

(2017) 04 BOM CK 0207
In the Bombay High Court
Case No : 2372 of 2015

Jaiprakash Suru Shetty

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

[3998](#) Constitution of India, [3998-226](#) Article 226 -
Power of High Courts to Issue certain writs
[3863](#) Code of Criminal Procedure, 1973, [3863-482](#) Section
482 - Saving of inherent powers of High Court

Citation : (2017) 04 BOM CK 0207

Hon'ble Judges : A.S. Oka, Anuja Prabhudessai

Bench : DIVISION BENCH

Advocate : M.G. Shukla, S.K. Shinde, K.V. Saste

Final Decision : Disposed off

Judgement

1. By this Petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973, the prayer is for quashing the First Information Report registered against the petitioner for the offences punishable under Sections 370 and 374 of the Indian Penal Code, Sections 3 and 14 of the Child Labour (Prohibition and Regulation) Act, 1986 and Sections 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000. There are consequential prayers including a prayer for challenging the circular dated 24th April, 2015 issued by the learned Chief Metropolitan Magistrate, Mumbai. We must note here that during the pendency of this Petition, the petitioner appeared before the Juvenile Justice Board,

Dongri, Mumbai and pleaded guilty. By order dated 5 th December, 2016 passed by the Juvenile Justice Board, the petitioner was held guilty of the offences punishable under Sections 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "the said Act of 2000") and Section 374 of the Indian Penal Code. The said order dated 5th December, 2016 has attained finality as the petitioner has not challenged the same. Therefore, now it is not necessary to consider the prayer for quashing the FIR. However, the prayer for quashing the circular dated 24th April, 2015 will have to be considered on merits.

2. Therefore, the submissions which are canvassed across the Bar by the learned counsel appearing for the petitioner and the learned Public Prosecutor are confined to the legality and validity of circular dated 24th April, 2015. The said circular reads thus :-

"No. CMM/21/2015

Office of the Chief

Metropolitan Magistrate,

Mumbai

Date :- 24-04-2015

CIRCULAR

Subject :- Cognizance of crime committed under section 23 to 28 of the Juvenile Justice Care and Protection of Children Act, 2000

Apropos of the above, it is observed that remand applications/ chargesheets in respect of crimes committed under section 23 to 28 of the Juvenile Justice (Care and Protection of Children) Act, 2000 are presented before the courts of Metropolitan Magistrates, Mumbai as per jurisdiction.

Attention of all the judicial officers is invited to Rule 10 of the Juvenile Justice (Care and Protection of Children) Rules 2007. As per Rule 10(b), it is provided that,

The Board shall perform the following functions to achieve the objectives of the Act, namely :-

(b) take cognizance of crimes committed under sections 23 to 28 of the Act.

The Presiding Officers of Juvenile Justice Board (City and Suburbs) are directed

to accept the remand applications and chargesheets in respect of crimes committed under sections 23 to 28 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and dispose of the same according to law."

3. The submission is that the circular is illegal inasmuch as under Sub-Section (1) of Section 6 of the said Act of 2000, the jurisdiction conferred on the Juvenile Justice Board (for short "the Board") is confined to dealing with the proceedings under the said Act of 2000 relating to juveniles in conflict with law. It is pointed out that admittedly, the petitioner was not a juvenile in conflict with law on the date on which the alleged offence was committed. Therefore, the submission is that the impugned circular issued by the learned Chief Metropolitan Magistrate is illegal as the Board is not conferred with the power to deal with the proceedings relating to the persons who are not juveniles in conflict with law. The learned Public Prosecutor supported the circular by relying upon clause (b) of Rule 10 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short "the said Rules") framed by the Central Government. His submission is that in view of clause (b) of Rule 10 of the said Rules, jurisdiction is conferred on the Board to take cognizance of the offences punishable under Sections 23 to 28 of the said Act of 2000 and therefore, there is nothing wrong with the said circular.

4. We have given careful consideration to the submissions. We may note here that the impugned circular is confined to the offences punishable under Sections 23 to 28 of the said Act of 2000 and, therefore, we are not dealing with the cases where the offences alleged against a person who is not juvenile in conflict with law are under Sections 23 to 28 of the said Act of 2000 as well as under the Indian Penal Code or any other penal statute. We are confining our adjudication to the offences under Sections 23 to 26 and 28 of the said Act of 2000. Sections 23 to 28 of the said Act of 2000 read thus :- "23. Punishment for cruelty to juvenile or child.- Whoever, having the actual charge of

or control over, a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

24. Employment of juvenile or child for begging.-

1. Whoever, employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

2. Whoever, having the actual charge of, or control over, a juvenile or the child abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.

25. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.-

Whoever give, or causes to be given, to any juvenile or the child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon

the order of duly qualified medical practitioner or in case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

26. Exploitation of juvenile or child employee.-

Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and with-holds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

27. Special offences.-

The offences punishable under section 23, 24, 25 and 26 shall be cognizable.

28. Alternative punishment.-

Where an act or omission constitute an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offences shall be liable to punishment only under such Act as provides for punishment which is greater in degree."

5. Thus, the offences punishable under Sections 23 to 26 are

the offences committed against a juvenile or a child by any person

including an adult (who was not a juvenile in conflict with law on the

date of the commission of alleged offence). Thus, the offences punishable under the said provisions are the offences relating to a juvenile or a child.

6. The petitioner has heavily relied upon Section 6 of the said Act which reads thus :-

"6. Powers of Juvenile Justice Board.-

1. Where a Board has been constituted for any district, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.

2. The powers conferred on the Board by or under this Act may also be exercised by the High Court and the court of Session, when the proceedings comes before them in appeal, revision or otherwise."

7. The provisions of the Rules framed under Sub-Section (1) of Section 68 of the said Act of 2000 will have to be considered. The Central Government has framed the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short "the said Rules"). Rules 10 and 18 read thus :-

"10. Functions of the Board. ? The Board shall perform the following functions to achieve the objectives of the Act, namely:-

- (a) adjudicate and dispose cases of juveniles in conflict with law;
- (b) take cognizance of crimes committed under section 23 to 28 of the Act;
- (c) monitoring institutions for juveniles in conflict with law and seeking compliance from them in cases of any noticeable lapses and improvement based on suggestions of the Board;
- (d) deal with non-compliance on the part of concerned government functionaries or functionaries of voluntary organizations, as the case may be, in accordance with due process of law;
- (e) pass necessary direction to the district authority and police to create or provide necessary infrastructure or facilities so that minimum standards of justice and treatment are maintained in the spirit of the Act;
- (f) maintain liaison with the Committee in respect of cases needing care and protection;

(g) liaison with Boards in other districts to facilitate speedy inquiry and disposal of cases through due process of law;

(h) take suitable action for dealing with unforeseen situations that may arise in the implementation of the Act and remove such difficulties in the best interest of the juvenile;

(i) send quarterly information about juveniles in conflict with law produced before them, to the District, State Child Protection Unit, the State Government and also to the Chief Judicial Magistrate or Chief Metropolitan Magistrate for review under sub-section (2) of section 14 of the Act;

(j) any other function assigned by the State Government from time to time relating with juveniles in conflict with law.

18. Procedure to be followed in respect of sections 21, 22, 23, 24, 25 and 26 of the Act. ?

(1) In the event of violation of provisions laid down under section 21 of the Act,-

(a) the Board shall take cognizance of such violation by

print or electronic media and shall initiate necessary inquiry and pass appropriate orders as per provisions contained in sub-section (2) of section 21 of the Act; and

(b) where the National or the State Commission for Protection of Child Rights takes suo motu cognizance of violation under section 21 of the Act, it shall inform the District or the State Child Protection Unit of the concerned district and the State directing them to initiate necessary action through the Board.

(2) In the event of an escape of a juvenile in conflict with law or a child, the following action shall be taken within twenty-four hours,-

(a) the Officer-in-Charge of any institution shall immediately send a report to the area Police Station or Special Juvenile Police Unit along with the details and description of the juvenile or child, with identification marks and a photograph, with a copy to the Board, District Child Protection Unit and other authorities concerned;

(b) the Officer-in-charge of institutions other than shelter homes or drop-in-centres shall send the guards or concerned staff in search of the juvenile, at places like railway stations, bus stands and other places where the juvenile is likely to go;

(c) the parents or guardians shall be informed immediately about such escape; and

(d) the Officer-in-charge of an institution other than a shelter home or drop-in-centre shall hold an inquiry about such escape and send his report to the Board or Committee and the authorities concerned and the report shall be placed before the Management Committee set up under rule 55 of these rules in the

next meeting for review.

(3) The offences against a juvenile in conflict with law or a child specified in sections 23, 24, 25 and 26 shall be either bailable or non-bailable besides being cognizable under the provisions of the Code of Criminal

Procedure, 1973 (2 of 1974) and the procedures shall apply on the Police, the Board and the concerned authorities and functionaries accordingly."

8. The preamble to the said Rules clearly records that the said Rules have been framed to provide for better implementation and administration of the provisions of the said Act of 2000 in its true spirit and substance. Rule 10 deals with functions of the Board and Rule 18 deals with procedure to be followed in respect of Sections 21 to 26 of the said Act of 2000. We may note here that Section 21 of the said Act is also a penal provision which prohibits publication of name, address or other particulars of juveniles in conflict with law. Sub-Section (2) of Section 21 provides for penalty in terms of money for contravention of Sub-Section (1).

9. We have perused the Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002. We may note here that the said Rules do not deal with the functions of the Board and procedure to be followed in respect of the offences punishable under Sections 23 to 26 . Therefore, in view of the proviso to Sub-Section (1) of Section 68 of the said Act of 2000, the said Rules framed by the Central Government will continue to operate in the State of Maharashtra on the aforesaid aspects. Rule 10 gives list of functions to be performed by the Board to achieve objectives of the said Act of 2000. Clause (b) provides that one of the functions of the Board is of taking cognizance of the crimes committed under Sections 23 to 28 of the said Act of 2000. As stated earlier, the offences punishable under Sections 23 to 26 and 28 can be committed by persons who are not juveniles in conflict with law or children. The offenders can be adults on the date of commission of the alleged offences. Thus, clause (b) of Rule 10 confers power on the

Board to take cognizance of the offences punishable under said Sections. Sub-Rule (3) of Rule 18 provides that the offences under Sections 23 to 26 shall be either bailable and non-bailable besides being cognizable as per the provisions of the Code of Criminal Procedure, 1973. What is important is the last portion of Sub-Rule (3) which provides that the procedures shall apply to the Police, Board and the concerned Authorities and functionaries accordingly. Clause (b) of Rule 10 confers a power on the Board to take cognizance of the offences punishable under Sections 21 to 26 of the said Act of 2000. Sub-Rule (3) of Rule 18 also indicates that the said offences will be tried before the Board as there is no reference to regular criminal Court under Sub-Rule (3).

10. Now, we come back to Sub-Section (1) of Section 6 . Sub-Section (1) suggests that the Board shall have an exclusive jurisdiction to deal with all proceedings under the said Act of 2000 relating to juvenile in conflict with law.

11. Under Sub-Section (1) of Section 68, Rule making power is conferred on the Central Government as well as on the State Government to make Rules to carry out purposes of the said Act of 2000. Clause (b) of Rule 10 of the said Rules, as stated earlier, confers power on the Board to take cognizance of the crimes committed under Sections 23 to 26 and 28 of the said Act of 2000. There is nothing either under the said Act of 2000 or under the said Rules which confers a power on the Board of transferring the cases of adult offenders under Sections 23 to 26 and 28 to regular criminal Courts under the Code of Criminal Procedure, 1973 after taking cognizance of the offences. Therefore, after taking cognizance, the offences will have to be tried by the Board. If any other interpretation is made, it will render clause (b) of Rule 10 otiose or redundant.

12. We may note here that there is no challenge to the validity

of clause (b) of Rule 10 of the said Rules and therefore, we are proceeding on the footing that the same is valid. If the same is valid, no other meaning except the meaning which we have given as above can be ascribed to clause (b) of Rule 10.

13. In the circumstances, we find nothing illegal about the circular issued by the learned Chief Metropolitan Magistrate, Mumbai.

14. Accordingly, the Petition is disposed of.