

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1460 of 2018**

Arising Out of PS. Case No.-10 Year-2018 Thana- KASIMBAZAR District- Munger

X

... .. Petitioner

Versus

The State of Bihar & Anr.

... .. Opposite parties

Appearance :

For the Petitioner : Mr. Surya Narayan Sah, Advocate
For the Respondent : Mr. Matloob Rab, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 01-07-2020

Heard learned counsel for the petitioner and learned counsel for the State via video conferencing.

2. Though the petitioner has given full description in the application, it would be inappropriate to disclose his identity in view of the statutory requirement of Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act of 2015'). He is being referred to in the cause title as X.

3. Registry while uploading the order on the website shall also ensure that the cause title is reflected in similar manner

4. By way of the instant revision application preferred under Section 102 of the Act of 2015, the petitioner has challenged the order dated 05.10.2018 passed by the learned



Session Judge, Munger in Criminal Appeal No.15 of 2018 whereby he has dismissed the appeal preferred against the order dated 28.08.2018 passed by the Juvenile Justice Board, Munger in J. J. Board Case No.12 of 2018 whereby and whereunder the prayer for bail of the petitioner in connection with Kasim Bazar P. S. Case No. 10 of 2018 dated 14.01.2018 was rejected.

5. Kasim Bazar P.S. Case No.10 of 2018 was initially registered *inter alia* under Section 304/34 of the Indian Penal Code. Subsequently, Section 302 of the Indian Penal Code was also added in the FIR at the request of the investigating officer.

6. At the outset, it came to my notice that against the order passed by the Juvenile Justice Board rejecting the prayer for bail of the petitioner, an appeal was preferred by the petitioner in the court of Session Judge, Munger. The learned Session Judge entertained the appeal and, vide impugned order dated 05.10.2018, dismissed the same.

7. Now, the question before the Court is as to whether the Session Judge, Munger had jurisdiction to entertain the appeal.

8. In the Act of 2015, 'Children's Court' has been defined under Section 2(20) as under :-



“Children’s Court” means a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.”

9. Vide S.O. 49 dated 19th May 2008 published in the Bihar Gazette (extra-ordinary), in exercise of powers conferred by Section 25 of the Commissions for Protection of Child Rights Act, 2005 (Act No.4- of 2006), the State Government in consultation with the Patna High Court designated the court of 1st Additional District and Session Judge in each of the session division of the State as a Special Court for the speedy trial of the offences related to the Commissions for Protection of Child Rights Act, 2005.

10. In the Protection of Children from Sexual Offences Act, 2012 (for short ‘the POCSO Act), Section 2(1) provides the definition of Special Court. It states that ‘Special Court’ means a court designated as such under Section 28.

11. Section 28(1) of the POCSO Act provides that for the purpose of providing a speedy trial, the State



Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act.

12. Proviso to Section 28(1) of the POCSO Act provides that if a Court of Session is notified as a Children's Court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

13. In the State of Bihar, as the court of 1st Additional District and Session Judge in each of session division of the State has been designated as Special Court for the trial of offences related to the Commissions for Protection of Child Rights Act, 2005, it is deemed to be Special Court under the proviso to Section 28(1) of the POCSO Act.

14. Since the court of 1st Additional District and Session Judge in each of the session division of the State has been established as a Special Court under the Commissions for Protection of Child Rights Act, 2005 and the said court is also deemed to be a Special Court under the proviso to Section 28 of



the POCSO Act, 2012, the court of 1st Additional District and Session Judge in each of the session division is deemed to be the Children's Court in terms of Section 2(20) of the Act of 2015.

15. Thus, since the court of 1st Additional District and Session Judge in each of the session division has been designated as Special Court under the Child Rights Act, 2005 and such courts are existing and such courts are also deemed to be Special Court under the proviso to Section 28(1) of the POCSO Act, in terms of the definition of the Children's Court, as provided under Section 2(20) of the Act of 2015, only the court of 1st Additional District and Session Judge in each of the session division is treated to be the Children's Court. The Court of Session could have derived the jurisdiction of Children's Court under the Act of 2015 only in absence of a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the POCSO Act.

16. Section 101 of the Act of 2015 deals with appellate jurisdiction under the Act of 2015. Section 101(1) of the Act of 2015 provides that subject to the provisions of the Act, any person aggrieved by an order of the Board, may prefer an appeal before the Children's Court within 30 days from the date of such order before the Children's Court.



17. Thus, the right to appeal, subject to the provisions of the Act of 2015, is vested with the child in conflict with law, the victim and the State under the aforesaid provision before the Children's Court.

18. Proviso to Section 101(1) of the Act of 2015 deals with the power to condone the delay caused in filing the appeal. It has been clarified that Court of Session may entertain the appeal even after the expiry of the said period of 30 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of 30 days. Hence, if an appeal is preferred after the expiry of the period of 30 days, an application for condonation of delay in filing the appeal can be filed before the Court of Session and not before the Children's Court. In order to ensure speedy disposal of such an application for condonation of delay, the proviso states that such an appeal should be decided within a period of 30 days.

19. Section 101(2) of the Act of 2015 makes provision for appeal against the order of the Board passed under Section 15 of the Act of 2015, after making preliminary assessment into a 'heinous offence' of a child in conflict with law. It lays down that an appeal against an order of preliminary



assessment shall lie before the Court of Session. It provides that in deciding the appeal against the preliminary assessment findings, the Court of Session may take the assistance of experienced psychologists and medical specialists, but these psychologists and medical specialists should not be the same whose assistance was availed of by the Board in making preliminary assessment under the Act of 2015.

20. Thus, Section 101(2) of the Act of 2015 makes it clear that an order relating to transfer of children after preliminary assessment under Section 15 is appealable before the Court of Session meaning thereby that suitability of the child being transferred or not for trial as an adult can be made by the Court of Session at this stage under the appellate jurisdiction.

21. The provisions prescribed under Sections 101(1) and 101(2) of the Act of 2015 would make it evident that an order granting or refusing bail by the Juvenile Justice Board can only be appealed before the Children's Court and not before the Court of Session.

22. In the instant case, as the appeal has been decided by the learned Session Judge, Munger, who was not having the jurisdiction of Children's Court, the order impugned cannot be sustained.



23. It is well settled position in law that an order passed by a court without jurisdiction is a nullity.

24. Accordingly, the impugned order dated 05.10.2018 passed by the learned Session Judge, Munger in Criminal Appeal No.15 of 2018 is hereby set aside.

25. The application is allowed to the extent indicated above.

26. The learned Session Judge, Munger is directed to transfer the records of Criminal Appeal No.15 of 2018 to the court of 1st Additional District and Session Judge-cum-Children's Court, Munger, forthwith.

27. The learned 1st Additional District and Session Judge-cum-Children's Court, Munger shall dispose of the appeal on merits after hearing the parties within 15 days of the receipt of the records in his court.

28. The learned Registrar General, Patna High Court is directed to ensure that a copy of the order is transmitted to the court of Session Judge, Munger by day after tomorrow.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.07.2020
Transmission Date	02.07.2020

