

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. No.16/2024

"X"

..... Petitioner (s).

V E R S U S

The State of Tripura

..... Respondent(s).

For Petitioner (s) : Mr. Subrata Sarkar, Sr. Advocate,
Ms. Piyali Chakraborty, Advocate,
Ms. Uttara Singh, Advocate.

For Respondent(s) : Mr. Raju Datta, P.P.,
Mr. Rajib Saha, Addl. P.P.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **22nd January, 2025.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Subrata Sarkar, learned senior counsel assisted by Ms. Piyali Chakraborty, learned counsel appearing for the petitioner and Mr. Raju Datta, learned Public Prosecutor assisted by Mr. Rajib Saha, learned Addl. Public Prosecutor appearing for the respondent-State.

2. The Court of learned Sessions Judge, West Tripura, Agartala is the Children's Court within the meaning of Section 2(20) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (*hereinafter referred to as "the Act of 2015"*). The learned Sessions Judge, West Tripura, Agartala [the appellate Court] has rejected the appeal under Section 101 of the Act of 2015 preferred by the child in conflict with law (CCL, for short) wherein the order on preliminary assessment report dated 01.04.2021 passed by the learned Juvenile

Justice Board, West Tripura, Agartala (JJB, for short) in case No. Juvenile 19 of 2019 under Sections 366A/376(1) of the Indian Penal Code (IPC, for short) was under challenge.

3. The relevant facts necessary to deal with the issue in controversy in the present revision petition preferred under Section 102 of the Act of 2015 read with Sections 397 and 401 of the Code of Criminal Procedure, 1973 (Cr.P.C., for short) are as under:

(i) On the basis of a written complaint lodged on 18.06.2019 at 0150 hours by one Sri Narayan Das alleging that on 16.06.2019 at about 1200 hours the CCL 'X' forcibly kidnapped the younger sister of the informant namely 'Y' (*hereinafter referred to as "the victim"*), aged 17 years and she could not be traced despite frantic search in all probable places, an FIR bearing No.2019BJN049 was instituted. Subsequently, his minor sister was dropped by a vehicle bearing registration No.TR-03-D-0767. The informant came to know from the victim that on 16.06.2019 the CCL took her to a guest house located at Ambassa area and in that guest house the CCL forcibly committed rape upon her. In the same night, the CCL also tortured the victim mentally and physically in the said guest house giving assurance of marriage. When the victim raised alarm, the CCL pressed her mouth and asked her not to raise alarm giving assurance that he would marry the victim girl.

(ii) On receipt of the written complaint, the Officer-in-Charge of Bodhjunnagar Police Station registered Bodhjunnagar P.S. case No.2019BJN049 under Sections 366A/376(1) of IPC against the CCL.

(iii) After investigation, charge-sheet bearing Bodhjungnagar P.S. C/S No.13 of 2020 dated 29.02.2020 under Sections 366A/376 of IPC and under Section 4 of the POCSO Act, 2012 was submitted against the CCL aged 17 years.

(iv) After receipt of the charge-sheet, the learned JJB sought for the Preliminary Assessment Report of the CCL from Modern Psychiatric Hospital, Narsingarh. The report was received on 17.03.2021 as per the order sheet of the said date. The case was fixed for order on preliminary assessment on the next date, i.e. 01.04.2021. The learned JJB came to a conclusion upon going through the Preliminary Assessment Report and upon hearing the learned Public Prosecutor as also the CCL represented through the legal aid counsel that the CCL was a boy of 17 years 06 months and 28 days old on the date of alleged incident. He was almost an adult person who was physically and mentally capable to commit the alleged offence. The CCL had the ability to understand that he was going to commit the alleged acts only for a physical relationship with the victim girl. So, the learned JJB found it prudent to send the case to the learned Children's Court for holding inquiry after observing all legal formalities.

(v) On receipt of the case record bearing Bodhjungnagar P.S. case No.49 of 2019 from the learned JJB, West Tripura, Agartala, the case was fixed on 29.03.2022 for discussion on framing of charge.

(vi) During the pendency of Special (Juvenile) case No.01 of 2021, the CCL preferred the appeal under Section 101 of the Act of 2015 on

14.06.2023 to assail the order dated 01.04.2021 passed by the learned JJB in Juvenile case No.19 of 2019. The learned appellate Court after perusal of the materials on record including the Preliminary Assessment Report and upon hearing learned counsel for the appellant-State and the CCL dismissed the appeal holding that in the facts and circumstances of the case and also the heinous offences allegedly committed by the CCL-appellant, there is no merit in the appeal. The CCL was directed to appear before the learned Children's Court on 05.03.2024 in connection with case No.Special(Juvenile) 01 of 2021. Being aggrieved, the CCL has preferred the instant revision petition.

(vii) The name of the CCL has been masked and is identified as 'X' for the purposes of the case records though his identity has been preserved in the office in the manner prescribed.

4. Mr. Subrata Sarkar, learned senior counsel for the petitioner-CCL, has, *inter alia*, questioned the order passed by the learned JJB dated 01.04.2021 whereby the juvenile was held as falling in the category of an adult liable to be tried by the Children's Court for the heinous offences under Sections 366A/376 of the IPC and also the appellate order dated 02.02.2024 passed by the learned Sessions Judge, West Tripura, Agartala on the following grounds:

(i) That, the CCL was denied reasonable opportunity to defend as the materials like the Social Investigation Report (SIR, for short), the Preliminary Assessment Report prepared by the Clinical Psychologist, Modern Psychiatric Hospital, Narsingarh and other materials were not communicated to

him before the order dated 01.04.2021 was passed holding him liable to be tried by the Children's Court;

(ii) The learned JJB did not follow the requirement prescribed under Section 99 of the Act of 2015 by not communicating even the substance of the reports relating to the CCL to another Committee or Board or to the child or to his parent or guardian. Learned senior counsel has in this regard referred to the opinion of the Apex Court in the case of *Barun Chandra Thakur* (supra) that even though all such reports are treated as confidential so that they do not come in the public domain or are shared with third parties but the CCL or his parents or his guardians cannot be denied access to such reports. However, he does not dispute that the CCL was represented by a legal aid counsel and no application was made on behalf of the CCL for providing those reports;

(iii) Learned senior counsel for the petitioner has also sought to draw the attention of this Court to the Preliminary Assessment Report in order to submit that neither does it reflect that as to who is the author of the said report nor does it contain a proper analysis of the various psycho-social and mental health assessment factors to be carried out in respect of a child in conflict with law as per the format prescribed by the NIMHANS and also taken note of by the Apex Court in the case of *Barun Chandra Thakur vrs. Master Bholu and another* reported in (2023) 12 SCC 401;

(iv) The appellate Court has also failed to take note of this infirmity in the grounds of challenge raised by the CCL against the order dated 01.04.2021 passed by the learned JJB, West Tripura;

(v) The Juvenile Justice (Care and Protection of Children) Act, 2015 and the Model Rules framed thereunder are in the nature of a beneficial piece of legislation as has been held in several judgments rendered by the Apex Court; therefore, the provisions of the Act should be construed in a manner beneficial to the Juvenile.

(vi) The three ingredients prescribed under Section 15 of the Act of 2015 to be followed by the JJ Board for the purposes of preliminary assessment into heinous offences of a CCL who is above the age of 16 years, i.e. (a) his mental and physical capacity to commit such offence; (b) the ability to understand the consequences of the offence; and (c) the circumstances in which he allegedly committed the offence, have not been duly satisfied by the learned JJB while directing the petitioner to be tried by the Children's Court;

(vii) Even the Children's Court has the power to decide that there is no need for trial of the child as an adult. For that purposes, it may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of Section 18, which the learned Children's Court also failed to follow;

5. Learned senior counsel for the petitioner has in summary submitted that not only the learned JJB but also the appellate Court has failed to follow the procedure prescribed under the Act of 2015 read with the Rules of 2016 in matter of preliminary assessment of the CCL on the question whether he is fit to be tried by a Children's Court as an adult for having committed the

heinous offences under Sections 366A/376 of the IPC. Based on these submissions, the impugned orders have been challenged.

6. Mr. Raju Datta, learned Public Prosecutor for the respondent-State, has defended the order passed by the learned JJB dated 01.04.2021 and also the appellate order dated 02.02.2024. He submits that all the procedural requirements of obtaining Social Investigation Report and Preliminary Assessment Report as per the provisions of the Act of 2015 have been duly complied with. The police has after investigation found *prima facie* materials against the CCL of having committed the heinous offences under Sections 366A/376 of the IPC. The statement of the victim under Section 164(5) of the Cr.P.C. and the materials collected during the investigation also substantiates the allegations made in the FIR that the CCL had not only committed the serious offence of rape of the minor victim girl in a hotel room after kidnapping her from her parent's house but he had the mental and physical capacity to commit such offence and also to understand the consequences of the offence. The learned JJB has taken into consideration the Preliminary Assessment Report, the SIR and also taken into consideration the submission of the learned Public Prosecutor and the legal aid counsel representing the CCL while passing the order for the CCL to be tried as an adult by the Children's Court for the heinous offences committed under Sections 366A/376 of the IPC. Learned JJB has while taking into account these materials and reports given due consideration to the aspects regarding (a) mental capacity to commit the alleged offence, (b) physical capacity to commit such offence, (c) ability to

understand the consequences of the offence, and (d) the circumstances in which the juvenile in conflict with law has allegedly committed the offence.

7. It is further submitted that though the decision of the Apex Court in the case of **Barun Chandra Thakur** (supra) had come later on in July, 2022 but the learned JJB had keeping into mind the provisions of the Act of 2015 and the rules framed thereunder sought the report of psychological and mental health assessment of the CCL from the Clinical Psychologist of Modern Psychiatric Hospital, Narsingarh which is a specialized hospital in such matters.

8. It is submitted that the grievance of non-furnishing of Preliminary Assessment Report and SIR and other materials to the CCL as being made out at this stage is only an afterthought as at no stage of the proceedings the CCL represented through a proper legal aid counsel sought such reports before the impugned order dated 01.04.2021 was passed. There has been no denial of access to such reports as was in the case of **Barun Chandra Thakur** (supra).

9. It is submitted that Section 99 of the Act mandates that such reports are to be treated as confidential and discretion is left with the Board or the Committee, if it so thinks fit, to communicate the substance thereof to another Committee or Board or to the child or to the child's parent or guardian. He has also referred to sub-section (2) of Section 99 of the Act which provides that the victim shall not be denied access to their case record, orders and relevant papers.

10. Learned Public Prosecutor has also made reference to the other materials placed by the investigating agency including the statement of the victim under Section 164(5) of the Cr.P.C. The Apex Court has in the case of **Barun Chandra Thakur** (supra) at paragraph-85 of the report held that the Court including the High Court, exercising revisionary powers under Section 102 would test the decision of the Board or the Children's Court with respect to its legality or propriety only and not delve upon the exercise of preliminary assessment as it is in the domain of the experts. In such circumstances, the impugned orders do not suffer from any illegality or impropriety nor denial of reasonable opportunity to the CCL. As such, the revision petition is fit to be dismissed.

11. I have considered the submissions of learned counsel for the parties at length. I have also taken note of the materials placed from the lower Court records which include the SIR, the Preliminary Assessment Report, the statement made by the victim under Section 164(5) of the Cr.P.C. as also the charge-sheet and the SFSL report.

12. In the gamut of facts and circumstances and the materials placed from record in the light of the provisions of the Act of 2015, specifically Section 15 read with Section 99 thereof which are extracted hereunder and the opinion of the Apex Court in the case of **Barun Chandra Thakur** (supra), this Court is of the considered opinion that the impugned order dated 01.04.2021 passed by the learned JJB suffers from violation of principles of natural justice and a reasonable opportunity to the CCL/his parent or the guardian because of non-furnishing or communication of the substance of the reports and the

materials relied upon by it to hold the CCL is liable to be tried as an adult by the Children's Court for the offences punishable under Sections 366A/376 of the IPC.

13. Section 15 of the Act of 2015 and Section 99 thereof are quoted hereunder as they are contextual to the issue at hand:

"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.

99. Reports to be treated as confidential.- (1) All reports related to the child and considered by the Committee or the Board shall be treated as confidential:

Provided that the Committee or the Board, as the case may be, may, if it so thinks fit, communicate the substance thereof to another Committee or Board or to the child or to the child's parent or guardian, and may give such Committee or the Board or the child or parent or guardian, an opportunity of producing evidence as may be relevant to the matter stated in the report.

(2) Notwithstanding anything contained in this Act, the victim shall not be denied access to their case record, orders and relevant papers."

14. In this regard, the opinion of the Apex Court in the case of **Barun Chandra Thakur** (supra) as to the requirement of providing reasonable opportunity or following the principles of natural justice in the light of Section

99 of the Act of 2015 and Rule 10(5) of the Model Rules are aptly extracted hereunder:

52. The Board and the Children's Court have relied upon Section 99 of the 2015 Act to hold that they were not required to provide the copies of the material on record available in the form of SIR, the report of the psychologist, and other material. On the other hand, the High Court relied upon Rule 10(5) of the Model Rules to hold that the documents ought to have been provided to the child or his guardian or his lawyer as the case may be, and this having not been done, it was a case where reasonable opportunity had been denied.

53. Section 99 provides that all reports relating to the child and considered by the Committee or the Board are to be treated as confidential. The proviso to Section 99(1) gives the power to the Committee or the Board to communicate the substance thereof to another Committee or Board or the child, his parents or guardian, and may also give such Committee or Board or the child or parent or guardian, an opportunity to produce evidence as may be relevant to the matter stated in the report. Section 99(2) states that the victim would not be denied access to the case record, relevant documents and papers.

54. Maintaining confidentiality has a different purpose but in no case can it be said that to maintain confidentiality, the relevant material would not be provided to the child or his guardian or parents. It would be in complete contravention of the settled principles of criminal jurisprudence. Concept of confidentiality used in Section 99 is to prevent the reports from coming in public domain or shared in public. Its availability will be confined to the parties to the proceedings and the parties should also refrain from sharing it with third parties. Section 99(2) begins with the non obstante clause and proceeds to direct that the victim should not be denied access to the case report, orders and relevant papers. Once the legislature's intention is to provide material to the victim there could never be an intention in the name of confidentiality to deny such access to the records to the child or his parents or guardians. The Board and the Children's Court committed an illegality in not providing the documents as demanded by misinterpreting Section 99 of the 2015 Act.

55. In the present case, the SIR and the report of the expert psychologist was not provided to the respondent or his parents or guardians. An application was filed on behalf of the respondent for supplying such material which was denied by the Board by a detailed order dated 13-12-2017. The Board only extended the liberty to the counsel and the parent or the guardian to look into these reports for 30 minutes before the hearing commenced.

56. It has been argued on behalf of the respondent that firstly, these documents ought to have been provided to them; and secondly, half an hour was too little a time to go through the contents of the voluminous SIR (running into 35 pages) which contained several statements; and thirdly, they had no opportunity to lead evidence in rebuttal by way of cross-examination or submitting documents.

57. Another violation of principles of natural justice/opportunity addressed on behalf of the respondent was on the report of the psychologist, which only provided the IQ level of the child and nothing more. An application was also filed on behalf of the respondent to lead evidence in rebuttal to the report of the psychologist and to cross-examine the

psychologist as the tests applied by the psychologist in his report were not the relevant tests for a child aged 16.5 years. The tests applied were applicable to children up to the age of 15 years. This request made on behalf of the respondent was also denied by the Board by a detailed order dated 13-12-2017.

58. Another aspect urged on behalf of the respondent was to the effect that the report of the psychologist suggested/recommended that the child may be got examined further by the Institute of Mental Health, University of Health Sciences, Rohtak. According to the learned counsel for the respondent, the Board committed an error by not getting further examination carried out by a superior institution. Once the psychologist carrying out the tests had given a report and he was himself not sure of his own report and had suggested for assessment by a superior institution, the Board ought to have obtained further report.

59. Yet another aspect which goes to violation of a fair opportunity was, rejection of the application filed on behalf of the respondent before the Board to defer the proceedings of preliminary assessment till such time the compliance of Rule 10(5) of the Model Rules is not made. The material collected by the Child Welfare Police Officer in the form of statement of witnesses and other documents during the course of investigation which was to be made within a period of one month, ought to have been awaited and a copy of the same should have been provided to the respondent or his parents or guardian as this would be relevant for preliminary assessment.

60. In view of the above, the argument of Mr Vikramjit Banerjee, learned counsel for CBI, on two counts needs to be rejected. Firstly, Rule 10(5) of the Model Rules should be read down as being in conflict with Section 99 of the 2015 Act and secondly, that no material collected during investigation could be provided to the accused till such time the police report under Section 173(2)CrPC is filed and the cognizance is taken by the Magistrate under Section 190 and the stage of Sections 207/208CrPC is reached. The 2015 Act, being a special Act, will have an overriding effect over general procedure prescribed under CrPC. The provisions of CrPC would be applicable so long and so far as they are not in conflict with the special provisions contained in the 2015 Act."

15. In the facts of the present case, no doubt, the learned JJB had called for the Psychological Assessment Report from the Clinical Psychologist of Modern Psychiatric Hospital, Narsingarh which is an expert body and the report was also received on 17.03.2021 but a perusal of the order dated 17.03.2021 shows that the case records were fixed on 01.04.2021 for order on preliminary assessment without communicating the substance of the report to the child or his parent or guardian as per Section 99(1) of the Act of 2015. The principles governing the same has been expatiated in paragraphs-52 to 54 in the case of *Barun Chandra Thakur* extracted supra. The Apex Court has held that

while maintaining confidentiality has a different purpose but in no case can it be said that to maintain confidentiality, the relevant material would not be provided to the child or his guardian or parents. It would be in complete contravention of the settled principles of criminal jurisprudence. Concept of confidentiality used in Section 99 is to prevent the reports from coming in public domain or shared in public. Its availability will be confined to the parties to the proceedings and the parties should also refrain from sharing it with third parties. Section 99(2) which begins with a non obstante clause proceeds to direct that the victim should also not be denied access to the case report, orders and relevant papers. Once the legislature's intention is to provide material to the victim, there could never be an intention in the name of confidentiality to deny such access to the records to the child or his parents or guardians meaning thereby the child in conflict with law (CCL).

16. A perusal of the order dated 17.03.2021 followed by the impugned order dated 01.04.2021 passed by the learned JJB does not leave any room of doubt that neither were these materials communicated to the CCL before taking a decision on the Preliminary Assessment Report nor the same were endorsed on the file for being accessed by the CCL through his parents or guardian or his legal aid counsel. In that way, a reasonable opportunity to the CCL to defend himself or rebut the reports which include the Preliminary Assessment Report and the SIR on the basis of which the learned JJB has held him liable to be tried as an adult by the Children's Court for the alleged heinous offences stands denied in the eye of law. Such denial of reasonable opportunity goes to the root of the matter and vitiates the decision making process as far as the declaration

of the CCL to be tried as an adult by the Children's Court under Section 15 of the Act is concerned. The provisions of the Act of 2015 and the Rules framed thereunder are no doubt beneficial in nature as held by the Apex Court in a number of decisions rendered from time to time.

17. This Court is, therefore, of the considered opinion that the impugned order dated 01.04.2021 passed by the learned JJB and the order dated 02.02.2024 passed by the learned appellate Court under Section 101 of the Act of 2015 are unsustainable in law and are fit to be set aside. Accordingly, it is ordered.

18. The matter is remitted to the learned JJB to take a fresh decision on the Preliminary Assessment Report to assess the capacity of the child as regards his mental and physical capacity to commit such offence; the ability to understand the consequence of the offence and the circumstances in which he allegedly committed the offence in order to pass such order as required under Section 18(3) of the Act as to whether there is a need for trial of the said child as an adult by the Children's Court having jurisdiction to try such offences. Since the FIR bearing No. 2019BJN049 regarding the alleged offence is of 2019 and the matter has not progressed beyond the present stage, this Court deems it proper to direct the learned JJB, West Tripura, Agartala to take a fresh decision on this question within a reasonable period, preferably within 2(two) months from the date of receipt of copy of this order. The learned Court is well advised to be cognizant of the principles laid down as regards the exercise of power under Section 15 of the Act of 2015 by the decisions rendered by the

Apex Court from time to time including that of *Barun Chandra Thakur* (supra).

19. Let it be made clear that this Court has not made any comments on the merits of the Preliminary Assessment Report or the Social Investigation Report and other materials which are required to be taken into consideration by the learned JJB to arrive at a fresh decision in accordance with law.

20. The revision petition stands allowed in the aforesaid terms.
Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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