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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision : December 04, 2024

ABC(MINOR)

-PETITIONER

V/S

STATE OF UNION TERRITORY CHANDIGARH

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Pratham Sethi, Advocate
for the petitioner.

Mr. Manish Bansal, P.P., U.T. Chandigarh with
Ms. Diksha Sharma, Advocate and
A.S.I. Rampal Singh (I.O.)

KULDEEP TIWARI, J. (ORAL)

1. The gravamen of the instant *lis* is embedded in the order dated 30.03.2024, whereby, the Principal Magistrate, Juvenile Justice Board, Chandigarh (hereinafter referred to as the 'J.J.B.') has ordered to treat the petitioner/juvenile (hereinafter referred to as the 'C.C.L.') as an adult and has transferred his trial to Children's Court having jurisdiction to try such offences. Therefore, the C.C.L. has, by instituting the instant revision petition through his father, assailed the validity of the order 30.03.2024, besides assailing the validity of the order dated 05.06.2024, whereby, his criminal appeal preferred against the order dated 30.03.2024 has been dismissed by the Judge, Fast Track Special Court-cum-Children's Court, Chandigarh (hereinafter referred to as the 'Children's Court').

2. Before this Court proceeds to gauge the legality of the impugned orders and evince any opinion thereon, it is deemed apt to initially



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capture the factual matrix of the present case.

3. The C.C.L. has been booked in FIR No.02 dated 05.01.2024, under Section 377 IPC and Section 6 of POCSO Act, registered at P.S. 49, Chandigarh. The genesis of this FIR is embodied in the complaint made by one Hira Lal (hereinafter referred to as the 'complainant') regarding commission of anal sex with his son by the C.C.L. To be precise, the complainant alleged that, on 05.01.2024, when he reached home at about 08:25 p.m., his son told him that when he was playing near his house at around 03:00 p.m., the C.C.L., who lived nearby, took the key of his cycle and pretended to throw it to his house. Thereafter, on the pretext of returning the key, the C.C.L. took the complainant's son to his house and asked him to suck his penis because only then he would return the key to him. Not only this, the C.C.L. then took the complainant's son to the other room, removed his pants and committed anal sex.

4. After registration of FIR, the C.C.L. was apprehended and his medical examination was got conducted. Samples of victim and the C.C.L. were taken for forensic purpose. Statement of the victim was also recorded under Section 164 Cr.P.C. The date of birth record of the victim and the C.C.L. were collected. After completion of inquiry, the charge-sheet was presented before the J.J.B.

5. The date of birth of the C.C.L. was found to be 05.09.2007 and the alleged occurrence took place on 05.01.2024, therefore, it is nowhere disputed that the C.C.L. was more than 16 years of age on the date of occurrence.

6. The J.J.B. held an inquiry as per the mandate enclosed in Sec-

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tion 15 of The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'Act of 2015') and came to a conclusion that, the C.C.L., who is over and above 16 years of age, has attained sufficient maturity and he is physically and mentally capable to commit such offence, therefore, he is required to be tried as an adult. Consequently, vide the impugned order dated 30.03.2024, the J.J.B. transferred the trial of C.C.L. to the Children's Court.

7. Fetching grievance from the order dated 30.03.2024, the C.C.L. instituted thereagainst a criminal appeal before the Children's Court, however, he did not succeed in his endeavour inasmuch as the yearned for relief was declined to him by the Children's Court by dismissing his appeal vide order dated 05.06.2024.

8. In this way, now the C.C.L. is driven to this Court to assail the validity of both the orders (supra).

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE C.C.L.

9. The principal argument constructed by the learned counsel for the C.C.L. is that, both the courts below have erred in not assigning proper weightage to the medical report dated 07.03.2024 (Annexure P-2), as became submitted by the doctors of medical board, and, to the Social Investigation Report dated 20.01.2024 (Annexure P-4).

10. To fortify his above made argument, the learned counsel for the C.C.L. submits that, in the report dated 07.03.2024, the Intelligence Quotient (I.Q) of the C.C.L. was assessed as 86 suggesting "Dull Average" level of intelligence and as per this report itself, a child having IQ level of 85 to 90 falls in the age group of 14/15 years of age. Moreover, the formula to de-

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termine IQ level is: mental age/biological age x 100. Therefore, the assessment made by the medical board in its report dated 07.03.2024 is sufficient to prove that, even as on the date of examination, the C.C.L. was having the mental capacity of a child below 15 years of age. Not only this, even in the Social Investigation Report dated 20.01.2024, the Probation Officer has specifically recorded that, the C.C.L. has no knowledge or awareness about the consequence of the act.

11. Making huge dependence upon both the reports (supra), the learned counsel for the C.C.L. emphasizes that the mental capacity of the C.C.L. is “Dull” and his mental age is also less than 15 years and he has no knowledge about the consequences of the act. Both the courts below have committed a grave error by ignoring such a vital piece of evidence, which is available on record in the shape of reports (supra), and, which is in fact one of the important aspects to be taken into consideration at the time of making preliminary assessment in terms of the mandate enclosed in Section 15 of the Act of 2015. Consequently, the impugned orders are tainted with the vice of illegality and are bad in law.

12. The learned counsel for the C.C.L. also submits that, both the reports (supra) were never supplied to the C.C.L./his guardian/his counsel, rather only five minutes’ time was afforded to the C.C.L.’s counsel to take a glimpse thereof before addressing arguments. Therefore, this amounts to gross violation of the settled principles of criminal jurisprudence, besides violation of the General Principles laid down in Section 3 of the Act of 2015.

13. Finally, the learned counsel for the C.C.L. submits that, in the



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order authored by the Children's Court, a factually incorrect observation has been recorded that, the C.C.L. has opted "Non-medical stream" in senior secondary and as such he cannot be expected to be of below average, whereas, the fact is that, the C.C.L. has opted "Humanities" as his stream in senior secondary.

SUBMISSIONS OF THE LEARNED PUBLIC PROSECUTOR

14. *Per contra*, the learned Public Prosecutor submits that, it is not for this Court to delve upon the exercise of making preliminary assessment inasmuch as the limited scope of the instant revision petition is to, within the established legal parameters, examine the legality of the impugned orders drawn by the courts below.

15. In his defending the legality of the impugned orders, the learned Public Prosecutor submits that, only after holding a detailed interaction with the C.C.L. and considering the medical report as well as the Social Investigation Report, the J.J.B. rightly concluded that the C.C.L. has enough mental and physical capability to commit the alleged offence and he also has the ability to understand the consequence of his act.

16. Concluding his arguments, the learned Public Prosecutor submits that, the learned counsel for the C.C.L. is unable to point out any material illegality or perversity in the impugned orders, which may constrain this Court to make any interference therein or in the preliminary assessment made by the J.J.B.

ANALYSIS OF SIGNIFICANT PROVISIONS ENCAPSULATED IN THE ACT OF 2015, AND, OF JUDICIAL PRECEDENTS GERMANE TO DISPOSAL OF THE INSTANT REVISION PETITION



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17. Section 3 of the Act of 2015 stipulates the fundamental principles to be borne in mind by the Board while implementing the provisions of the said Act. Some of the relevant principles embodied in this Section are reproduced hereunder:-

“3. General principles to be followed in administration of Act.—
The Central Government, the State Governments, [the Board, the Committee, or] other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:—

(i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

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(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

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(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.”

18. According to Section 8 of the Act of 2015, wherein becomes enclosed the powers, functions and responsibilities of the Board, the powers conferred on the Board by or under the said Act may also be exercised by the High Court and the Children’s Court, when the proceedings come before them under Section 19 or in appeal, revision or otherwise. Moreover, this Section casts obligation upon the Board to ensure the **informed participation** of the child and the parent or guardian in every step of the process. Section 8 is reproduced hereunder:-

“8. Powers, functions and responsibilities of the Board.—(1) Notwithstanding anything contained in any other law for the time being



in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

(3) The functions and responsibilities of the Board shall include—

(a) ensuring the informed participation of the child and the parent or guardian, in every step of the process;

(b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;

(c) ensuring availability of legal aid for the child through the legal services institutions;

(d) wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;

(e) directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;

(f) adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;

(g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;

(h) disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, includ-



ing follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required;

(i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;

(j) conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;

(k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;

(l) order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;

(m) conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of [that child to an observation home or place of safety, as the case may be]; and

(n) any other function as may be prescribed.”

19. Proceeding further, the provision which is of dire importance in the case at hand is encapsulated in Section 15 of the Act of 2015 inasmuch as therethrough becomes cast an obligation upon the Board to make preliminary assessment into heinous offence alleged to have been committed by a child, who has completed or is above the age of 16 years. This preliminary assessment appertains to the: (i) mental and physical capacity of the child to commit such offence; (ii) ability of the child to understand the consequences of the offence; (iii) circumstances in which the child allegedly committed the offence. Moreover, since the exercise of making preliminary assessment is a tedious task, therefore, the Board may take the assistance of



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experienced psychologists or psycho-social workers or other experts. Notably, the explanation attached to this Section clearly postulates that the exercise of preliminary assessment is not a trial but is solely to assess the **capacity of child to commit and understand the consequences of the alleged offence (emphasis supplied)**. Section 15 is reproduced hereinafter:-

“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.”

20. In the event of the Board arriving at a conclusion, after preliminary assessment, that the child is to be tried as an adult, then in terms of Section 18(3) of the Act of 2015, the Board may transfer the trial of the case to the Children’s Court having jurisdiction to try such offences. Section 18



is extracted hereunder:-

“18. Orders regarding child found to be in conflict with law.—(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, [or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child’s well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child’s well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing refor-



mative services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."

21. The Hon'ble Supreme Court, in its verdict rendered in "**Barun Chandra Thakur Vs. Master Bholu and Another**", 2022 SCC OnLine SC 870, observed that the task of preliminary assessment is a delicate task with requirement of expertise and has its own implications as regards trial of the case. Consequently, directions were passed upon the Central Government for formulating specific guidelines in this regard.

22. In compliance to the directions (supra) rendered by the Hon'ble Supreme Court, the National Commission for Protection of Child Rights issued guidelines in April 2023 for conducting preliminary assessment under Section 15 of the Act of 2015. Some of the relevant guidelines are reproduced hereinafter:-

"1.2 General Principles



The fundamental principles of care and protection of children that guide the implementation of J.J. Act, 2015 are also significant for these guidelines. These guiding principles are as follows-

- *Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.*
- *Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.*
- *Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.*
- *Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.*
- *Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.*
- *Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.*
- *Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.*
- *Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.*
- *Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.*
- *Principle of equality and non-discrimination: There shall be*



no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

- *Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.*
- *Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.*
- *Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.*
- *Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.*
- *Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.*
- *Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under the J.J. Act.”*

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2.2 Criteria for conducting preliminary assessment- *There are two essential conditions that calls for preliminary assessment under section 15 of the JJ Act, 2015. First, the crime that has taken place is in the category of heinous crime as defined in the JJ Act, 2015. Second, the child who has allegedly committed the crime is in the age group of 16-18 years. If the offence is allegedly committed by more than one child, preliminary assessment of each child will be carried out separately.*

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2.4 Determinants of a preliminary assessment- *The preliminary assessment has to be carried out in terms of the following four determinants-*

a. physical capacity of the child to commit alleged offence- *Child's locomotor abilities and capacities, particularly with regard to gross motor functions (such as walking, running, lifting, throwing...such abilities as would be required to engage in most antisocial activities due to which children come into conflict with the law). The expert shall not delve into assessing the physical age of the child as a part of the preliminary assessment. The age determination is concluded before the initiation of preliminary assessment by the JJB and therefore, the experts shall not repeat the process at this stage. The role of the experts with regard to assessing physical capacity of the child to commit the alleged offence is only limited to assessing the aspects as have been mentioned above in light of the physical capacities that may be required to carry out the offence.*

b. mental capacity of the child to commit alleged offence- *Child's ability to make social decisions and judgments, for these are the critical executive functioning abilities that operate in the social context that offense takes place in. Thus, reporting on the child's "mental capacity" would draw on all the variables in the mental health and psychosocial assessment including substance abuse problems, life skills deficits, neglect or poor supervision by family or poor role models; experience of abuse and trauma; mental health disorder or other (neuro) developmental disabilities such as attention deficit hyperactivity disorder; intellectual disability.*

c. the circumstances in which the child allegedly committed the offence- *Psychosocial vulnerabilities, including life events and mental health problems that the child is afflicted with, i.e., factors relating to family, school, peer relationships, trauma and abuse, mental health, and substance use. Circumstances, therefore, do not refer merely to the immediate circumstances of the offense itself, i.e., the last event that oc-*



curred and led the child into conflict with the law. In fact, the offense behavior, including its immediate circumstances, is a (cumulative) consequence of a whole plethora of other circumstances that have been occurring over relatively long time periods of the child's life (perhaps since early childhood). Thus, we take a longitudinal (versus a cross-sectional) perspective of circumstances of the offense.

d. ability to understand the consequences of the offence-
Child's knowledge and/or understanding of social consequences (what other people will say or how they will perceive the behaviour and consequently what opinion society would form about the child including labelling and stigmatization), interpersonal consequences (how the behaviour might affect personal relationships in terms of loss of trust, affection and respect of family and friends) and legal consequences of their actions (knowledge of relevant laws on sexual abuse/rape/robbery/ dacoity etc. and violation of rules leading to serious consequences for the child in terms of punishment).

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3.1 The Juvenile Justice Board (JJB) is solely responsible for conducting preliminary assessment as per section 14 (5) (f) (ii) and Section 15(1) of the Act.

3.2 In case the Board does not have at least one member who is a practicing professional with a degree in child psychology or child psychiatry, the Board shall take assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. In such cases the Board would record specific reason(s) for the same.

3.3 In cases where the Board needs to consult experts for preliminary assessment, the Board may take assistance from experts associated with any District Mental Health Programme or an expert from a Mental Health Institution in the District or outside the District. District Magistrate (DM) will provide the list of such experts and Institutions.

3.4 Qualification of experts-The psychologists and other experts who are asked to assist JJB in conducting the Preliminary assessment,



shall be possessing qualification as required to be a Member of the JJB under the JJ Act, 2015, that is as follows-

- a practicing professional with a degree in child psychology or psychiatry.
- No expert shall be included in the process of conducting the preliminary assessment, if he —
 - has any past record of violation of human rights or child rights;
 - has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;
 - has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;
 - has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.

3.5 Non-availability of experts in the District- In case trained psychologists and experts are not available within a given District, services of In-Patient Departments may be availed from other Districts. The State Child Protection Society (SCPS) with help of the Health Department shall issue a list of Institutes.

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4.4 Other information to be considered while carrying out preliminary assessment- During the preliminary assessment, the Board and experts shall also analyze and take into consideration the following-

- **Social Investigation Report (SIR)-** The Board directs the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report, within a period of fifteen days from the date of first production before the Board [section 8(3)(e)]
- **Social Background Report-** Child Welfare Police Officer of the police station, or the special juvenile police unit to which such child is brought, shall, as soon as possible after apprehending the child, inform he probation officer, or if no probation officer is



available, a Child Welfare Officer, for preparation and submission within two weeks to the Board, a social investigation report containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry [Section 13(1)(ii)]

- **Individual Care Plan (ICP)**- *The Board should also consider the Individual Care Plan (ICP) for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or a recognised voluntary organisation on the basis of interaction with the child and his family, where possible. Thereafter, at the time of final orders an amended/updated ICP may be submitted to the Board/Children's Court.*
- **Witness report by CWPO**- *In cases of heinous offences alleged to have been committed by a child, who has completed the age of sixteen years, the Child Welfare Police Officer shall produce the statement of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board, a copy of which shall also be given to the child or parent or guardian of the child [Rule 10(5)].*
- **Interaction** *with parents/guardians; staff of school or other institution attended by the child; peer group; neighbours or any other person deemed appropriate for giving insights regarding the child within the scope of four determinants as given at point 7 above."*

23. The essence of the hereinabove alluded to provisions of law as well as the guidelines framed by the Central Government is that, when a child between the age group of 16 to 18 years, who is alleged to have committed a heinous offence, is brought before the J.J.B., the latter is required to, after making preliminary assessment as regards (i) physical and mental capacity of the child to commit alleged offence; (ii) ability of the child to understand the consequences of the offence; and (iii) circumstances in which the child allegedly committed the offence; pass an order as to



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whether the child is to be tried by the J.J.B. or by the Children's Court as an adult.

24. The preliminary assessment has a wider implication upon the child inasmuch as in the event of the J.J.B., post making preliminary assessment, declaring the child to be tried as an adult by the Children's Court, there are two major consequences. First is that, the sentence or the punishment can go up to life imprisonment if the child is tried as an adult, whereas, if the child is tried by the J.J.B. as a child, the maximum sentence that can be awarded is three years. The second major consequence is that, if the child is tried as a child by the J.J.B, then under Section 24(1), he would not suffer any disqualification attached to the conviction of an offence, whereas, the said removal of disqualification would not be available to a child tried as an adult.

TESTING THE LEGALITY OF THE IMPUGNED ORDERS ON THE ANVIL OF THE HEREINABOVE DISCUSSED PROVISIONS OF LAW, AND, EXAMINING AS TO WHETHER THE J.J.B. HAS CONDUCTED THE EXERCISE OF MAKING PRELIMINARY ASSESSMENT WITHIN THE SETTLED PRINCIPLES OF LAW

25. For the purpose of examining as to whether the preliminary assessment has been carried out as required under law, this Court has to test the validity thereof on the following four aspects, as become mandated in Section 15 of the Act of 2015.

(I) PHYSICAL CAPACITY OF THE CHILD TO COMMIT SUCH OFFENCE;

(II) MENTAL CAPACITY OF THE CHILD TO COMMIT



SUCH OFFENCE;

(III) ABILITY OF THE CHILD TO UNDERSTAND THE CONSEQUENCES OF THE OFFENCE;

(IV) CIRCUMSTANCES IN WHICH THE CHILD ALLEGEDLY COMMITTED THE OFFENCE.

(I) PHYSICAL CAPACITY OF THE CHILD TO COMMIT SUCH OFFENCE

26. In order to assess the physical capacity of the C.C.L. to commit the alleged offence, the J.J.B. mainly relied upon its own personal observations, besides relying upon the social investigation report and medical report. After making interaction with the C.C.L., putting exhaustive questions to him and also gauging his physical appearance, the J.J.B. concluded that the C.C.L. is a fit person and he has enough physical capacity to commit the alleged offence.

27. Since there is no other evidence on record suggesting contrary to the conclusion (supra), therefore, this Court finds no illegality in the preliminary assessment on this aspect.

(II) MENTAL CAPACITY OF THE CHILD TO COMMIT SUCH OFFENCE;

28. Insofar as this aspect is concerned, the affirmative conclusion of the J.J.B. in this regard is anchored upon the social investigation report and medical report. The J.J.B. has concluded the C.C.L. to have enough mental capacity to commit the alleged offence.

29. This Court has perused the medical report dated 07.03.2024, as became prepared by the Department of Psychiatry, Government Medical



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College and Hospital, Chandigarh, after assessing the mental capacity of the C.C.L. In this medical report, relevant portion whereof is extracted hereinafter, **the Intelligence Quotient (IQ) of the C.C.L. is revealed to be 86 suggesting “Dull Average” level of intelligence.**

“The assessment dated 7/Mar/2024 revealed intelligence quotient (IQ) of 86 Suggesting dull average level of intelligence.

*On Mental Status examination (MSE): Well kempt, cooperative and communicative, well aware of surroundings, rapport could be established, eye contact maintained, could understand the questions being asked and give relevant replies. **Appeared sad and was weeping during the interview. No other active psychopathology elicited, at present.” (emphasis supplied)***

30. Therefore, when as per medical jurisprudence, a child having Intelligence Quotient (IQ) of 85 to 90 falls in the age group of 14/15 years, hence the conclusion of the J.J.B. that the C.C.L., whose Intelligence Quotient (IQ) is 86, has enough mental capacity to commit the alleged offence requires reconsideration.

31. At this stage, it would also be apt to refer to the hereunder reproduced observations, as rendered by the Hon’ble Supreme Court in ***Barun Chandra Thakur’s case (supra)***.

“65. While considering a child as an adult one needs to look at his/her physical maturity, cognitive abilities, social and emotional competencies. It must be mentioned here that from a neurobiological perspective, the development of cognitive, behavioural attributes like the ability to delay gratification, decision making, risk taking, impulsivity, judgement, etc. continues until the early 20s. It is, therefore, all the more important that such assessment is made to distinguish such attributes between a child and an adult.

66. Cognitive maturation is highly dependent on hereditary factors. Emotional development is less likely to affect cognitive maturation. However, if emotions are too intense and the child is unable to regu-



late emotions effectively, then intellectual insight/knowledge may take a back seat.

67. We are in agreement with the reasoning given by the High Court that further assessment ought to have been carried out once the psychologist had recommended so and had also suggested the name of the institute. The Board and the Children's Court apparently were of the view that the mental capacity and the ability to understand the consequences of the offence were one and the same, that is to say that if the child had the mental capacity to commit the offence, then he automatically had the capacity to understand the consequences of the offence. This, in our considered opinion, is a grave error committed by them.

70. A child with average intelligence/IQ will have the intellectual knowledge of the consequences of his actions. But whether or not he is able to control himself or his actions will depend on his level of emotional competence. For example, risky driving may result in an accident. But if emotional competence is not high, the urge for thrill seeking may get the better of his intellectual understanding.

71. Children may be geared towards more instant gratification and may not be able to deeply understand the long-term consequences of their actions. They are also more likely to be influenced by emotion rather than reason. Research shows that young people do know risks to themselves. Despite this knowledge, adolescents engage in riskier behaviour than adults (such as drug and alcohol use, unsafe sexual activity, dangerous driving and/or delinquent behaviour). While they do consider risks cognitively (by weighing up the potential risks and rewards of a particular act), their decisions / actions may be more heavily influenced by social (e.g. peer influences) and/or emotional (e.g. impulsive) tendencies. In addition, the lack of experience coupled with the child's limited ability to deeply understand the long-term consequences of their actions can lead to impulsive / reckless decision making."

(III) ABILITY OF THE CHILD TO UNDERSTAND THE CONSEQUENCES OF THE OFFENCE;

32. On this aspect also, although an affirmative finding has been



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recorded by the J.J.B., however, a survey of the Social Investigation Report dated 20.01.2024 reveals that, the Probation Officer has recorded in unambiguous terms that, **reasons/contribution factors for the offence are parental neglect, non attentive care of father and not knowledge about the consequence of the act.** The relevant portion of the Social Investigation Report is reproduced hereunder:-

“Analysis of the case, including reasons/contributions factors for the offence: Parental neglect, non attentive care of father and not knowledge about the consequences of the act.”

33. The Hon’ble Supreme Court has, in **Barun Chandra Thakur’s case (supra)**, clearly held that, the consequence of an offence would not just be confined to the immediate consequence of the offence or that the occurrence of the offence would only have its consequence upon the victim but it would also take within its ambit the consequence which may fall on the child and his family, and that too, not only immediate consequence but also the far reaching consequence in future. The relevant observations are reproduced hereinafter.

“68. The language used in section 15 is “the ability to understand the consequences of the offence”. The expression used is in plurality i.e., “consequences” of the offence and, therefore, would not just be confined to the immediate consequence of the offence or that the occurrence of the offence would only have its consequence upon the victim but it would also take within its ambit the consequences which may fall upon not only the victim as a result of the assault, but also on the family of the victim, on the child, his family, and that too not only immediate consequences but also the far-reaching consequences in future. Consequences could be in material/physical form but also affecting the mind and the psychology of the child for all times to come. The consequences of the offence could be numerous and manifold which cannot be just linked to a framework; and, for



this purpose, the overall picture as also future consequences with reference to the facts of the case are required to be consciously analysed by the Board.

69. Consequences for the victim could be his death, or permanent physical disability, or an injury which could be repaired or recovered; the impact of the offence on the mind of the victim may be prolonged and continue for his lifetime; the impact on the family and friends of the victim, both mental and financial; consequence on the child going into incarceration; mental impact on the child, it could be repentance or remorse for life, the social stigma cast on the child and his family members; the consequences of litigating and so many other things which would be difficult to adumbrate.”

34. It is not under dispute that, the right of the victim is one of the important aspects to be kept in mind by the J.J.B. at the time of conducting proceedings under the Act of 2015, however, it is also equally important to apply all the safeguards provided under the Act. The object behind enactment of the Act of 2015 is not to punish the juveniles but to provide them such an atmosphere so that they can be reformed and ultimately be re-adjusted in the mainstream of the society.

35. Moreover, the Hon’ble Supreme Court has, in ***Barun Chandra Thakur’s case (supra)***, has made it mandatory to, while making preliminary assessment, take the assistance of experienced psychologists or psycho-social workers or other experts. The relevant observations are extracted hereinafter.

“74. The world acknowledges that children in conflict with law should be treated differently than adults in conflict with law. The reason is that the mind of the child has not attained maturity and it is still developing. Therefore, the child should be tested on different parameters and should be given an opportunity of being brought into the main stream if, during his juvenility, has acted in conflict with law. To understand psychology of the child, huge rounds of studies



have been made not only recently but from age old times and child psychology is a subject which is being studied world over and there are institutes specifically dealing with the developments and research on the said subject. The enactments dealing with children are enacted world over.

75. It is to be noted that child psychology is a specialised branch of development psychology, its genesis is based on the premise that children and adults have a different thought process. The individualised assessment of adolescent mental capacity and ability to understand the consequences of the offence is one of the most crucial determinants of the preliminary assessment mandated by section 15 of the Act, 2015. The report of the preliminary assessment decides the germane question of transferring the case of a child between 16 to 18 years of age to the Children's Court. This evaluation of 'mental capacity and ability to understand the consequences' of the child in conflict with law can, in no way, be relegated to the status of a perfunctory and a routine task. The process of taking a decision on which the fate of the child in conflict with law precariously rests, should not be taken without conducting a meticulous psychological evaluation.

76. As already noticed, the Board consists of three members, one is a Judicial Officer First Class and two social workers, one being a woman. The social worker appointed as a member could be having a degree in child psychology or psychiatry but it is not necessary. As such, the constitution of the Board may not necessarily be having an expert child psychologist. It is for all the above reasons that it has been provided not only in sections 15 and 101(2) but also under the Model Rules that assistance may be taken from an expert psychologist. Having regard to the framework of the Act, 2015 and the Model Rules and the purpose of preliminary assessment in terms of Section 15 as also looking to the varied composition of the Board, we are of the view that where the Board is not comprising of a practicing professional with a degree in child psychology or child psychiatry, the expression "may" in the proviso to section 15(1) would operate in mandatory form and the Board would be obliged to take assistance of experienced psychologists or psychosocial workers or other ex-



perts. However, in case the Board comprises of at least one such member, who has been a practicing professional with a degree in child psychology or child psychiatry, the Board may take such assistance as may be considered proper by it; and in case the Board chooses not to take such assistance, it would be required of the Board to state specific reasons therefor.

79. Therefore, looking to the purpose of the Act, 2015 and its legislative intent, particularly to ensure the protection of best interest of the child, the expression “may” in the proviso to Section 15(1) thereof and the requirement of taking assistance of experienced psychologists or psychosocial workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practicing professional with a degree in child psychology or child psychiatry. Moreover, in case the Board, in view of its own composition with at least one member, who is a practicing professional with a degree in child psychology or child psychiatry, chooses not to take such assistance, it would record specific reasons therefor.”

36. Consequently, when the Social Investigation Report embodies a vivid finding regarding the C.C.L. being ignorant about the consequence of the act, therefore, the said report ought not to have been ignored by the J.J.B., rather it should have been purveyed equal importance before arriving at any conclusion on the aspect at hand, inasmuch as, the Hon’ble Supreme Court has, in ***Barun Chandra Thakur’s case (supra)***, already observed that the mental capacity and ability to understand the consequence of the offence is not one and the same thing. In case, even if the child had the mental capacity to commit the alleged offence, then too it would not be construed that he automatically had the capacity to understand the consequence of his act. In the instant case, it is clearly spelt out by the Probation Officer in the Social Investigation Report that, the petitioner did not possess the capacity to



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understand the consequence of the alleged offence. Therefore, the J.J.B. ought to have, instead of exercising the power under Section 18(3) of the Act of 2015, resorted to the provisions of Section 18(1), the prime object whereof is to ensure the rehabilitation and reintegration of the C.C.L. into the society.

37. At this stage, this Court is reminded of a poetry verse befitting the case at hand by a renowned poet Nida Fazli.

*“Jin Charaaghon Ko Hawaon Ka Koi Khauf Nahi
Un Charaaghon Ko Hawaon Se Bachaya Jaye”
(Those lamps that are not fearful of strong winds, they must be
protected from the winds, let’s do that)*

38. Therefore, the issue as to whether the child had the ability to understand the consequences of the offence also requires reconsideration.

(IV) CIRCUMSTANCES IN WHICH THE CHILD ALLEGEDLY COMMITTED THE OFFENCE.

39. Insofar as this aspect is concerned, the Social Investigation Report voices that, the C.C.L. is the victim of parental neglect inasmuch as the C.C.L. is well attached with his mother, however, she is residing in her native village, and, his father did not take care well of him.

40. It also surges forth from the Social Investigation Report that, the C.C.L. is an introverted personality character such as self judgmental attitude, focusing inner thoughts and ideas, self aware thinking and he does not like group work.

41. All the above observations have been clearly ignored by the J.J.B. while making preliminary assessment. The circumstances prevailing around the C.C.L. are one of the important factors to be borne in mind for



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the purpose of making preliminary assessment in terms of Section 15.

42. It would also be apt to record here that, apart from the preliminary assessment being replete with the hereinabove discussed infirmities and irregularities, the basic procedural standards of fairness encapsulated in Section 3 of the Act of 2015, including the right to a fair hearing, rule against bias and right to review, have also not been adhered to by the J.J.B. Moreover, Section 8(3) of the Act of 2015, which imposes obligation upon the J.J.B. to ensure **informed participation** of the child and parent or guardian at every step of the process, has also been infringed, inasmuch as, the C.C.L. and his parent or guardian were never made to participate at any stage of the process. Even the medical report and social investigation report were also not provided to them well before in time, rather only five minutes' time was afforded to peruse the reports before addressing arguments. This Court is of the opinion that, the J.J.B. ought to have provided the documents/reports to the C.C.L.'s parent/counsel well before in time, thereby enabling the latter to make proper assistance.

43. Gainful reference can be made to the hereinafter extracted paragraphs of the verdict rendered in **Barun Chandra Thakur's case (supra)**.

“52. 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



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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 Act, 2015.

58. 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 Act, 2015 and secondly, that no material collected during investigation could be provided to the accused till such time the police report under section 173(2) Cr.P.C. is filed and the cognizance is taken by the Magistrate under section 190 and the stage of section 207/208 Cr.P.C. is reached. The Act, 2015, being a special Act, will have an overriding effect over general procedure prescribed under the Cr.P.C.. The provisions of the Cr.P.C. would be applicable so long and so far as they are not in conflict with the special provisions contained in the Act, 2015."

FINAL ORDER

44. In summa, this Court has no hesitation to conclude that, both the impugned orders require interference by this Court inasmuch as they have failed to pass the test of legality on the anvil of the hereinabove discussed settled principles of law. Therefore, the instant revision petition is **allowed** and the orders dated 30.03.2024 and 05.06.2024 are set aside. The case is remanded to the J.J.B. for making preliminary assessment afresh by adhering to the hereinabove laid down legal principles and within the time-frame prescribed in the relevant guidelines of the Central Government.

December 04, 2024
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No