

(2025) 07 CAL CK 0790
In the Calcutta High Court, Appellate Side
Case No : C.R.R. No. 3062 Of 2024

Rajesh Yadav

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 04-07-2025

Acts Referred:

Citation : (2025) 07 CAL CK 0790

Hon'ble Judges : Uday Kumar, J

Bench : Single Bench

Advocate : Ananda Gopal Mukherjee, Sonam Ray, Nasrin Khatoon, Sourav Mondal, Subhajit Chowdhury, Anand Keshari, Sonali Bhar

Final Decision : Disposed Of

Judgement

Uday Kumar, J

1. This revisional application has been filed under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter, "the Cr.P.C."), or Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter, "the BNSS"), to challenge the order dated July 3, 2024, passed by the learned Juvenile Justice Board (hereinafter, "the JJB"), Kolkata, in JJB No. 56 of 2022. The order discharged opposite party no.2, Daksh Jaiswal, a Child in Conflict with Law (CCL), from the proceedings stemming from Amherst Street Police Station Case No. 122 of 2022, under Sections 341, 323, 427, and 114 of the Indian Penal Code (IPC).

2. Being aggrieved thereby, the petitioner / original complainant, Rajesh Yadav, questioned the impropriety, illegality and irregularity of the impugned order and prayed for the intervention to prevent miscarriage of justice.

3. The essence of the prosecution's case is that on June 2, 2022, the petitioner lodged a complaint with the Officer-in-Charge of Amherst Street Police Station. He alleged that some assailants, along with a CCL, namely Daksh Jaiswal, assaulted him physically and abused him while he was installing a CCTV camera

at a newly acquired go-down belonging to one Shobhnath Yadav. Following this complaint, Amherst Street Police Station Case No. 122 of 2022 was registered. The medical report corroborated the injuries sustained by the petitioner, lending credence to his allegation of assault.

4. A pivotal procedural development occurred on July 8, 2022, when the Learned Additional Chief Metropolitan Magistrate, 2nd Court, Kolkata, recognizing the juvenility of Daksh Jaiswal, correctly relegated his case to the Juvenile Justice Board, Kolkata, for trial and disposal. It was transferred in strict adherence to the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter, "the JJ Act"), which mandates a distinct adjudicatory framework for children in conflict with law to ensure their welfare and rehabilitation.

5. The gravamen of the petitioner's apprehension crystallized when, on September 18, 2023, he came to know that the police had filed a charge-sheet, being No. 167 of 2023 dated September 15, 2023, in the said case. While this charge sheet implicated the adult co-accused, it notably sought the discharge of the CCL, Daksh Jaiswal, asserting "lack of sufficient evidence" to establish his involvement. A significant procedural anomaly, pointed out by the petitioner, is that this final report was signed and submitted by one Noor Kalam Sekh, Sgt. (I) of Police, explicitly identified as being "of Tala P.S.," despite the FIR having been registered and the initial investigation conducted by Amherst Street P.S. The petitioner vehemently contends that throughout this investigative phase, he was never called by the police to record his statement under Section 161 of the Cr.P.C. (or Section 181 of the BNSS), nor was he requested to produce any necessary proofs or evidence, including the crucial CCTV footage, which he had in his custody. This alleged omission, he argues, directly led to the purported "lack of evidence."

6. Feeling aggrieved and uninformed about the true trajectory of the proceedings concerning the CCL before the JJB, the petitioner sought fresh legal advice and undertook an inspection of the JJB records. It was then that he became aware of the opportunity to file a 'Narazi' petition (protest petition) against the police's final report. He instructed his learned advocate to act forthwith. Attempts to file the Narazi petition on June 28, 2024, and July 1, 2024, were met with procedural hurdles by the JJB. However, on July 3, 2024, the petitioner successfully filed the Narazi petition, which was then taken on record by the Learned JJB.

7. During the proceedings on 3rd July 2024, Learned Counsel for the petitioner had drawn the JJB's attention to the alleged failure of police to record the petitioner's statement and to seize available evidence. Crucially, the petitioner also sought to tender electronic evidence – a USB device containing CCTV footage of the alleged incident, which he claimed clearly depicted the CCL's involvement. However, the learned JJB, according to the petitioner, refused to entertain such evidence and rejected the petitioner's application.

8. The impugned order of the JJB, dated 3rd July 2024, meticulously recorded in

the petition, indicates that the JJB accepted the Final Report and discharged the CCL. The Board's reasoning for rejecting the Narazi petition was based on two grounds: firstly, the petitioner's prayer for further investigation specifically named Md. Noor Kalam Sekh "of Tala PS," while the case was investigated by Amherst Street PS; and secondly, the general principle that an IO who has submitted a final report is not usually entrusted with further investigation. The JJB characterized these as "mere technical grounds" for rejecting the prayer for further investigation, leading to the acceptance of the Final Report and the consequent discharge of the CCL. It is this order that forms the subject matter of the present revisional challenge before this Court.

9. Mr. Ananda Gopal Mukherjee, Learned counsel appearing for the petitioner submitted that the impugned order of the JJB cannot withstand judicial scrutiny, being fundamentally flawed in law and on facts. It was

10. The first and foremost he, contended that the police investigation was tainted by grave omissions and incomplete action, specifically emphasizing that the petitioner, as the de facto complainant and the individual who suffered the alleged harm, was remarkably never summoned by the police to record his statement under Section 161 Cr.P.C. (or Section 181 BNSS), nor was any request made to him to produce vital evidence, including his medical injury certificate and, crucially, the electronic evidence in the form of CCTV footage, which was undeniably in his possession. This investigative lacuna, it was argued, directly led to the police's superficial conclusion of "lack of sufficient evidence" against the CCL in their final report.

11. Secondly, Learned Counsel strenuously argued that the learned JJB committed a patent legal error by rejecting the Narazi petition on grounds that can only be described as hyper-technical, asserting that the Board's reasoning, focusing on the specific mention of an IO from Tala P.S. for further investigation when the original investigation emanated from Amherst Street P.S., was an elevation of form over substance, disregarding the settled legal position that a Magistrate or a quasi-judicial body is not bound by a police closure report and possesses the inherent power, indeed the duty, to consider a protest petition on its merits, particularly when it articulates a prima facie case for further inquiry. The JJB's failure to do so, it was contended, amounted to an abdication of its judicial responsibility.

12. Thirdly, Learned Counsel placed particular emphasis on the JJB's unwarranted refusal to entertain the critical electronic evidence (the USB containing CCTV footage) tendered by the petitioner, which was asserted to directly implicate the CCL, arguing that such a summary rejection, especially in an era where electronic evidence is universally recognized as admissible under the Indian Evidence Act, 1872 (now reinforced by the Bharatiya Sakshya Adhiniyam, 2023), on "mere technical grounds" without allowing the petitioner the opportunity to lay the necessary foundation for its admissibility, constitutes a serious miscarriage of justice and infringes upon the petitioner's fundamental right to

present his case.

13. Finally, it was submitted that the discharge of the CCL, predicated upon such a procedurally flawed and substantively inadequate process, operates to the severe prejudice of the petitioner, effectively denying him the opportunity for justice, and it was therefore urged that this Court, in exercise of its extraordinary revisional jurisdiction, must intervene to rectify this manifest injustice and secure the ends of justice.

14. Conversely, Mr. Anand Keshari, Learned Advocate for the State and the CCL, in unison, sought to uphold the validity of the impugned order. It was submitted that the police, having conducted their investigation in good faith, arrived at a conclusion that there was insufficient evidence to establish the involvement of the CCL, and accordingly, filed a final report, and that the JJB, in its judicious discretion, after carefully perusing this report and considering all relevant aspects, found no compelling reason to differ from the police's findings or to direct further investigation, and therefore, correctly accepted the final report and discharged the CCL.

15. It was further contended that the JJB's decision to reject the Narazi petition on the stated grounds was well within the ambit of its judicial discretion, arguing that the petitioner's specific prayer for further investigation naming an IO from a different police station represented a procedural irregularity, and the Board was entirely justified in not acceding to a request that might lead to jurisdictional confusion or undermine the established principles of investigation. It was also advanced that, generally, the same IO who has filed a final report is not, as a matter of policy, entrusted with further investigation to maintain objectivity was also cited as a valid consideration for the JJB's decision.

16. Furthermore, it was highlighted that the welfare and best interest of the child are the paramount considerations under the JJ Act, and prolonging legal proceedings against a CCL without substantial evidence, it was argued, would be detrimental to his development and rehabilitation, thus the discharge order served the best interest of the child by bringing a necessary finality to the proceedings.

17. Regarding the electronic evidence, it was submitted that the petitioner might not have complied with the requisite procedural formalities for its admission under Section 65B of the Indian Evidence Act (or the corresponding provisions of BNSS) at the moment of its proffer, and thus, the JJB was under no obligation to accept evidence that had not met the preliminary legal requirements for admissibility.

18. Lastly, it was urged that the revisional jurisdiction of this Hon'ble Court is circumscribed, and in the absence of any demonstrable perversity, patent illegality, or gross miscarriage of justice, this Court ought to refrain from interfering with the JJB's considered and reasoned order.

19. Having carefully weighed the rival submissions and meticulously examined the records placed before us, the following pertinent questions arise for our determination in this revisional application, the answers to which will logically lead to our final conclusion:

a. Whether the Juvenile Justice Board was justified in rejecting the petitioner's Narazi petition on purely technical grounds, thereby foregoing a substantive consideration of the serious allegations and contentions advanced therein?

b. Whether the police investigation conducted in Amherst Street P.S. Case No. 122 dated 2.6.2022 was indeed flawed or incomplete, particularly with regard to the alleged non-recording of the petitioner's statement and the non-collection of crucial evidence from his custody?

c. Whether the Juvenile Justice Board committed an error of law by refusing to entertain the electronic evidence (CCTV footage) proffered by the petitioner, and what are the implications of such refusal for the fairness and comprehensiveness of the inquiry?

d. Whether the discharge of the Child in Conflict with Law by the Juvenile Justice Board, predicated solely on the police's final report, can be legally sustained when juxtaposed against the petitioner's specific allegations, the offer of additional evidence, and the jurisprudential principles governing protest petitions?

e. What is the appropriate scope for revisional intervention by this High Court under Section 401 read with Section 482 of the Cr.P.C. (and Section 528 BNSS) when confronted with an order of discharge passed by the Juvenile Justice Board under circumstances such as those presented in the instant case?

20. At the very outset, let me delineate the contours and limitations of the power of the revisional court, as deriving from Section 401 read with Section 482 of the Cr.P.C. and Section 528 of the BNSS, which are indeed formidable and broad. However, they are to be wielded with circumspection and prudence, as they are not co-extensive with appellate powers. The primary object of this jurisdiction is to correct any patent illegality, perversity, or fundamental procedural impropriety that demonstrably leads to a miscarriage of justice, or to prevent the abuse of process of any Court. It emphatically does not permit a de novo re-appreciation of evidence or a substitution of this Court's view for that of the trial court on factual findings, unless those findings are perverse or based on no evidence. Nevertheless, where an inferior court or tribunal has manifestly erred in its approach to well-settled legal principles, or has failed to exercise a jurisdiction lawfully vested in it, or has exercised it in an arbitrary, perverse, or capricious manner, interference by this Court becomes not merely permissible but a solemn imperative to uphold the rule of law. In the specific and sensitive context of juvenile justice, our supervisory role assumes added significance, ensuring that the protective and rehabilitative framework of the JJ Act is scrupulously adhered to, while simultaneously upholding the broader tenets of justice for all stakeholders, including the victims, ensuring that the search for truth is not

stymied by procedural rigidity.

21. It is true that learned JJB's decision to reject the Narazi petition based solely on its mention of an Investigating Officer from a different police station, or on the generalized principle about the same I.O. conducting further investigation, constitutes a hyper-technical approach that fundamentally flawed its proceedings. This approach indicates a clear failure to appreciate the substantive purpose and underlying legal principles governing protest petitions. The law is unequivocally settled, as authoritatively enunciated by the Hon'ble Supreme Court in *Bhagwant Singh v. Commissioner of Police* (supra) and reaffirmed in *Vinay Tyagi v. Irshad Ali* (supra), that a Magistrate, or by clear analogy, a quasi-judicial body like the JJB when performing functions akin to a Magistrate, is not merely a passive recipient or a "post office" for police reports. When a police report suggests closure or discharge of an accused, the informant or victim possesses a vested and inalienable right to be heard and to lodge a protest. The very object of a Narazi petition is to invite the court's judicious attention to alleged deficiencies or omissions in the investigation and to provide a robust basis for the court to take a different view from that of the police, potentially leading to further investigation or even taking cognizance of the offence. To dismiss such a vital petition simply because of an imprecise nomination of an IO's affiliation, rather than delving into and examining the substantive underlying allegations of inadequate investigation or the prima facie case sought to be made out by the petitioner, amounts to a clear abdication of judicial responsibility. The JJB was under an obligation to look beyond this superficial technicality and to meticulously delve into the substance of the petitioner's protest. Its failure to do so represents a material irregularity in the exercise of its jurisdiction, directly leading to a denial of a fair and meaningful opportunity to the petitioner to present his grievances and evidence. This judicial principle forms the basis for our determination of Point I.

22. The allegations raised by the petitioner regarding the conduct of the police investigation are undeniably serious and warrant the most careful consideration by the JJB upon remand. The assertion that the de facto complainant's statement was never recorded under Section 161 Cr.P.C. (or Section 181 BNSS), despite him being the injured party and the informant, and that crucial evidence, particularly the CCTV footage, was not collected by the police from his custody, strongly points towards a perfunctory, incomplete, and potentially biased investigation. The fundamental mandate of a police investigation, as highlighted by the Supreme Court in *H.N. Rishbud v. State of Delhi* (AIR 1955 SC 196), is to unearth all relevant facts and evidence, irrespective of whether they appear to support the prosecution or the defence. An investigation that fails to gather readily available evidence from a key witness, especially the victim, cannot then justifiably conclude a "lack of sufficient evidence" against an accused, particularly a Child in Conflict with Law. Such a conclusion would be inherently suspect if based on a deficient process. Where the very foundation of the case, i.e., the investigation, is alleged to be shaky or incomplete, the adjudicating authority, in

this instance the JJB, cannot simply rubber-stamp the police report. The power to direct further investigation, as lucidly affirmed by the Supreme Court in *Sakiri Vasu v. State of U.P.* (2008 (2) SCC 409), is unequivocally vested in the Magistrate (and thus conceptually in the JJB), precisely to ensure that justice is not thwarted by inadequate police work. The integrity and validity of the police's final report are thus intrinsically linked to the thoroughness, fairness, and completeness of their investigation. The JJB's initial failure to objectively assess these critical allegations was an error of omission, directly informing our conclusion on Point II.

23. Furthermore, the JJB's refusal to entertain the electronic evidence is particularly disturbing and represents a grave error of law. In the contemporary legal landscape, electronic evidence, such as CCTV footage, frequently offers the most direct, objective, and compelling proof of alleged events. The petitioner explicitly tendered a USB device containing CCTV footage, claiming it directly demonstrated the CCL's involvement in the incident. The JJB's outright refusal to "entertain such evidence" on what it deemed "mere technical grounds" is amount to a complete misdirection. The Indian Evidence Act, 1872, and now reinforced by the *Bharatiya Sakshya Adhiniyam*, 2023, with its expanded and clarified provisions for electronic records (notably in Sections 61 and 62, read with principles akin to Section 65B of the old Act), provides a clear and comprehensive framework for the admissibility and proof of electronic documents. While it is undeniably incumbent upon the party tendering such evidence to satisfy the statutory conditions for its admissibility (e.g., through a certificate under Section 65B(4) of the old Act or corresponding provisions of the new Act), the JJB's summary refusal to even allow the petitioner the opportunity to attempt to lay the necessary foundation for its production and proof amounts to a clear denial of due process and a fair opportunity to present one's case. Such a judicial stance impedes the truth-finding process, potentially suppresses vital evidence, and ultimately can lead to a flawed outcome. A court or board cannot simply shut its doors to relevant evidence merely because it perceives a "technical" hurdle without giving the party an opportunity to comply with the legal requirements for its admissibility. This arbitrary rejection without due process is a clear ground for revisional interference, and thus our determination on Point III.

24. The cumulative impact of the deficiencies identified in the preceding as appeared from the aforesaid deliberations render the discharge of the CCL by the JJB legally unsustainable. The discharge was predicated solely on the police's final report, which itself now stands under a serious cloud due to alleged investigative omissions and procedural anomalies. When this report was directly challenged by the victim through a valid *Narazi* petition, and when the victim offered specific and potentially crucial evidence to counter the police's findings, the JJB was under an unequivocal legal obligation to conduct a more robust, independent, and merits-based inquiry. The JJ Act, while undoubtedly a benevolent legislation primarily aimed at the welfare, rehabilitation, and best

interest of children in conflict with law, does not, and cannot, envisage a scenario where grave allegations of crime involving children are summarily dismissed due to procedural oversights or demonstrably inadequate investigations, thereby leaving victims without any recourse to justice and undermining public faith in the legal system. The "best interest of the child" principle, while paramount, must operate within the larger framework of justice, the rule of law, and the ascertainment of truth. It does not permit the JJB to overlook material facts, to avoid its solemn responsibility in ascertaining the truth, or to blindly accept a police report where legitimate and serious doubts about the thoroughness and fairness of the investigation persist. To discharge a CCL under such circumstances, without a thorough examination of the Narazi petition and the critical proffered evidence, is to compromise the very objective of criminal jurisprudence, which is the ascertainment of truth and the equitable delivery of justice to all stakeholders. This conclusion is reinforced by the principles articulated in Bhagwant Singh and Vinay Tyagi, which mandate a proactive role for the Magistrate/JJB when a protest petition challenges a police closure report. This comprehensive analysis underpins our determination on Point IV.

25. In light of these comprehensive deliberations, the High Court concluded that the impugned order of the learned Juvenile Justice Board dated July 3, 2024, suffered from multiple, fundamental, and incurable infirmities. The JJB's approach was manifestly erroneous in dismissing the Narazi petition on a hyper-technicality, thereby failing to appreciate its true import and, critically, failing to afford the petitioner a full and fair opportunity to present his contentions and proffer crucial evidence. Such a summary discharge of a Child in Conflict with Law, based solely on a police report directly challenged by an aggrieved victim alleging a demonstrably flawed investigation and offering substantial countering evidence, simply cannot be countenanced in the eyes of law. The overarching demands of justice unequivocally mandated a more rigorous and merits-based scrutiny of the matter. Consequently, the ends of justice necessitated a remand of the matter for fresh consideration.

26. Therefore, the revisional application, CRR 3062 of 2024, is hereby allowed.

27. The order dated 3rd July 2024, passed by the Juvenile Justice Board, Kolkata, in JJB No. 56 of 2022, arising out of Amherst Street P. S. Case No. 122 dated 2.6.2022, which discharged the Child in Conflict with Law, Daksh Jaiswal, is hereby quashed and set aside.

28. The entire matter is remitted back to the Juvenile Justice Board, Kolkata, for a de novo consideration of the Narazi petition filed by the petitioner. This reconsideration must be strictly in accordance with law and in light of the detailed observations made within this judgment.

29. The Juvenile Justice Board is specifically directed to:

i. Provide a fresh and reasonable opportunity to the petitioner to present all his contentions and to produce any evidence he wishes to rely upon, including the

electronic evidence (CCTV footage). The admissibility of this evidence shall be determined in accordance with the provisions of the Bharatiya Sakshya Adhiniyam, 2023 (or the Indian Evidence Act, 1872, if applicable), after ensuring due compliance with all procedural formalities for its proof, including, where necessary, the foundational requirements akin to Section 65B of the erstwhile Evidence Act.

ii. Specifically consider the petitioner's assertion regarding the alleged non-recording of his statement during the initial police investigation and objectively assess its impact on the thoroughness and reliability of the police report. This assessment must go beyond mere procedural adherence and delve into the substantive effect of such omission on the fairness of the investigation.

iii. If, upon fresh and thorough consideration of the Narazi petition and all evidence presented by the petitioner, the Board finds that a prima facie case is made out or that the initial investigation was indeed incomplete or flawed, it shall be at liberty to direct further investigation by a competent police officer. This directive is not to be constrained by the particular unit to which the previous IO was attached, ensuring that the quest for truth overrides administrative technicalities. Alternatively, the Board may choose to proceed to take cognizance of the Narazi petition as a complaint case against the CCL, if warranted by the facts and law, thereby exercising its independent judicial discretion.

iv. Ensure that the proceedings are conducted with utmost expedition, keeping in view the paramount mandate of the JJ Act for timely disposal of cases involving children in conflict with law, and critically, without being in any manner prejudiced by the previous order of discharge. The focus must be on a fair and expeditious resolution in the best interests of justice for all parties.

v. All contentions of the parties, both factual and legal, are left open for a fresh and independent determination by the learned JJB on their merits during the remanded proceedings, uninfluenced by the quashed order.

30. There shall be no order as to costs.

31. Interim orders if any, stand vacated.

32. Applications if any, disposed of accordingly.

33. Parties shall be at liberty to obtain certified copies of this order on usual terms.

34. Urgent photostat copies of this order be supplied to the parties, if applied for, upon compliance with usual formalities.