6.1 It was further submitted that, in terms of proviso to Section 15(1) of the Act, the Board may take assistance of experienced psychologists, psycho-social workers or other experts to enable the Board to reach a proper conclusion.

6.2 In this case, a report dated 01.02.2022 has been submitted by the Department of Child and Adolescent Psychiatry, NIMHANS-DWCO. It was in response to a letter dated 12.01.2022 from the Police Inspector, Marathahalli Police Station to the Psychiatrist, NIMHANS Hospital, Bengaluru. Going backward, learned counsel for the State referred to the interim order of the Board dated 09.11.2021 in terms of which the

Board had called for the social investigation report of the child to enable the Board to pass further order in terms of Section 18(3) of the Act. However, no report was produced on 06.12.2021. The matter was adjourned from 06.12.2021 to 11.01.2022, and thereafter to 21.02.2022. The Social Investigation Report was received by the Board on 19.02.2022.

6.3 The arguments on the issue of trial of the CCL by the Children's Court or inquiry by the Board, were completed on 29.03.2022 and the matter was adjourned to 05.04.2022 for orders, when the Principal Magistrate passed an order directing for trial of the CCL by the Children's Court. Another member of the Board did not append his signature and recorded that he had a dissenting view and would pass the detailed order on the next date i.e. 12.04.2022. In fact, in terms of Section 7(4) of the Act, the proceeding for determination of the forum, which was to conduct the inquiry or trial, concluded on that day itself, as the opinion of the Principal Magistrate is final. The manner in which the case was dealt with subsequently, is strange. Subsequent order dated 12.04.2022 was passed by different members of the Board. The entire proceedings were *non-est*. There was no error in the application moved

by the victim for termination of proceedings before the Board and referring the matter to the Children's Court, for which an order had already been passed by the Principal Magistrate on 05.04.2022.

6.4 It was further argued that merely because proceedings under Section 15 of the Act could not be concluded within three months, by default the CCL will not be tried by the Board. The provision cannot be held to be mandatory, as no consequence of such a default has been provided in the Act. Even proviso to Section 14(4) provides for extension of time in case the inquiry as envisaged under Section 14(1) cannot be concluded within the time prescribed.

6.5 It was further submitted that though there is no direct judgment of this Court in this matter dealing with Section 14(3) of the Act. However, the learned counsel for the State referred to the following judgments of the Madhya Pradesh, Punjab & Haryana and Delhi High Courts **Bhola vs State of Madhya Pradesh**[14]**, Neeraj and Others vs State of Haryana**[15] and **X vs. State**[16]**.**

[14] 2019 SCC OnLine MP 521
[15] 2005 SCC OnLine P&H 611
[16] 2019 SCC OnLine Del 11164

6.6 It was further argued that the inquiry envisaged under Section 15 of the Act provides for taking opinion from experienced psychologists or psycho-social workers or other experts. The role of investigating officer is also relevant as he is investigating the same. There can be intentional delays caused in the process also to take benefit, in case by default CCL in a heinous offence is to be tried by the Board. As in the case in hand the investigating officer himself took about two months in getting the report from NIMHANS. In such a situation the Board should not be treated as powerless to extend the time for reasons to be recorded. No doubt, in such a matter all the proceedings have to be completed as expeditiously as possible.

6.7 It was further submitted that there is no merit in the arguments raised by the learned counsel for the appellant, to give him liberty to challenge the order dated 05.04.2022 in case he has grievance against the same. Much water has flown thereafter. All possible arguments were raised in the revision decided by the High Court, and considered. To give liberty to the appellant to raise the same before a lower authority would be an exercise in futility. The same would rather

result in delaying the process further. The prayer is for the dismissal of the appeal.

DISCUSSION

7. Heard learned counsel for the parties and perused the relevant referred record. We have divided our judgment in different parts, as mentioned below:

I. RELEVANT PROVISIONS

8. The relevant provisions of various statutes and the Rules applicable in the matter are extracted below:

EXTRACTS OF RELEVANT PROVISIONS OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

"Section 2(10). "Board" means a Juvenile Justice Board constituted under section 4**.**

Section 2(13). "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.

Section 2(20). "Children's Court" means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.

Section 2(22). "Committee" means Child Welfare Committee constituted under section 27.

Section 2(23). "court" means a civil court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court and City Civil Courts.

Section 2(33). ‘‘heinous offences’’ includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.

x x x

Section 4. Juvenile Justice Board.—

(1) xx xx

(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 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

(3) to (7) xx xx

Section 7. Procedure in relation to Board.—

(1) & (2) xx xx

(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 sub-section (3) of section 18.

(4) In the event of any difference of opinion among the members of the Board in the interim or final disposal, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Principal Magistrate, shall prevail.

x x x

Section 14. Inquiry by Board regarding child in conflict with law.—(1) Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of 2 more months by the

Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

(3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

(5) xx xx

x x x

Section 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 an 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.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101.

Provided further that the assessment under this section shall be completed within the period specified in section 14.

x x x

Section 17. Orders regarding child not found to be in conflict with law.—(1) Where a Board is satisfied on inquiry that the child brought before it has not committed any

offence, then notwithstanding anything contrary contained in any other law for the time being in force, the Board shall pass order to that effect.

(2) In case it appears to the Board that the child referred to in sub-section (1) is in need of care and protection, it may refer the child to the Committee with appropriate directions.

Section 18. Orders regarding child found to be in conflict with law.—

(1) & (2) xx xx

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

Section 19. Powers of Children's Court.—(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

x x x

Section 101. Appeals. —(1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate:

Provided that the Court of Sessions, or the District Magistrate, as the case may be, 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 and such appeal shall be decided within a period of thirty days.

(2) An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.

(3) No appeal shall lie from any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years.

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

(5) Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974).

(6) & (7) xx xx

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

EXTRACTS OF RELEVANT RULES 10, 10A, 11 & 13 OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) MODEL RULES, 2016

"Rule 10. Post-production processes by the Board.- (1) On production of the child before the Board, the report containing the social background of the child, circumstances of apprehending the child and offence alleged to have been committed by the child as provided by the officers, individuals, agencies producing the child shall be reviewed by the Board and the Board may pass such orders in relation to the child as it deems fit, including orders under sections 17 and 18 of the Act, namely:

(i) disposing of the case, if on the consideration of the documents and record submitted at the time of his first appearance, his being in conflict with law appears to be unfounded or where the child is alleged to be involved in petty offences;

(ii) referring the child to the Committee where it appears to the Board that the child is in need of care and protection;

(iii) releasing the child in the supervision or custody of fit persons or fit institutions or Probation Officers as the case may be, through an order in Form 3, with a direction to appear or present a child for an inquiry on the next date; and

(iv) directing the child to be kept in the Child Care Institution, as appropriate, if necessary, pending inquiry as per order in Form 4.

(2) In all cases of release pending inquiry, the Board shall notify the next date of hearing, not later than fifteen days of the first summary inquiry and also seek social investigation report from the Probation Officer, or in case a Probation Officer is not available the Child Welfare Officer or social worker concerned through an order in Form 5.

(3) When the child alleged to be in conflict with law, after being admitted to bail, fails to appear before the Board, on the date fixed for hearing, and no application is moved for exemption on his behalf or there is not sufficient reason for granting him exemption, the Board shall, issue to the Child Welfare Police Officer and the Person-in-charge of the Police Station directions for the production of the child.

(4) If the Child Welfare Police Officer fails to produce the child before the Board even after the issuance of the directions for production of the child, the Board shall instead of issuing process under section 82 of the Code of Criminal Procedure, 1973 pass orders as appropriate under section 26 of the Act.

(5) In cases of heinous offences alleged to have been committed by a child, who has completed the age of sixteen years, the Child Welfare Police Officer shall produce the statement 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.

(6) In cases of petty or serious offences, the final report shall be filed before the Board at the earliest and in any case not beyond the period of two months from the date of information to the police, except in those cases where it was not reasonably known that the person involved in the offence was a child, in which case extension of time may be granted by the Board for filing the final report.

(7) When witnesses are produced for examination in an inquiry relating to a child alleged to be in conflict with law, the Board shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872 (1 of 1872) so as to interrogate the child and proceed with the presumptions in favour of the child.

(8) While examining a child alleged to be in conflict with law and recording his statement during the inquiry under section 14 of the Act, the Board shall address the child in a child-friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which has been alleged against the child, but also in respect of the home and social surroundings, and the influence or the offences to which the child might have been subjected to.

(9) The Board shall take into account the report containing circumstances of apprehending the child and the offence alleged to have been committed by him and the social investigation report in Form 6 prepared by the Probation Officer or the voluntary or non- governmental organisation, along with the evidence produced by the parties for arriving at a conclusion.

Rule 10A. Preliminary assessment into heinous offences by Board.- (1) The Board shall in the first instance determine whether the child is of sixteen years of age or above; if not, it shall proceed as per provisions of section 14 of the Act.

(2) For the purpose of conducting a preliminary assessment in case of heinous offences, the Board may take the assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. A panel of such experts may be made available by the District Child Protection Unit, whose assistance can be taken by the Board or could be accessed independently.

(3) While making the preliminary assessment, the child shall be presumed to be innocent unless proved otherwise.

(4) Where the Board, after preliminary assessment under section 15 of the Act, passes an order that there is a need for trial of the said child as an adult, it shall assign reasons for the

same and the copy of the order shall be provided to the child forthwith.

Rule 11. Completion of Inquiry.- (1) Where after preliminary assessment under section 15 of the Act, in cases of heinous offences allegedly committed by a child, the Board decides to dispose of the matter, the Board may pass any of the dispositional orders as specified in section 18 of the Act.

(2) Before passing an order, the Board shall obtain a social investigation report in Form 6 prepared by the Probation Officer or Child Welfare Officer or social worker as ordered, and take the findings of the report into account.

(3) All dispositional orders passed by the Board shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or a recognised voluntary organisation on the basis of interaction with the child and his family, where possible.

(4) Where the Board is satisfied that it is neither in the interest of the child himself nor in the interest of other children to keep a child in the special home, the Board may order the child to be kept in a place of safety and in a manner considered appropriate by it.

(5) Where the Board decides to release the child after advice or admonition or after participation in group counselling or orders him to perform community service, necessary direction may also be issued by the Board to the District Child Protection Unit for arranging such counselling and community service.

(6) Where the Board decides to release the child in conflict with law on probation and place him under the care of the parent or the guardian or fit person, the person in whose custody the child is released may be required to submit a written undertaking in Form 8 for good behaviour and well-being of the child for a maximum period of three years.

(7) The Board may order the release of a child in conflict with law on execution of a personal bond without surety in Form 9.

(8) In the event of placement of the child in a fit facility or special home, the Board shall consider that the fit facility or special home is located nearest to the place of residence of the child's parent or guardian, except where it is not in the best interest of the child to do so.

(9) The Board, where it releases a child on probation and places him under the care of parent or guardian or fit person or where the child is released on probation and placed under the care of fit facility, it may also order that the child be placed under the supervision of a Probation Officer who shall

submit periodic reports in Form 10 and the period of such supervision shall be maximum of three years.

(10) Where it appears to the Board that the child has not complied with the probation conditions, it may order the child to be produced before it and may send the child to a special home or place of safety for the remaining period of supervision.

(11) In no case, the period of stay in the special home or the place of safety shall exceed the maximum period provided in clause (g) of sub-section (1) of section 18 of the Act.

x x x

Rule 13. Procedure in relation to Children's Court and Monitoring Authorities.-

(1) Upon receipt of preliminary assessment from the Board the Children's Court may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders.

(2) Where an appeal has been filed under sub-section (1) of section 101 of the Act against the order of the Board declaring the age of the child, the Children's Court shall first decide the said appeal.

(3) Where an appeal has been filed under sub-section (2) of section 101 of the Act against the finding of the preliminary assessment done by the Board, the Children's Court shall first decide the appeal.

(4) Where the appeal under sub-section (2) of section 101 of the Act is disposed of by the Children's Court on a finding that there is no need for trial of the child as an adult, it shall dispose of the same as per section 19 of the Act and these rules.

(5) Where the appeal under sub-section (2) of section 101 of the Act is disposed of by the Children's Court on a finding that the child should be tried as an adult the Children's Court shall call for the file of the case from the Board and dispose of the matter as per the provisions of the Act and these rules.

(6) The Children's Court shall record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child.

(7) Where the Children's Court decides that there is no need for trial of the child as an adult, and that it shall decide the matter itself:

(i) It may conduct the inquiry as if it were functioning as a Board and dispose of the matter in accordance with the provisions of the Act and these rules.

(ii) The Children's Court, while conducting the inquiry shall follow the procedure for trial in summons case under the Code of Criminal Procedure, 1973.

(iii) The proceedings shall be conducted in camera and in a child friendly atmosphere, and there shall be no joint trial of a child alleged to be in conflict with law, with a person who is not a child.

(iv) When witnesses are produced for examination the Children's Court shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872 (1 of 1872).

(v) While examining a child in conflict with law and recording his statement, the Children's Court shall address the child in a child-friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which is alleged against the child, but also in respect of the home and social surroundings and the influence to which the child might have been subjected.

(vi) The dispositional order passed by the Children's Court shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or recognized

voluntary organisation on the basis of interaction with the child and his family, where possible.

(vii) The Children's Court, in such cases, may pass any orders as provided in sub-sections (1) and (2) of section 18 of the Act.

(8) Where the Children's Court decides that there is a need for trial of the child as an adult:

(i) It shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 of trial by sessions and maintaining a child friendly atmosphere.

(ii) The final order passed by the Children's Court shall necessarily include an individual care plan for the child as per Form 7 prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.

(iii) Where the child has been found to be involved in the offence, the child may be sent to a place of safety till the age of twenty-one years.

(iv) While the child remains at the place of safety, there shall be yearly review by the Probation Officer or the District Child Protection Unit or a

social worker in Form 13 to evaluate the progress of the child and the reports shall be forwarded to the Children's Court.

(v) The Children's Court may also direct the child to be produced before it periodically and at least once every three months for the purpose of assessing the progress made by the child and the facilities provided by the institution for the implementation of the individual care plan.

(vi) When the child attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall:

(a) interact with the child in order to evaluate whether the child has undergone reformative changes and if the child can be a contributing member of the society.

(b) take into account the periodic reports of the progress of the child, prepared by the Probation Officer or the District Child Protection Unit or a social worker, if needed and further direct that institutional mechanism if inadequate be strengthened.

(c) to (cd) xx xx

(vii) xx xx"

EXTRACT OF RELEVANT PROVISION OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

"Section 28. Designation of Special Courts.—

(1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

(2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in subsection (1)], with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000 (21 of 2000) shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children

in any act, or conduct or manner or facilitates abuse of children online."

II <u>WHETHER THE PERIOD PROVIDED FOR COMPLETION OF PRELIMINARY ASSESSMENT UNDER SECTION 14(3) OF THE ACT IS MANDATORY OR DIRECTORY.</u>

9. Section 15 of the Act enables the Board to make preliminary assessment into heinous offences where such an offence alleged to have been committed by a child between 16 and 18 years of age. The preliminary assessment is to be conducted with regard to his mental and physical capacity to commit such an offence, ability to understand the consequences of the offence and the circumstances in which the offence was allegedly committed. Proviso to the aforesaid section provides that for making such an assessment the Board may take assistance of an experienced psychologist or psycho-social worker or other experts. Explanation thereto provides that the process of preliminary assessment is not a trial but merely to assess the capacity of such a child to commit and understand the consequences of the alleged offence. The importance of the assistance from the expert is even evident from Section 101(2) of the Act. While considering the appeal against an order

passed under Section 15, the appellate authority can also take assistance of experts other than those who assisted the Board.

9.1 The importance of the aforesaid provision was considered by this Court in **Barun Chandra Thakur's case (supra)** where requirement of such assistance was held to be mandatory, even though the words used in proviso to Section 15(1) and Section 101(2) of the Act are 'may'.

9.2 Section 14(3) of the Act provides that the preliminary assessment in terms of Section 15 is to be completed by the Board within a period of three months from the date of first production of the child before the Board.

9.3 In case the Board after preliminary assessment under Section 15 of the Act comes to a conclusion that the trial of the CCL is to be conducted as an adult, then the Board shall transfer the records to the Children's Court having jurisdiction.

9.4 The argument raised by learned counsel for the appellant was that the CCL was produced before the Board on 03.11.2021. The period of three months having expired on 02.02.2022, any order passed

by the Board thereafter is *non-est,* and the trial of CCL cannot now be transferred to the Children's Court.

9.5 What we need to consider is as to whether the timeline for the conclusion of inquiry as envisaged under Section 14 is mandatory or directory?

9.6 As per the scheme of Section 14 of the Act, sub-section (1) thereof provides that, when a CCL is produced before the Board, after holding inquiry, it may pass order in relation to such CCL as it deems fit under Section 17 and 18 of the Act.

9.7 Section 17 of the Act envisages the order regarding a child not found to be in conflict with the law. Whereas Section 18 (1) envisages an order passed in case a child is found to be in conflict with law. It includes child of the age of 16 years and above, who is involved in a heinous offence, but inquiry to be conducted by the Board.

9.8 Section 14(2) of the Act provides that the inquiry as envisaged under Section 14(1) thereof shall be completed within a period of four months from the date of first production of the child before the Board. The time is extendable by the Board for a maximum period of two months, for the reasons to be recorded. The consequences of non-

conclusion of any such inquiry have been provided in Section 14(4) of the Act, only with reference to petty offences. The aforesaid sub-section provides that if inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated. Proviso to the aforesaid sub-section provides that in case the Board requires further extension of time for completion of inquiry into serious and heinous offences, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

9.9 Meaning thereby that as far as inquiry of CCL, as envisaged under Section 14(1) of the Act, by the Board for heinous offences is concerned, there is no deadline after which either the inquiry cannot be proceeded further or has to be terminated.

9.10 Now coming to the issue in hand. It is not in dispute that the CCL has allegedly committed a heinous offences. The argument is with reference to the period provided for the conclusion of preliminary assessment under Section 15 of the Act and passing of an order under Section 15(2) or 18(3) of the Act, namely as to whether the matter is to be

enquired into by the Board or is to be transferred to the Children's Court for trial of the CCL as an adult.

9.11 We may add here that apparently the placement of Section 18(3) does not seem to be appropriate. Sub-sections (1) and (2) of Section 18 deal with final orders to be passed by the Board on inquiry against the CCL, whereas sub-section (3) envisages passing of an order by the Board as to whether the trial of CCL is to be conducted by the Children's Court in terms of preliminary assessment, as envisaged in Section 15 thereof. Passing of such an order could very well be placed in Section 15 itself after sub-section (2) thereof.

9.12 The inquiry as envisaged in Section 15(1) of the Act enables the Board to take assistance from experienced psychologists or psycho-social workers or other experts. The proviso has nexus with the object sought to be achieved. The Act deals with the CCL. The preliminary assessment as envisaged in Section 15 has large ramifications, namely, as to whether inquiry against the CCL is to be conducted by the Board, where the final punishment, which could be inflicted is lighter or the trial is to be conducted by the Children's Court treating the CCL as an adult, where the punishment could be stringent.

9.13 As noticed earlier, the preliminary assessment into the heinous offence by the Board in terms of Section 15(1) of the Act has to be concluded within a period of three months in terms of Section 14(3) of the Act. The Act as such does not provide for any extension of time and also does not lay down the consequence of non-compilation of inquiry within the time permissible. In the absence thereof the provision prescribing time limit of completion of inquiry cannot be held to be mandatory. The intention of the legislature with reference to serious or heinous offences is also available from the language of Section 14 of the Act which itself provides for further extension of time for completion of inquiry by the Board to be granted by the Chief Judicial Magistrate or Chief Metropolitan Magistrate for the reasons to be recorded in writing. It is in addition to two months' extension which the Board itself can grant.

9.14 As in the process of preliminary inquiry there is involvement of many persons, namely, the investigating officer, the experts whose opinion is to be obtained, and thereafter the proceedings before the Board, where for different reasons any of the party may be able to delay the proceedings, in our opinion the time so provided in Section 14(3) cannot be held to be mandatory, as no consequences of failure have

been provided as is there in case of enquiry into petty offences in terms of Section 14(4) of the Act. If we see the facts of the case in hand, the investigating officer had taken about two months' time in getting the report from the NIMHANS.

9.15 Where consequences for default for a prescribed period in a Statute are not mentioned, the same cannot be held to be mandatory. For this purpose, reference can be made to the following decisions of this Court.

9.16 This Court in **Topline Shoes Ltd vs Corporation Bank**[17] while interpretating Section 13(2)(a) of the repealed Consumer Protection Act, 1986 prescribing time limit for filing reply to the complaint, held the same to be directory in nature. Relevant para 11 thereof is extracted below:

> "11. We have already noticed that the provision as contained under clause (a) of sub-section (2) of Section 13 is procedural in nature. It is also clear that with a view to achieve the object of the enactment, that there may be speedy disposal of such cases, that it has been provided that reply is to be filed within 30 days and the extension of time may not exceed 15 days. This provision envisages that

[17] (2002) 6 SCC 33: 2002 INSC 287: (2002) 3 SCR 1167

proceedings may not be prolonged for a very long time without the opposite party having filed his reply. No penal consequences have however been provided in case extension of time exceeds 15 days. Therefore, it could not be said that any substantive right accrued in favour of the appellant or there was any kind of bar of limitation in filing of the reply within extended time though beyond 45 days in all. The reply is not necessarily to be rejected. All facts and circumstances of the case must be taken into account. The Statement of Objects and Reasons of the Act also provides that the principles of natural justice have also to be kept in mind."

(emphasis supplied)

9.17 This Court in **Kailash vs Nanhku and Others** [18] while interpretating Order VIII Rule 1 CPC prescribing time limit for filing written statement, held the same to be directory in nature. Relevant paras 30 and 46 thereof are extracted below:

"30. It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 is circumscribed by the words "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided for though they may be read in by necessary implication. Merely because a

[18] (2005) 4 SCC 480: 2005 INSC 186: (2005) 3 SCR 289

provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

x x x

46. We sum up and briefly state our conclusions as under:

(i) - (iii) xxxx

(iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."

(emphasis supplied)

9.18 This Court in **State of Bihar and Others vs Bihar Rajya Bhumi Vikas Bank Samiti**[19] while section 34 (5) and (6) of the Arbitration and Conciliation Act, 1996 held the period prescribed in sub-section (6) to be directory. The relevant paras 23, 25 and 26 are extracted below:

> "23. It will be seen from this provision that, unlike Sections 34(5) and (6), if an award is made beyond the stipulated or extended period contained in the section, the consequence of the mandate of the arbitrator being terminated is expressly provided. This provision is in stark contrast to Sections 34(5) and (6) where, as has been stated hereinabove, if the period for deciding the application under Section 34 has elapsed, no consequence is provided. This is one more indicator that the same Amendment Act, when it provided time periods in different situations, did so intending different consequences.
>
> x x x
>
> 25. We come now to some of the High Court judgments. The High Courts of Patna [Bihar Rajya Bhumi Vikas Bank Samiti v. State of Bihar, 2016 SCC OnLine Pat 10104], Kerala [Shamsudeen v. Shreeram Transport Finance Co. Ltd., 2016 SCC OnLine Ker 23728], Himachal Pradesh [Madhava Hytech Engineers (P) Ltd. v. Executive Engineers,

[19] (2018) 9 SCC 472: 2018 INSC 648: (2018) 7 SCR 1147

2017 SCC OnLine HP 2212], Delhi [Machine Tool India Ltd. v. Splendor Buildwell (P) Ltd., 2018 SCC OnLine Del 9551], and Gauhati [Union of India v. Durga Krishna Store (P) Ltd., 2018 SCC OnLine Gau 907] have all taken the view that Section 34(5) is mandatory in nature. What is strongly relied upon is the object sought to be achieved by the provision together with the mandatory nature of the language used in Section 34(5). Equally, analogies with Section 80 CPC have been drawn to reach the same result. On the other hand, in Global Aviation Services (P) Ltd. v. Airport Authority of India [Global Aviation Services (P) Ltd. v. Airport Authority of India, 2018 SCC OnLine Bom 233] , the Bombay High Court, in answering Question 4 posed by it, held, following some of our judgments, that the provision is directory, largely because no consequence has been provided for breach of the time-limit specified. When faced with the argument that the object of the provision would be rendered otiose if it were to be construed as directory, the learned Single Judge of the Bombay High Court held as under: (SCC OnLine Bom para 133)

> "133. Insofar as the submission of the learned counsel for the respondent that if Section 34(5) is considered as directory, the entire purpose of the amendments would be rendered otiose is concerned, in my view, there is no merit in this submission made by the

learned counsel for the respondent. Since there is no consequence provided in the said provision in case of non-compliance thereof, the said provision cannot be considered as mandatory. The purpose of avoiding any delay in proceeding with the matter expeditiously is already served by insertion of appropriate rule in the Bombay High Court (Original Side) Rules. The Court can always direct the petitioner to issue notice along with papers and proceedings upon other party before the matter is heard by the Court for admission as well as for final hearing. The vested rights of a party to challenge an award under Section 34 cannot be taken away for non-compliance of issuance of prior notice before filing of the arbitration petition."

The aforesaid judgment has been followed by recent judgments of the High Courts of Bombay [Maharashtra State Road Development Corpn. Ltd. v. Simplex Gayatri Consortium, 2018 SCC OnLine Bom 805] and Calcutta [Srei Infrastructure Finance Ltd. v. Candor Gurgaon Two Developers and Projects (P) Ltd., 2018 SCC OnLine Cal 5606].

26. We are of the opinion that the view propounded by the High Courts of Bombay and Calcutta represents the correct state of the law. However, we may add that it shall be the endeavour of every court in which a Section 34 application is filed, to stick to the time-limit of one year from the date of service of notice to the opposite party by the applicant, or by the Court, as the case may be. In case the Court issues notice after the period mentioned in Section 34(3) has elapsed, every court shall endeavour to dispose of the Section 34 application within a period of one year from the date of filing of the said application, similar to what has been provided in Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This will give effect to the object sought to be achieved by adding Section 13(6) by the 2015 Amendment Act."

(emphasis supplied)

9.19 This Court in **C. Bright vs District and Others**[20] while interpretating the nature of section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 held the period prescribed therein mandating the District Magistrate to deliver possession of a secured asset within 30 days,

[20] (2021) 2 SCC 392: 2020 INSC 633: (2020) 7 SCR 997

extendable to an aggregate of 60 days, to be directory in nature. The relevant paras 8 and 11 are extracted below:

> "8. A well-settled rule of interpretation of the statutes is that the use of the word "shall" in a statute, does not necessarily mean that in every case it is mandatory that unless the words of the statute are literally followed, the proceeding or the outcome of the proceeding, would be invalid. It is not always correct to say that if the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid [State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912] and that when a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute [State of U.P. v. Babu Ram Upadhya, AIR 1961 SC 751]. The principle of literal construction of the statute alone in all circumstances without examining the context and scheme of the statute may not serve the purpose of the statute [RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424].
>
> x x x
>
> 11. In a judgment reported as Remington Rand of India Ltd. v. Workmen [Remington Rand of India Ltd. v. Workmen, AIR 1968 SC 224], Section 17 of the Industrial

Disputes Act, 1947 came up for consideration. The argument raised was that the time-limit of 30 days of publication of award by the Labour Court is mandatory. This Court held that though Section 17 is mandatory, the time-limit to publish the award within 30 days is directory inter alia for the reason that the non-publication of the award within the period of thirty days does not entail any penalty."

(emphasis supplied)

9.20 As against above, where consequences of non-compliance within the period prescribed for anything to be done in the statute have been mentioned, the same was held to be mandatory by this Court in **SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd.**[21] It was with reference to Order VIII Rule 1 CPC as amended for suits relating to commercial disputes in terms of Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Relevant paras of the judgment are extracted hereinbelow:

"10. Several High Court Judgments on the amended Order 8 Rule 1 have now held that given the consequence of non-filing of written statement, the amended provisions of the CPC will have to be held to be mandatory. See *Oku Tech (P) Ltd. v. Sangeet Agarwal*, 2016 SCC OnLine Del 6601 by a

[21] (2019) 12 SCC 210: 2019 INSC 187: (2019) 3 SCR 1050

learned Single Judge of the Delhi High Court dated 11-8-2016 in CS (OS) No.3390 of 2015 as followed by several other judgments including a judgment of the Delhi High Court in *Maja Cosmetics v. Oasis Commercial (P) Ltd.,* 2018 SCC OnLine Del 6698.

11. We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order 8 Rule 1 on the filing of written statement under Order 8 Rule 1 has now been set at naught."

(emphasis supplied)

9.21 The judgment of this Court in **Barun Chandra Thakur's case (supra)** does not come to the rescue of the appellant. This Court in the aforesaid judgment had only noticed the scheme of the Act in paras 59 and 60 and concluded that the conclusion of the inquiry and trials under Act should be expeditious, is the scheme of the Act.

9.22 Hence, we are of the opinion that the time provided in Section 14(2) of the Act to conduct inquiry is not mandatory but directory. The time so provided in Section 14(3) can be extended by the

Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, for the reasons to be recorded in writing.

9.23 After holding that the period as provided for under Section 14(3) for completion of preliminary assessment is not mandatory, what further? We deem it our duty to clarify the position further. For this purpose, the tools of interpretation as were used in **Afcons Infrastructure Limited and Another vs Cherian Varkey Construction Company Private Limited and Others**[22] could be aptly used to clarify the position further. In the aforesaid case, the consideration before this Court was the interpretation of Section 89 CPC. (See: paragraphs 20 and 21)

9.24 The rule of *causus omissus* i.e. 'what has not been provided in the Statute cannot be supplied by the courts' in the strict rule of interpretation. However, there are certain exceptions thereto. Para '19' of the judgment of this Court in **Surjit Singh Kalra vs. Union of India and Another**[23] throws light thereon. The same is extracted below:

> "19. True it is not permissible to read words in a statute which are not there, but "where the alternative lies

[22](2010) 8 SCC 24: 2010 INSC 431: (2010) 8 SCR 1053
[23] (1991) 2 SCC 87: 1991 INSC 36: (1991) 1 SCR 364

between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words" (Craies Statute Law, 7th edn., p.109). Similar are the observations in *Hameedia Hardware Stores v. B. Mohan Lal Sowcar, (1988) 2 SCC 513, 524-25* where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: *Sirajul Haq Khan v. Sunni Central Board of Waqf, 1959 SCR 1287, 1299:AIR 1959 SC 198)*"

(emphasis supplied)

9.25 The issue was thereafter considered by this Court in **Rajbir Singh Dalal (Dr.) vs. Chaudhari Devi Lal University, Sirsa and Another[24].** In the aforesaid case this Court observed as: '*where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a strict construction which leads to absurdity or deprives certain existing words of all meaning,*

[24] (2008) 9 SCC 284: 2008 INSC 913: (2008) 11 SCR 992

and in this situation it is permissible to supply the words (vide Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., pp.71-76)'. This Court also considered the traditional principles of interpretation known as the 'Mimansa rules of interpretation'. The issue under consideration in the aforesaid case was regarding requisite academic qualification for appointment to the post of Reader in the University in Public Administration. Applying the tools of interpretation, this Court opined that 'relevant subject' should be inserted in the qualification required for the post of Reader after the words 'at the Masters degree level' to give the rules a purposive interpretation by filling in the gap.

9.26 The same principles were followed by this Court in **Central Bureau of Investigation, Bank Securities and Fraud Cell vs. Ramesh Gelli and Others**[25].

9.27 In our opinion, the guidance as is evident from sub-section (4) of section 14 of the Act enabling the Chief Judicial Magistrate or Chief Metropolitan Magistrate to extend the period of inquiry as envisaged under Section 14(1), shall apply for extension of period as envisaged in sub-section (3) also. Such an extension can be granted for

[25] (2016) 3 SCC 788: 2016 INSC 134: (2016) 1 SCR 762

a limited period for the reasons to be recorded in writing. While considering the prayer for extension of time, the delay in receipt of opinion of the experts shall be a relevant factor. This shall be in the spirit of the Act and giving the same a purposive meaning.

9.28 We approve the views expressed by the High Court of Madhya Pradesh in **Bhola vs State of Madhya Pradesh**[26] and the High Court in Delhi in **CCL vs State (NCT) of Delhi**[27] who while dealing with the provisions of section 14 of the Act have held that the time period prescribed for completion of the preliminary assessment is not mandatory but merely directory in nature. We also approve the views expressed by the High Court of the Punjab and Haryana in **Neeraj and Others vs State of Haryana**[28] and by the High Court of Delhi in **X (Through his Elder Brother) vs State**[29] who also expressed similar views while dealing with the *pari materia* provisions of the repealed Juvenile Justice (Care and Protection of Children) Act, 2000.

[26] 2019 SCC OnLine MP 521
[27] 2023 SCC OnLine Del 5063
[28] 2005 SCC OnLine P&H 611
[29] 2019 SCC OnLine Del 11164

III EXERCISE OF REVISIONAL POWER BY THE HIGH COURT

10. The order under challenge in the present appeal was passed by the High Court in revision filed by the complainant, impugning the order dated 10.04.2023 passed by the Board *vide* which the application filed by her under section 19 of the Act for termination of proceedings before the Board and transferring the case to the Children's Court for trial, was rejected. It was for the reason that the order passed by the Principal Magistrate on 05.04.2022 was final in terms of Section 7(4) of the Act, as no majority opinion could have been given.

10.1 In terms of the provision of law, the CCL could have grievance against that order and availed of his remedy against the same but, the proceedings were allowed to be continued further. Lesser said the better as to how two members of the Board without the Principal Magistrate being there had conducted the proceedings taking a different view in the matter. It is relevant to note that when subsequent order was passed by two members of the Board on 12.04.2022, the Principal Magistrate had already been transferred, as is evident from impugned order of the High Court (para 19). In fact, the order passed by the two members of the Board on 12.04.2022 directing inquiry in the

case by the Board was *non-est* in the eyes of law, if considered strictly in terms of Section 7(4) of the Act. From various orders passed by the Board, it is evident that the inquiry could not proceed further either on account of the absence of the Presiding Officer or APP (Public Prosecutor) or the witnesses summoned. At that stage, an application was moved by the complainant for termination of proceedings before the Board and transferring the matter to the Children's Court, to which objections were filed by the appellant. The Board *vide* order dated 10.04.2023 dismissed the application holding that the complainant had a right of appeal against the order dated 12.04.2022, which could have been availed and the Board does not have any power to review its order. The aforesaid order was challenged by the complainant before the High Court by filing the Revision Petition invoking power under Section 397 read with Section 399 Cr.P.C. It is the order passed in the aforesaid petition which is impugned before this Court.

10.2 Firstly, the issue is mentioning of Section 397 read with Section 399 Cr. P.C for filing revision petition before the High Court and about its maintainability on that account. Nothing hinges on that, as it was mere mentioning of a wrong section in the petition. The High Court

otherwise has the power to deal with the subject-matter. Section 102 of the Act enables the High Court to exercise its revisional powers with reference to any order or proceeding by the Board or the Children's Court. Hence, on that account we do not find that the revision should have been dismissed.

10.3 Another argument raised by learned counsel for the appellant was that there being remedy of appeal available with the complainant against the order dated 12.04.2024 *vide* which two members of the Board had directed inquiry into the offence allegedly committed by CCL by the Board. In our opinion, even though such a remedy may be available to the complainant which should normally be availed, but what is evident from the facts of the case is that there was an earlier order passed by the Principal Magistrate on 05.04.2022, which was final regarding conduct of trial of the CCL by the Children's Court, still subsequently two members of the Board without the Principal Magistrate being there passed an order on 12.04.2022 directing inquiry into the offence by the Board. In fact, the subsequent order was totally *non-est*. Even if in such a situation the aforesaid order was not

challenged by availing the remedy of appeal, in our opinion the revision under Section 102 of the Act cannot be said to be not maintainable.

10.4 Firstly, there is no time limit provided for filing a revision therein, and secondly it could be on an application filed by any of the parties. The High Court can exercise its revisional powers for satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit. Besides the legality of the order dated 12.04.2022, the case in hand is such where even the propriety of the proceeding was also in question. The proceedings before the Board could not continue after the passing of the order dated 05.04.2022, in terms of Section 7(4) of the Act.

10.5 Hence, non-availment of the remedy of appeal by the complainant in such a situation cannot be held to be fatal. We may also add here that even the appellant could have availed the remedy of appeal against the order dated 05.04.2022, but he thought of continuing before the Board in a *non-est* proceeding.

IV ANOMALY IN SECTION 101 OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

(A) REGARDING THE TERMS USED AS 'CHILDREN'S COURT' AND 'COURT OF SESSIONS'

11. Section 101 of the Act provides for appeal against various orders as provided therein. Sub-section (1) thereof provides that any person aggrieved by an order made by the Committee or the Board under the Act may within 30 days from the date of such order prefer an appeal to the Children's Court, with an exception that against decision of the Committee relating to foster care and sponsorship care the appeal shall lie to the District Magistrate. The term 'Committee' has been defined in Section 2(22) of the Act to mean 'Child Welfare Committee' constituted under Section 27 thereof.

The proviso to sub-section (1) of section 101 provides that the Court of Sessions or District Magistrate, as the case may be, may entertain the appeal after expiry of the period of 30 days in case sufficient cause is shown for the delay in filing.

11.1 Sub-section (2) of Section 101 provides that an appeal against the order passed by the Board after making preliminary assessment

under Section 15 of the Act shall lie before the Court of Sessons. While deciding the appeal, the Court can take assistance of experienced psychologists and medical specialists, other than those whose assistance was taken by the Board while passing the order impugned. It shows independent examination of the issue. Sub-section (4) provides that, no second appeal will be maintainable from the order passed by the Court of Sessions. In **Barun Chandra Thakur's case (supra)** the provisions have been held to be mandatory.

11.2 Some anomalies are evident in the aforesaid proviso, as pointed out by the learned counsel for the parties at the time of hearing. Their contention was that the anomalies should also be addressed, so as to streamline the procedure in future. We also think in the same direction, keeping in view the spirit of law.

11.3 The term Court of Sessions as such has not been defined in the Act. The trial of CCL, who is of the age of 16 years or above and is involved in a heinous offence is to be conducted by the Children's Court, treating him as an adult.

11.4 'Children's Court' has been defined in the Act in Section 2(20) to mean the Court established under the 2005 Act or a Special

Court established under the 2012 Act. Where such Courts are not existing, the Court of Sessions shall have jurisdiction to try the offence under the Act. Meaning thereby the Presiding Officer of the Children's Court and the Court of Sessions have been put in same bracket. There is no doubt with the proposition that a Sessions Judge would include an Additional Sessions Judge as well.

11.5 Section 25 of the 2005 Act provides that for providing speedy trial of offences against children or violation of child rights, the State Government in concurrence with the Chief Justice of the High Court by notification specify at least a Court in the State or for each district a Court of Sessions to be a Children's Court. Meaning thereby the Special Court under the 2005 Act is at the level of the Sessions Court.

11.6 Section 101(1) of the Act deals with filing of appeals against certain orders passed by the Board or the Committee before the Children's Court, as the case may be. The proviso to the aforesaid sub-section provides that in case there is any delay in filing the appeal, the power of condonation has been vested with the Court of Sessions. The word 'Children's Court' is not mentioned, though appeal is maintainable before Children's Court.

11.7 Sub-section (2) of Section 101 of the Act provides for an appeal against an order passed by the Board under Section 15 of the Act. The appellate authority is stated to be Court of Sessions.

11.8 Rule 13 of the 2016 Rules deals with the procedure in relation to Children's Court and Monitoring Authorities. Sub-rules (3) and (4) thereof which deal with appeal filed under Section 101(2) of the Act refer the appellate authority as the 'Children's Court' though in Section 101(2) of the Act appeal is stated to be maintainable before the Court of Sessions. From the above provision also, it is evident that the words 'Court of Sessions' and the 'Children's Court' have been used interchangeably.

12. Section 102 of the Act provides for revisional power of the High Court. This again talks of calling for records of any proceedings in which a Committee or a Board or Children's Court or Court has passed an order. It does not talk of exercise of revisional power against the order passed by the Sessions Court. To put the record straight, it is added that the term 'court' has been defined in the Act in Section 2(23) to mean a civil court, which has jurisdiction in matters of adoption and

guardianship and may include the District Court, Family Court and City Civil Courts.

12.1 Similarly, sub-section (2) provides that against an order passed by the Board after preliminary assessment under Section 15 of the Act, the appeal is maintainable before the Court of Sessions. The Board is headed by the Principal Magistrate. Here, the word Children's Court is not mentioned.

12.2 From a conjoint reading of the aforesaid provisions of the Act and the 2016 Rules, in our opinion, wherever words 'Children's Court' or the 'Sessions Court' are mentioned both should be read in alternative. In the sense where Children's Court is available, even if the appeal is said to be maintainable before the Sessions Court, it has to be considered by the Children's Court. Whereas where no Children's Court is available, the power is to be exercised by the Sessions Court.

(B) TIME FOR FILING APPEAL AGAINST ORDER OF THE BOARD UNDER SECTION 15 OF THE ACT

13. Though, the right of appeal has been provided in Section 15(2) and Section 101(2) of the Act against an order passed under Section 18(3) after preliminary assessment under Section 15 of the Act,

however, neither any time has been fixed for filing the appeal nor any provision is provided for condonation of delay in case need be.

13.1 In our opinion, the same being an omission. In order to make the Act workable and putting timelines for exercise of statutory right of appeal which always is there, we deem it appropriate to fill up this gap, which otherwise does not go against the scheme of the Act. Hence, for the period for filing of appeal in Section 101(2), we take guidance from Section 101(1) of the Act. The period provided for filing the appeal therein is 30 days and in case sufficient cause is shown the power to condone the delay has also been conferred on the appellate authority. Timeline has also been provided for decision of appeal.

13.2 Ordered accordingly.

(C) REGARDING SECOND APPEAL

14. In sub-section (4), it is provided that no second appeal shall lie from the order of Sessions Court. Sub-section (5) provides for appeal to the High Court against an order of Children's Court, for this procedure of CrPC is applicable, as if the second appeal may lie against the order passed by the Children's Court. High Court has also been conferred revisional powers under Section 102 of the Act.

14.1 The aforesaid provisions will also need examination in detail for seamless working of the provisions of the Act removing anomalies. However, as this is not the issue involved in the present appeal and no arguments have been addressed thereon, hence, we leave this issue open to be considered in some appropriate case.

V VALIDITY OF ORDER PASSED BY THE BOARD ON 05.04.2022

15. In the case in hand, after receipt of the report dated 01.02.2022 submitted by the Department of Child and Adolescent Psychiatry, NIMHANS-DWCO, the arguments of learned counsel for the parties were heard by the Board and vide order dated 29.03.2022 the matter was kept for orders on 05.04.2022. On that day, the Principal Magistrate passed the order, after considering the preliminary assessment report and the social investigation report, that the CCL is to be tried by the Children's Court as an adult. The records of the case were directed to be transferred to the Children's Court, Bengaluru. When the file was put up before the member of the Board for signature, he recorded as under:

> "I am having a dissenting view to above said order. I will pass detailed order on next date of hearing."

15.1 The matter was directed to be put up on 12.04.2022. On the next date, the Principal Magistrate being not there and another person having been appointed as a member of the Board, the arguments apparently were reheard by the two members of the Board in the absence of the Principal Magistrate, and it was directed that enquiry into the offence allegedly committed by the CCL is to be conducted by the Board.

15.2 Section 7 of the Act deals with the procedure in relation to the Board. Sub-Section 3 thereof provides that the Board may act notwithstanding absence of any member of the Board. No order passed by the Board shall be invalid by reason only of absence of any member during any stage of proceedings. The proviso thereto provides that at the time of final disposal of the case or making an order under Section 18(3) of the Act, there shall be at least two members including the Principal Magistrate.

15.3 When the arguments in the matter were heard with reference to the order under Section 18(3) of the Act, and the order was reserved on 29.03.2022 the Board consisted of a Principal Magistrate and a Member.

15.4 Section 7(4) of the Act provides that in case there is any difference of opinion in the interim or the final disposal, the opinion of the majority shall prevail. Where there is no such majority, the opinion of the Principal Magistrate shall prevail.

15.5 A perusal of the record shows that after the order was reserved on 29.03.2022, the matter was listed on 05.04.2022 for orders. The Principal Magistrate recorded his opinion that the CCL is to be tried by the Children's Court. The other member of the Board recorded his dissent though, no detailed reasons were given as such. In terms of Section 7(4) of the Act, the opinion of the majority is to prevail. The case in hand does not fall in that category, as the Board on that date consisted of the Principal Magistrate and a Member, and the Member had recorded his dissent. In such a situation the opinion of the Principal Magistrate will prevail. In the case in hand the order was signed by the Principal Magistrate. Even if the other member of the Board had not signed the order and had merely mentioned that he had a dissenting view, without any reasons being recorded, the order of the Principal Magistrate will prevail. Needless to add that reasons in any order are 'heart and soul' and are helpful for the next higher Court to examine the

matter. The proceedings with reference to the opinion of the Board regarding inquiry or trial of the CCL, either by the Board or Children's Court, stood culminated. Any further proceedings in that matter were *non-est* and without jurisdiction. Much less to say anything more about the same. The opinion of the High Court in that regard does not call for any interference.

VI REMEDY OF APPEAL TO APPELLANT

16. In our opinion, considering the facts of the case in hand, the appellant deserves to be granted that right.

16.1 Initially the application filed by the complainant was rejected by the Board. Aggrieved against the same, the complainant preferred revision before the High Court. The High Court decided the same merely on the issue of finality of the opinion of the Board. It was in terms of Section 7(4) of the Act, which provides that where majority opinion is not possible, the opinion of the Principal Magistrate shall prevail. An appeal is a valuable right. The arguments, if any, which the CCL may have against the order dated 05.04.2022 passed by the Board directing for his trial by the Children's Court, have not been considered. The impugned order only noticed as fact that the Board had formed opinion

after considering the opinion received from NIMHANS. If scheme of the Act is considered, an appeal against order of the Board passed under Section 15 of the Act lies to the Court of Sessions. The appellate authority, to examine the issues, is entitled to get the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board. Hence, independent examination is envisaged. The said process has not been followed in the case in hand. We do not want to prejudice the rights of the parties in that regard.

16.2 Hence, we are of the opinion that the CCL can exercise his right of appeal against order dated 05.04.2022 passed by the Board within 10 days and appeal, if any filed, shall be decided by the appellate authority within two months thereafter.

VII ADDITIONAL ISSUES

17. Before parting with the judgment, we quote with approval para 25 of the impugned order passed by the High Court. The same is extracted below:

> "25. One more point observed by this Court is that while signing the order sheet and also orders, the names of the Judicial Member as well as Non-judicial Members are not

noted below their signatures. This is coming in the way of anyone knowing the names of the members who were present and who were absent. Therefore, only on the basis of signatures, this Court was able to distinguish as to who was the Non-Judicial Member present on 05.04.2022 and who was the third member who joined in expressing dissenting opinion on 12.04.2022. This Court is of the considered opinion that it would be appropriate to mention the names of the members below their signatures, which would also help the transparency in conduct of the said proceedings and put the members on guard about their roles played in the said proceedings."

17.1 The High Court has noticed an important issue which arises in judicial and quasi-judicial proceedings throughout the country. The Presiding Officers or Members of the Board, as the case in hand, or Tribunals do not mention their names when the order is passed. As a result of which it becomes difficult to find out later on, as to who was presiding the Court or Board or Tribunal or was the member at the relevant point of time. There may be many officers with the same name. Insofar as the judicial officers are concerned, unique I.D. numbers have been issued to them.

17.2 We expect that wherever lacking, in all orders passed by the Courts, Tribunals, Boards and the quasi-judicial authorities, the names of the Presiding Officers or the Members be specifically mentioned in the orders when signed, including the interim orders. If there is any identification number given to the officers, the same can also be added.

17.3 The matter does not rest here. In many of the orders the presence of the parties and/or their counsels is not properly recorded. Further, it is not evident as to on whose behalf adjournment has been sought and granted. It is very relevant fact to be considered at different stages of the case and also to find out as to who was the party delaying the matter. At the time of grant of adjournment, it should specifically be mentioned as to the purpose therefor. This may be helpful in imposition of costs also, finally once we shift to the real terms costs.

VIII RELIEFS AND DIRECTIONS

18. In view of our aforesaid discussions, the present appeal is disposed of with the following directions:

(i) The provision of Section 14(3) of the Act, providing for the period of three months for completion of a preliminary assessment under Section 15 of the Act, is not mandatory. The same is held to be directory. The period can

be extended, for the reasons to be recorded in writing, by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate.

(ii) The words 'Children's Court' and 'Court of Sessions' in Juvenile Justice (Care and Protection of Children) Act, 2015 and the 2016 Rules shall be read interchangeably. Primarily jurisdiction vests in the Children's Court. However, in the absence of constitution of such Children's Court in the district, the power to be exercised under the Act is vested with the Court of Sessions.

(iii) Appeal, under Section 101(2) of the Act against an order of the Board passed under Section 15 of the Act, can be filed within a period of 30 days. The appellate court can entertain the appeal after the expiry of the aforesaid period, provided sufficient cause is shown. Endeavour has to be made to decide any such appeal filed within a period of 30 days.

(iv) There is no error in exercise of revisional jurisdiction by the High Court in the present matter.

(v) There is no error in the order dated 15.11.2023 passed by the High Court dealing with the procedure as provided for under the Act in terms of Section 7(4) thereof.

(vi) Order passed by the Board as signed by the Principal Magistrate on 05.04.2022 was final. However, the same is subject to right of appeal of the aggrieved party. The appellant shall have the right of appeal against the aforesaid order within a period of 10 days from today. The appellate authority shall make an endeavour to decide the same within a period of two months from the date of filing.

(vii) In all the orders passed by the Courts, Tribunals, Boards and the Quasi-Judicial Authorities the names of the Presiding Officer and/or the Members who sign the orders shall be mentioned. In case any identification number has been given, the same can also be added.

(viii) The Presiding Officers and/or Members while passing the order shall properly record presence of the parties and/or their counsels, the purpose for which the

matter is being adjourned and the party on whose behalf the adjournment has been sought and granted.

19. A copy of the judgment be sent to all the Registrar Generals of High Courts for further circulation amongst the Judicial Officers and the Members of the Juvenile Justice Boards, the Directors of the National Judicial Academy and the State Judicial Academies.

.....J.
(C.T. RAVIKUMAR)

.....J.
(RAJESH BINDAL)

New Delhi
May 07, 2024.