
(2014) 06 SIK CK 0006
In the Sikkim High Court
Case No : S.B. Cri. Rev. P. No. 6 of 2014

State of Sikkim

APPELLANT

Vs

Shilash Biswakarma

RESPONDENT

Date of Decision : 25-06-2014

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 5, 5(3)

Citation : (2015) ALLMR(Cri) 126 : (2014) CriLJ 4656

Hon'ble Judges : Narendra Kumar Jain, C.J

Bench : Single Bench

Advocate : Karma Thinlay, Addl. Public Prosecutor, S.K. Chettri and Pollin Rai, Asstt. Public Prosecutor, Advocate for the Appellant

Judgement

Narendra Kumar Jain, C.J.—Learned Principal Magistrate, Juvenile Justice Board, West District at Gyalshing vide her letter/Memo No. 544/2014/CJJM (W) dated 26th May, 2014, has referred this matter to this Court stating therein that she has decided the Juvenile Justice Board Case No. 06 of 2012 vide judgment dated 29th June, 2013, sitting alone, whereas as per proviso to Section 5(3) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, "the Act of 2000"), any matter of Juvenile Justice Board has to be decided finally by at least two members of the Board including the Principal Magistrate. She has further mentioned that the said judgment is contrary to proviso of Section 5(3) of the Act of 2000. However, the Board does not have any power to recall such an order, therefore, this Court should pass an appropriate order. The aforesaid letter was ordered to be registered as Cri. Revision Petition. The Revision Petition was admitted and notice was issued to the respondent. The service of notice upon respondent is complete, but neither respondent is present nor any one is present on his behalf.

2. A similar SB Cri. Revision Petition No. 05 of 2014 State of Sikkim v. Prakash Chettri was heard and disposed of by this Court vide judgment dated 02.06.2014, wherein this Court took a view that the case should have been

disposed off finally by the Juvenile Justice Board consisting of at least two members including the Principal Magistrate. The order of Juvenile Justice Board was set aside and the case was remanded back to Juvenile Justice Board, West Sikkim at Gyalshing for deciding the case afresh. Paragraphs 3, 4 and 5 of the said judgment are reproduced as under:-

"3. From the impugned judgment, it is clear that judgment has been passed by the Principal Magistrate alone, whereas, as per proviso to sub-section (3) of Section 5 of the Act of 2000, the matter could have been disposed off finally by at least two members of the Board. Section 5(3) of the Act of 2000 is reproduced as under:--

"5. Procedure, etc., in relation to Board.-

(1)

(2)

(3) A Board may act notwithstanding the absence of any member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings:

Provided that there shall be at least two members including the principal Magistrate present at the time of final disposal of the case.

(4)"

(Emphasis supplied)

4. Since, there is no dispute in the case that the judgment has been passed by Principal Magistrate alone, whereas the case should have been disposed off finally by the Juvenile Justice Board consisting of at least two members including the Principal Magistrate. Therefore, the judgment is apparently illegal and without jurisdiction and the same deserves to be set aside.

5. Consequently, the Cri. Revision Petition is allowed. The impugned judgment dated 31.03.2014 passed by Principal Magistrate, Juvenile Justice Board, West Sikkim at Gyalshing in JJB Case No. 12 of 2013 is set aside. The case is remanded to Juvenile Justice Board, West Sikkim at Gyalshing for deciding the case afresh in accordance with law, after hearing both the parties."

3. In view of the above discussions, the Revision Petition is allowed. The impugned judgment dated 29th June, 2013 passed by the Principal Magistrate, Juvenile Justice Board, West Sikkim at Gyalshing in JJB Case No. 06 of 2012 is set aside. The case is remanded back to the Juvenile Justice Board, West Sikkim at Gyalshing, for deciding the case afresh in the accordance with law, after hearing both the parties. The Registry is directed to send back the record of the case to the Juvenile Justice Board, West Sikkim at Gyalshing, forthwith.