2025:KER:670

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

TUESDAY, THE 7TH DAY OF JANUARY 2025 / 17TH POUSHA, 1946

RPJJ NO. 3 OF 2024

NOORANADU POLICE STATION, ALAPPUZHA

CRIME NO.945OF YEAR 2023

ORDER DATED 20.07.2024 IN CC NO.5/2024,

JUVENILE JUSTICE BOARD, ALAPPUZHA

REVISION PETITIONER/CHILD IN CONFLICT WITH LAW:

XXXXX
AGED XXXX YEARS
XXXXX

BY ADVS. V.N.SANKARJEE
V.N.MADHUSUDANAN
R.UDAYA JYOTHI
M.M.VINOD
M.SUSEELA
KEERTHI B. CHANDRAN
VIJAYAN PILLAI P.K.
C.PURUSHOTHAMAN NAIR
SINEESH K.M.
SHILPA P.S.

RESPONDENTS/STATE AND COMPLAINANT:

1 THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM DISTRICT., PIN - 682031.

2 THE INSPECTOR OF POLICE,
NOORANAD POLICE STATION, MAVELIKKARA TALUK,
ALAPPUZHA DISTRICT, PIN - 690504.

SRI R BINDU (SASTHAMANGALAM)-AMICUS CURIAE;
SRI P M SHAMEER-GP

THIS REV.PETITION(JUVENILE JUSTICE) HAVING COME UP FOR ADMISSION ON 07.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R.'

ORDER

Devan Ramachandran, J.

The Juvenile Justice (Care and Protection of Children) Act, 2000 [for brevity, 'the Act, 2000'] was enacted drawing inspiration from the United Nations Convention on the Rights of the Child, ratified by India on 11.12.1992. It was embedded on the imperative constitutional provisions of Article 15(3) of our Constitution, conferring powers on the State to make special provisions for children; as also on the stipulations in Articles 39(e) & (f), read with Articles 45 & 47, which enjoins the State to ensure that all needs of children are met and their basic human rights protected.

2. Though the afore Act did commendably well, increasing cases of crimes committed by children in the age group of 16 to 18 impelled a requirement for its

comprehensive amendment, it being noticed that its provisions were ill-equipped to tackle child offenders in that group. This was fortified because, the data collected by the National Crime Record Bureau indicated a rise in the number of offenders in the age group of 16 to 18; particularly in categories of crimes, which are defined as being heinous. This led to the Juvenile Justice (Care and Protection of Children) Act, 2015 [for brevity, 'the Act'].

3. One of the acme provisions in the 'Act' relating to heinous offences committed by children in the age group of 16 to 18 is that, in certain specified circumstances and on the enumerated criteria being attracted, such offenders would be tried not as children, but as adults. The statutory provisions empower the Juvenile Justice Board [for brevity, 'the Board'], as also the Children's Court/Sessions Court in such regard.

4. The petitioner in this case was charged in the year 2022, with offences alleged to have been committed by him under Sections 354, 451, 342, 506, 376(3), 376(2)(n) of the Indian Penal Code, 1860 [for brevity, 'the IPC'], along with various Sections of the provisions of Protection of Children from Sexual Offences Act [for brevity, 'the POCSO Act'], when he was a mere 16 years in age. The "Board" of Alappuzha, issued the impugned order, concluding that "*the petitioner had sufficient maturity to understand the act done by him and the consequences of it*" [sic]; and that "*since no infirmity to his mind and body is noticed, he should be tried as an adult and not as a child*" [sic]. It thereupon referred the matter to the Children's Court for inquiry and this order is assailed by him as being perverse, illegal and unlawful.

5. Dr.V.N.Sankarjee – learned Counsel for the

petitioner, argued that the findings of the 'Board' are factually impermissible, incorrect and misdirected; and that the offences alleged against his client are baseless and without any factual corroboration. He predicated that the impugned order is peremptorily void because, it has been issued by the 'Board' without taking the assistance of experienced Psychologists or Psycho-social Workers and other experts, as is statutorily mandated by the 'Act', under the proviso to Section 15 thereof. He then impelled an adscititious argument that his client obtained no other option, but to have approached this Court directly through a Revision because, the statutory Appellate provision is reduced to being nugatory in his case because, if he is to invoke it, it can only be preferred before the Court of Sessions, which would render him without the protection of the indispensable provisions of Section 19(1) of

the 'Act', which provides for an inquiry by the 'Children's Court', before he can be tried as an adult. He thus prayed that the impugned order be set aside.

6. Adverting to the rather piquant legal issues that are projected for our consideration, we requested Sri.Bindu Sasthamangalam – learned Counsel of this Court, to assist us as an amicus curiae. He has made available a meticulous note, touching upon all the provisions of law; as also the precedents that cover the field, which, we must say has been of great assistance to us.

7. The learned amicus curiae pointed out that the latter objection of the petitioner, as argued by his learned Counsel, that had an Appeal been filed by his client against the impugned order, it could have been preferred only before the Court of Sessions and consequently that he would lose the

beneficial umbra of the provisions of Section 19 of the 'Act' is without any basis because, in ***Child in Conflict with Law through his Mother v. State of Karnataka*** *[2024 KHC 6268],* it has been clarified, beyond the pale of doubt, that wherever the words 'Children's Court' or Court of Sessions is used in the 'Act', it shall be read interchangeably; and further that wherever the former is available, all Appeals shall only be instituted before it. He asserted that, this is the inviolable corollary to the operational ambit of the 'Act' because, whether it be the consideration of an Appeal, or the assessment by the 'Board' under Section 15 thereof, before finding the child deserving to be tried as an adult, the 'Children's Court' or the Sessions Court - as the case may be, is enjoined to conduct an inquiry – which he emphasised was mandatory in its tenor. He submitted that in such perspective,

every such consideration automatically encompasses the beneficial stipulation of Section 15 of the Act, including its proviso, mandatorily requiring the obtention of assistance of experienced Psychologist or Psycho-social Workers or other experts. He showed us that, even going by Section 101(1) of the 'Act' - which enumerates the appellate provisions - when an Appeal is preferred against the order like the impugned one, before the 'Children's Court' or the Court of Sessions - as the case may be, the said Court is enjoined to take the assistance of experienced Psychologists and Medical Specialists, other than those whose assistance had been obtained by the 'Board'. He thus opined that, resultantly, an order akin to the one impugned in this Revision ought to have been appealed against by the petitioner before the 'Children's Court'/Court of Session, since the provisions of Section 19 of the 'Act' would

get automatically embedded to the consequential procedure to be followed by it.

8. The learned Amicus Curiae then made submissions *qua* the first limb of arguments of the learned Counsel for the petitioner, namely that the impugned order is null and void because, the proviso to Section 15 of the 'Act' has not been followed by the 'Board', saying that this may not be tenable, because the order impugned says that it had obtained "Social Investigation Report and Counselling Report"; further to which, it had conducted a personal assessment by itself. He reiterated his opinion that, therefore, when the impugned order is one issued by the 'Board' validly under Section 18(3) of the 'Act' - thus referring the matter to the 'Children's Court' for further action under Section 19 thereof - a Revision against it is not maintainable and that the petitioner ought to

have invoked his appellate remedy, as provided under Section 101 thereof.

9. Sri.P.M.Shameer – learned Government Pleader, aligned his arguments more or less with that of the learned Amicus Curiae, again referring to the various provisions of the 'Act', to contend that this Revision is not maintainable and that the petitioner ought to have invoked his statutorily alternative appellate remedy. The learned Government Pleader argued that when a specific power of Appeal is provided in the Statute itself, it was impermissible, and perhaps unnecessary, for the petitioner to have approached this Court directly because that would, in effect, denude him his valuable right of having his case considered by a competent Court of Session or "Children's Court" – as the case may be; and of then obtaining a further remedy, either before this

Court, or other Forum, as may be permissible.

10. As we have said in the prefatory paragraphs of this judgment, the scenario with which we are dealing with, reflects a situation where a child of less than 18 years, but more than 16, is alleged to have committed a 'heinous offence'. This phrase is defined by Section 2(33) of the 'Act' as under:

> '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;

11. After so defining the nature of the offence alleged, Section 15 of the 'Act' provides that the Statutory Board will conduct a preliminary assessment, with regard to the mental and physical capacity of the child to commit such offence; his ability to understand the consequence of the offence; and the circumstances under which he has allegedly committed it; and

only then, issue an order in accordance with Section 18(3) of the Act. The proviso to Section 15 then mandates that, while making such an assessment, the 'Board' may take the assistance of experienced Psychologists, or Psycho Social workers, or other experts.

12. Going to Section 18(3) of the "Act", after the "Board" makes its preliminary assessment, it becomes empowered to pass an order recommending the trial of the child as an adult – if it enters into that view; and then order transfer of the trial to the 'Children's Court', holding jurisdiction.

13. This triggers a further set of consequences under the 'Act', namely, as are enumerated under Section 19 thereof, which are extracted *ut infra* for ease of reference:

> 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.

14. It is thus ineluctable that, even when a 'Board' passes an order under Section 18(3) of the Act – akin to the order impugned in this Revision – the 'Children's Court' cannot proceed to try the child as an adult, but must conduct an inquiry to verify whether he can be so subjected to. Even though Section 19 of the 'Act' employs the word 'may', the **Child in Conflict with Law through his Mother** (supra) makes it apodictic that it will have to be construed as 'shall'; and that the 'Children's Court' must conduct an inquiry to arrive at a decision whether the child deserves to be treated as an adult, taking into account the totality of circumstances, as also his/her special needs and tenets of fair trial. This inquiry is imperative and can never be dispensed with by the 'Children's

Court', since it is specifically designed to ensure that the child is subjected to no prejudice; but adverting to the gravity of the offence and his/her mental capacity to understand the consequences of it, when he/she committed it.

15. Turning to Section 101 of the "Act", Appeals are permitted against any order issued by the "Board" and fixes a period of 30 days from such, to prefer it before the "Children's Court".

16. However, Section 101(2) of the "Act" then provides that an Appeal against an order of the 'Board' under Section 18(3) shall be made before the Court of Session and it is this lacunae that is now sought to be projected by Dr.Sankarjee, arguing that, if such an Appeal is preferred, the benefits of provisions of Section 19(2) of the 'Act' – which, according to him, authorises only the 'Children's Court' to conduct an

inquiry – would be lost to his client.

17. However, as we have already said above, and as rightly argued by the learned Amicus Curiae, in **Child in Conflict with Law through his Mother** (supra), the Honourable Supreme Court has declared, leaving no doubts, that the 'Children's Court' and the Court of Session are one and the same; with the former to be preferred wherever it is established. Viewed from such standpoint, the argument of Dr.Sankarjee regarding the efficacy and the beneficial umbra of Section 19 of the 'Act', while the 'Children's Court'/Court of Session exercises jurisdiction in its appellate mode, loses its significance and pales into redundancy.

18. We are persuaded to hold so also because, even though Dr.Sankarjee says that only a 'Children's Court' under Section 19(1) can cause an inquiry, as per Section 15 of the

'Act', as to whether a child requires to be treated as an adult, it is inescapable from Section 101(2) thereof that, when the 'Children's Court'/Sessions Court acts as an Appellate Court, it is imperatively required to take the assistance of experienced Psychologists and Medical Specialists, who shall be different from those whose assistance were sought by the 'Board' by passing its order under Section 18(3).

19. We do not think that any further safeguard is required in such forensic scheme; and are convinced that the Statute has certainly provided for the best protection to be available to a child, viz a viz the gravity of offence committed by him/her and his/her mental capacity, and such other criteria.

20. To paraphrase, when the 'Children's Court'/Sessions Court acts, either under Section 19 or Section 101(2) of the

'Act', it is bound to act in express conformity with the inviolable safeguards and requirements embedded in the proviso to Section 15, as also Section 19 and 101(2); and thus to cause necessary inquiry, involving Psychologists, Medical Specialists, Psycho Social Workers or other experts, with the singular necessity of verifying and convincing itself that it is a fit case where the child can be construed to be an adult, for the purpose of subjecting him to a trial under the provisions of Section 19 of the Act.

21. We draw support for our opinion as afore from the provisions of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, in which, Rule 13(3) provides that where an Appeal is filed invoking Section 101 of the 'Act' against the finding of the preliminary assessment of the 'Board' under Section 18 (3), the 'Children's Court' shall first

decide that Appeal, and only then proceed to take any further steps. It, therefore, becomes unnecessary for restatement that the operational perimeter and functional ambit of the 'Children's Court'/Court of Session, while considering both the Statutory Appeal and/or the reference made to it by the 'Board' under Section 18(3) of the 'Act' is analogous, if not identical.

22. Understood thus, it becomes unnecessary for further expatiation that the apprehension of the petitioner, that he would lose the benefit of the inquiry mentioned above, if he is to invoke his appellate remedy before the 'Children's Court', is without any legs to stand on. We, therefore, repel such, with the afore clarifications.

23. Now, coming to the first limb of the argument of Dr.Sankarjee – that the present Revision is maintainable

before this Court because the impugned order is perverse and illegal and has been issued by the 'Board' in violation of law, thus being null and void – it is perspicuous that he impels this argument on the assertion that the 'Board' has not abided by the proviso to Section 15 of the "Act". As we have already mentioned above, the said proviso enjoins the 'Board' to take the assistance of experienced Psychologists or Psycho Social Workers or other experts, before it takes a decision under the provisions of Section 18(3) of the 'Act'; and if this had not been done, then there would surely be force in the argument that such an order would fall foul of the Statutory requirements, consequently liable to be declared null. However, when one examines the impugned order, and as again correctly pointed out by the learned Amicus Curiae, the 'Board' has crystally recorded that is has relied upon a 'Social

Investigation Report' and 'Counselling Report'; and to have then conducted a personal assessment, to ascertain whether the petitioner is deserving of being treated as an adult, to stand trial. These are issues in the realm of facts, into which this Court cannot enter at this stage because, the power invoked by the petitioner to approach this Court is Section 102 of the 'Act' which is as under:

> 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.

24. As limpid from the afore, this Court is invested with jurisdiction only to verify the legality and propriety of an order passed by the 'Board' and nothing more. In other words,

this Court does not exercise appellate jurisdiction at this stage, but can only revise an order, which has been issued in violation of law and propriety.

25. As said above, in the case at hand, the argument of Dr.Sankarjee is that the impugned order has been issued in violation of law, because the 'Board' did not obtain the assistance of Psychologists and other experts, as mandated under the proviso to Section 15 of the 'Act'. However, the impugned order, *prima facie*, belies this argument, because the 'Board' is specifically stated to have relied upon 'Social Investigation Report and Counselling Report' and to have done a personal assessment of the petitioner. Whether these reports are valid in law, or whether they are sufficient within the knell of the Statutory requirements, are matters which can certainly be projected by the petitioner only in appellate

procedure and not through a revision before this Court under Section 102 of the 'Act'.

26. Once we notice that the essential requirements under Section 15 appear to have been, at least *prima facie,* satisfied by the 'Board' – without concluding whether they are sufficient, proper or valid – our jurisdiction under Section 102 of the 'Act' would stand extinguished and it will not be proper for us to speak on the merits of the order, or the opinion of the 'Board', which needs to be left to the discretion of the 'Children's Court'/Sessions Court, within the conjoined reading of the provisions aforementioned and extracted.

27. Thus seen, the provisions of Sections 101(2) of the 'Act' and Section 19 thereof, run complementary to each other and require to be read conjointly. To put it differently, the procedure to be adopted by the Court is the same, whether it

be consideration of the report from the 'Board', under Section 18(3) of the 'Act', or that of an Appeal preferred before it against such.

28. In such view, we cannot find this revision to be maintainable before us; and in any case, as rightly argued by Sri.P.M.Shameer, it may cause a disservice to the petitioner because, he would be denuded of a valuable right of Appeal, under Section 101(2) of the 'Act'; before the Children's Court/Sessions Court, especially when he may obtain further rights as per the Statutory Scheme.

29. We place on record our commendation for Sri.R.Bindu (Sasthamangalam) – learned *Amicus Curiae*, who was very meticulous in his approach, guiding us through the intricacies of law - which was rather novel to us - making available the statutory provisions in action, as also the

precedents covering the area. The effort of the *Amicus Curiae,* certainly made our task lighter, enabling navigation of a path which has to be done rather carefully, taking into account the factum of the petitioner being a Child in Conflict with Law, but charged with heinous offences.

30. When our minds as afore were disclosed to the Bar, the learned counsel for the petitioner - Dr.V.N.Sankarjee sought that his client be given liberty to file a statutory appeal against the impugned order. We do not understand why such a prayer should have been made because the right of appeal is certainly available to the petitioner and going by our view above, it would be necessary for the Children's Court to consider every aspect, even if it were not to be filed because it certainly will have to consider the reference already made to it by this Court. Further, the statutory

scheme has specific provisions for condonation of delay in filing the appeal and we see no reason why the 'Children's Court' would not consider it in its proper perspective, especially within the factual aspect that the petitioner has approached this Court through this proceedings, albeit incorrectly.

In the afore circumstances, we dismiss this revision with the afore observations.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B.SNEHALATHA

JUDGE

sp/rr/akv

APPENDIX

PETITIONER ANNEXURES

ANNEXURE-I	TRUE COPY OF THE FIRST INFORMATION REPORT DATED 13.10.2023 IN CRIME NO.945/2023 OF THE NOORANADU POLICE STATION.
ANNEXURE-II	TRUE COPY OF THE FINAL REPORT DATED 2.11.2023 IN CRIME NO.945/2023 OF THE NOORANADU POLICE STATION.
ANNEXURE-III	TRUE COPY OF THE SOCIAL BACKGROUND REPORT DATED 17.11.2023 OF THE CHILD WELFARE POLICE OFFICER IN CRIME NO.945/2023 OF NOORANADU POLICE STATION.
ANNEXURE-IV	TRUE COPY OF THE PLAN DATED 23.11.2023 PREPARED BY THE VILLAGE OFFICER, THAMARAKKULAM.
ANNEXURE-V	CERTIFIED COPY OF THE ORDER DATED 20.7.2024 IN C.C.NO.5/2024 OF THE JUVENILE JUSTICE BOARD OF ALAPPUZHA.