

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.359 of 2019

Arising Out of PS. Case No.-146 Year-2012 Thana- CHANPATIA District- West Champaran

Diwakar Singh @ Mithu Singh, S/o Chuman Singh @ Chuman Kumar Singh
Resident of Choubey Tola, P.S-Chanpatiya, District-West Champaran.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner : Mr. Bimlesh Kumar Pandey, Advocate
For the State : Mr. Jai Narain Thakur, APP

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT**

Date : 13-05-2025

The present Criminal Revision petition has been preferred against the judgment dated 13.09.2018 passed by learned District and Sessions Judge, Bettiah, West Champaran in Criminal Appeal No. 37 of 2013 (CIS No. 563 of 2014), whereby learned Sessions Court has upheld the order of learned Juvenile Justice Board, West Champaran, Bettiah passed in G.R. Case No.2277 of 2012 (J.J.B. No. 255 of 2013), whereby learned J.J. Board has found the petitioner herein, guilty of the offence punishable under Section 25(1-B)a and Section 26/35 of the Arms Act and have passed order to send the petitioner to Special Home, Patna for a period of three years, subject to adjustment of the period of detention the petitioner has already suffered.

2. The factual background of the case is that on the



written report of one, Badrinath Sharma, Police Sub-Inspector, Chanpatia police station, Chanpatiya P.S. Case No. 146 of 2012 was registered on 06.06.2012 against the petitioner and two other co-accused for offence punishable under Sections 25(1-B)a and 26/35 of the Arms Act.

3. As per the prosecution case as emerging from the written report dated 6.6.2012, the informant got secret information that three criminals were going to station from *Tikulia Chowk* on a red motorcycle to commit crime. On such information the informant along with police team reached the old High School near *Chanpatia* and saw three persons coming on motorcycle and on seeing the police they started fleeing away. One of them fled away throwing his bag, however, the rest two, including the petitioner were apprehended and on search police recovered one pistol of 9 mm made in Italy no.2000 and one country made pistol loaded with cartridges of 315 bore from the petitioner and other two accused persons, namely, Prince Kumar and Munna Singh were also apprehended with country made pistols. The recovered arms and cartridge were seized and seizure lists were prepared.

4. After investigation, charge sheet No.103 of 2012 dated 4.8.2012 was filed against all the three FIR named



accused persons including the petitioner herein for the offence punishable under Section 25(1-B)a and Section 26 read with Section 35 of the Arms Act in the Court of Chief Judicial Magistrate, Bettiah and subsequently, cognizance of the offence was taken and by the order dated 6.9.2012, the petitioner herein was declared juvenile and his case was transferred to Juvenile Justice Board, Bettiah for inquiry and disposal. As per the school certificates, the date of birth of the petitioner was found to be 15.09.1995 and on the date of occurrence, i.e on 06.06.2012, his age was found to be 16 years 8 months and 20 days.

5. During inquiry before the Juvenile Justice Board, nine witnesses were examined on behalf of the prosecution: **PW-1.** Badrinath Sharma (informant to this case), **P.W.-2.** Sudama Ram, **P.W.-3.** Driver Sugreev pandey, **P.W.-4.** Sunil Kumar, **P.W.-5.** Subhash Kumar Singh, **P.W.-6.** Radhamohan Pandit (I.O), **P.W.-7.** Sekh Abdullah, **P.W.-8.** Kamata Pandey, and **P.W.- 9** Sergeant Major Arun Kumar Singh.

6. The following documents were also exhibited on record : **Ext-01** - Written report, **Ext-02** - Seizure list, **Ext-03-** Seizure list, **Ext.-04** - Seizure list, **Ext-05** - Signature of Radhamohan Pandit on the formal FIR, **Ext.-06** - Forensic



report of the Sergeant Major, **Ext.-07**-Xerox copy of sanction order for prosecution of D.M Bettiah, **Ext.07/1** -Original copy of sanction order for prosecution of D.M. Bettiah, **Ext.08** - Xerox copy of the Formal Charge sheet, and **Ext-09** -Original forensic report of the Sergeant Major.

7. The prosecution has also brought on record the following material evidence : **Material Ext:-M-** Country Made Pistol, **Material Ext:-M/1 to M/6**-Six live cartridges, Material **Ext. M/7-** Country Made Pistol, **Material Ext:-M/8**-Country Made Pistol and **Material Ext:-M/9**-Country Made Pistol.

8. However, no witness was examined on behalf of the petitioner in his defense.

9. After inquiry, the petitioner was found to be guilty of the offence punishable under Sections 25(1-B)a and Section 26 read with Section 35 of the Arms Act and he was directed by learned Juvenile Justice Board to be sent to Special Home, Patna for a period of 3 years, subject to adjustment of the period of detention the petitioner has already suffered.

10. Being aggrieved by the judgment and order dated 16.03.2013 passed by learned Juvenile Justice Board, Bettiah, the petitioner preferred criminal appeal bearing No. 37 of 2013 before the Court of Sessions. However, his criminal appeal was



dismissed and the judgment of conviction and the order of sentence passed by learned Juvenile Justice Board was upheld. Hence, the petitioner has preferred the present Criminal Revision Petition.

11. I heard learned counsel for the petitioner and learned APP for the State.

12. Learned counsel for the Petitioner submits that the impugned judgment passed by learned Appellate Court below as well as the Judgment and order dated 16.03.2013 passed by learned J.J. Board are not sustainable in the eye of law.

13. He further submits that the prosecution has badly failed to prove its case against the petitioner, but both the Courts below have erroneously found the petitioner guilty and sentenced him to keep him in the Special Home for three years.

14. He further submits that out of the two seizure list witnesses, only one, namely, Sekh Abdulla has been examined and the other witness, namely, Md. Nurul Hoda Ansari has not been examined and even Sekh Abdulla, who has been examined as P.W.7, has not supported the prosecution case. He has deposed that when he had gone to the police station for character certificate, he was made to sign on a plain paper. As such, he has denied that any arms and ammunition was



recovered from the petitioner.

15. He further submits that there is also no evidence to show that the seized arms and ammunition from the accused persons, including the petitioner were sealed. In this regard, only evidence is that of P.W.5 who has deposed in his cross-examination that all the arms and ammunition seized were sealed in a sack, but who sealed it and where was it sealed, has not come in his evidence. There is also no evidence that the arms seized from the accused persons were sealed separately and they were deposited in the godown with mark of identification and the same were sent for ballistic test.

16. Under such facts and circumstances, learned counsel for the petitioner submits that the very seizure of the arms and ammunition allegedly recovered from the petitioner becomes highly doubtful, making the conviction and sentencing of the petitioner not sustainable in the eye of law.

17. He further submits that even the order of sentencing is not in consonance with the object, spirit and provisions of the Juvenile Justice (Care and Protection of Children Act), 2000 (hereinafter referred to as the “J.J. Act, 2000”) which is applicable in this case.

18. However, learned APP for the State defends the



judgment and order passed by learned J.J. Board as well as learned Appellate Court below submitting that there is no illegality or infirmity in the impugned judgment and order. Learned Courts below have rightly found the petitioner guilty under Sections 25(1-B)a, 26 read with Section 35 of the Arms Act and directed him to be sent to Special Home, Patna for a period of three years, subject to adjustment of the period already undergone by him in custody.

19. I considered the rival submissions advanced by both the parties and perused the material on record.

20. I find that whole allegation against the petitioner is based on alleged seizure of arms and ammunition from his possession. However, after perusal of the prosecution evidence adduced during inquiry before the J.J. Board, I find that the very seizure and recovery of the arms and ammunition from the possession of the petitioner is highly doubtful. Out of two seizure witnesses, only one of them was examined as P.W.-7 but even he has not supported the seizure of the arms and ammunition in his presence. He has deposed that when he had gone to the police station for Character Certificate, he was made by the police to sign on a plain paper. I further find that there is also no evidence on record to show that the alleged seized arms



and ammunition from the possession of the petitioner was sealed on the spot and deposited in *Malkhana* with identification marks and the same were sent for ballistic test. As per evidence on record, only evidence as per P.W.-5 is that the seized arms and ammunition from the petitioner and other co-accused were sealed in a sack but he has not given any details - like who sealed it and where was it sealed. Moreover, sealing all the arms and ammunition seized from all three accused in the same sack, clearly shows that even prosecution could not show which arms and ammunition were seized and recovered from the petitioner. Under such facts and circumstances of the prosecution case during inquiry, the very seizure and recovery of the arms and ammunition from the petitioner could not be proved beyond reasonable doubts. It would be travesty of justice to find the petitioner guilty on such evidence against him. As such, impugned judgment of conviction passed by learned J.J. Board as well as learned Appellate Court below is not sustainable.

21. I find that even the order of sentence passed under Section 15 of the J.J. Act, 2000 is not in consonance with the object, spirit and the provisions of the Act.

22. Here, it would be pertinent to point out that the alleged occurrence had taken place on 06.06.2012. As such, the



J.J. Act, 2000 as amended in the year, 2006 would be applicable, despite the fact that J.J. Act, 2000 has been repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015. But as per Section 25 of the J.J. Act, 2015, the application of the J.J. Act, 2000 in all the pending proceedings under the Act of 2000 is saved. Section 25 of the J.J. Act, 2015 reads as follows:-

“25. Special Provision in respect of pending cases.- Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted.”

23. At the outset, it would be pertinent to point out that the J.J. Act, 2000 is based on our belief that children are the future of the society and in case they go into conflict with law under some circumstances, they should be reformed and rehabilitated and not punished. No society can afford to punish its children. Punitive approach towards children in conflict with law would be self-destructive for the society. Such belief and object are reflected in the preamble to the Act as well as its provisions.

24. The preamble to the J.J. Act, 2000 reads as follows:-

“An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and



by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation and for matters connected therewith or incidental thereto”

(Emphasis supplied)

25. A “juvenile” or “child” has been defined as a person who has not completed eighteenth year of age as per Section 2(k) of the Act of 2000 whereas “juvenile in conflict with law” as per Section 2(l) of the Act means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.

26. Section 15 of the J.J. Act, 2000 provides for the orders which could be passed by J.J. Board/Court against the juvenile who is found to be in conflict with law. It read as follows:-

“15. Order that may be passed regarding juvenile

(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it so thinks fit,

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

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

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of



good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home for a period of three years:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

(2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

(3) Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law:

Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4) The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be under whose care the juvenile has been



placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.”

(Emphasis supplied)

27. Section 16 of the J. J. Act, 2000 prohibits the J.J. Board or any Court to pass orders as provided therein against any juvenile found to be in conflict with law after inquiry. It reads as follows:

“16. Order that may not be passed against juvenile - (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

(2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed in any case the maximum period provided under section 15 of this Act.”

(Emphasis supplied)



28. It clearly transpires from Section 15 of the J.J. Act, 2000 that if a juvenile is found to be in conflict with law after inquiry, he may be released just after advise or admonition, or may be directed to participate in group counseling, or to perform community service. It further transpires that a juvenile in conflict with law may be released just after payment of fine in certain circumstances. As per Sections 15(1) (f) and (g) of the J.J. Act, 2000, a juvenile in conflict with law may be released on probation of good conduct with sureties for maximum period of three years. It also transpires that juvenile in conflict with law in appropriate cases may be directed to be sent to a Special Home for a maximum period of three years, but the J.J. Board or the court is required to give special reason for it. As per Section 15(2) of the J.J. Act, 2000, the J.J. Board or court is also required to obtain social investigation report on the juvenile for its consideration before passing order under Section 15 of J.J. Act, 2000.

29. Rule 3 of the Juvenile Justice (Care And Protection Of Children) Rules, 2007 made under the J.J. Act, 2000 provides for fundamental principles to be followed in administration of the Act. This Rule clearly provides that while taking any decisions with reference to any juvenile in conflict



with law, the best interest of the juvenile is required to be the primary consideration. The principle of best interest as per Rule 3 means that traditional objectives of criminal justice, retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice. It also means seeking to ensure physical, emotional, intellectual, social and moral development of the juvenile in conflict with law or child so as to ensure the safety, well being and permanence for each child and thus enable each child to survive and reach his or her full potential. Rule 3 also provides for primary responsibility for the care, protection and rehabilitation of the child to the biological family or adoptive or foster parents of the child. Institutionalization of a child or juvenile in conflict with law has been contemplated as a last resort after reasonable inquiry and that too for the minimum possible duration.

30. The relevant parts of Rule 3 of J.J. Rules, 2007 read as follows:-

“3. Fundamental principles to be followed in administration of these rules.- (1) The State Government, the Juvenile Justice Board, the Child Welfare Committee or other competent authorities or agencies, as the case may be, while implementing the provisions of these rules shall abide and be guided by the principles, specified in sub-rule (2).

(2) The following principles shall, inter alia, be fundamental to the application, interpretation and implementation of the Act and the rules made hereunder:



.....

IV. Principle of best interest:

(a) In all decisions taken within the context of administration of juvenile justice, the principle of best interest of the juvenile or the juvenile in conflict with law or child shall be the primary consideration.

(b) The principle of best interest of the juvenile or juvenile in conflict with law or child shall mean for instance that the traditional objectives of criminal justice, retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice.

(c) This principle seeks to ensure physical, emotional, intellectual, social and moral development of a juvenile in conflict with law or child so as to ensure the safety, well being and permanence for each child and thus enable each child to survive and reach his or her full potential.

V. Principle of family responsibility:

(a) The primary responsibility of bringing up children, providing care, support and protection shall be with the biological parents. However, in exceptional situations, this responsibility may be bestowed on willing adoptive or foster parents.

(b) All decision making for the child should involve the family of origin unless it is not in the best interest of the child to do so.

(c) The family-biological, adoptive or foster (in that order), must be held responsible and provide necessary care, support and protection to the juvenile or child under their care and custody under the Act, unless the best interest measures of mandates dictate otherwise.

.....

XII. Principle of last resort:

Institutionalisation of a child or juvenile in conflict with law shall be a step of the last resort after reasonable inquiry and that too for the minimum possible duration.

XIII. Principle of repatriation and restoration:

(a) Every juvenile or child or juvenile in conflict with law has the right to be re-united with his family and restored back to the same socio-economic and cultural status that such juvenile or child enjoyed before coming within the purview of the Act or becoming vulnerable to



any form of neglect, abuse or exploitation.

(b) Any juvenile or child, who has lost contact with his family, shall be eligible for protection under the Act and shall be repatriated and restored, at the earliest, to his family, unless such repatriation and restoration is likely to be against the best interest of the juvenile or the child.

XIV. Principle of fresh start:

(a) The principle of fresh start promotes new beginning for the child or juvenile in conflict with law by ensuring erasure of his past records.

(b) The State shall seek to promote measures for dealing with children alleged or recognised as having impinged the penal law, without resorting to judicial proceedings.”

(Emphasis supplied)

31. From the conjoint reading of Sections 15 and 16 and Rule 3 of J.J. Rules, 2007, it clearly emerges that before passing any appropriate order with reference to a juvenile in conflict with law, the J.J. Board or the court must take into consideration the social investigation report regarding him and keep in mind the fundamental principles as provided in Rule 3 of the J.J. Rules, 2007 while passing appropriate order after inquiry.

32. From the object and statutory provisions of the J.J. Act, 2000, and the Rules made thereunder, it also transpires that during the juvenile inquiry by the J.J. Board, the Board is required not only to find guilt/innocence of the juvenile, but also to investigate the underlying social and familial causes of the offence committed by the juvenile so that the Board/Court may



pass appropriate order with intent to reform, rehabilitate and re-integrate the errant juvenile with mainstream of the society. Punishment of juvenile in conflict with law has never been the purpose of the juvenile justice.

33. Here it would be profitable to refer to **Salil Bali Vs. Union of India and Another, 2013 7 SCC 705**, where Hon'ble Supreme Court in paragraph no. 63 of the judgment has observed that the essence of J.J. Act, 2000 and the Rules framed thereunder in 2007, is restorative and not retributive providing for rehabilitation and reintegration of children in conflict with law with the mainstream of the society.

34. It would be also pertinent to refer to **Subramanian Swamy & Ors. Vs. Raju, (2014) 8 SCC 390**, where Hon'ble Supreme Court has pointed out differences between Juvenile Justice System and Criminal Justice System. The relevant paragraphs of the judgment read as follows:

“56.Differences between Juvenile Justice System and Criminal Justice System

56.1. FIR and charge-sheet in respect of juvenile offenders is filed only in “serious cases”, where adult punishment exceeds 7 years.

56.2. A juvenile in conflict with the law is not “arrested”, but “apprehended”, and only in case of allegations of a serious crime.

56.3. Once apprehended, the police must immediately place such juvenile under the care of a Welfare Officer, whose duty is to produce the juvenile before the Board. Thus, the police do not retain pre-trial



custody over the juvenile.

56.4. Under no circumstances is the juvenile to be detained in a jail or police lock-up, whether before, during or after the Board inquiry.

56.5. Grant of bail to juveniles in conflict with the law is the rule.

56.6. The JJ Board conducts a child-friendly “inquiry” and not an adversarial trial. This is not to say that the nature of the inquiry is non-adversarial, since both prosecution and defence submit their cases. Instead, the nature of the proceedings acquires a child-friendly colour.

56.7. The emphasis of criminal trials is to record a finding on the guilt or innocence of the accused. In case of established guilt, the prime object of sentencing is to punish a guilty offender. The emphasis of juvenile “inquiry” is to find the guilt/innocence of the juvenile and to investigate the underlying social or familial causes of the alleged crime. Thus, the aim of juvenile sentencing is to reform and rehabilitate the errant juvenile.

56.8. The adult criminal system does not regulate the activities of the offender once she/he has served the sentence. Since the JJ system seeks to reform and rehabilitate the juvenile, it establishes post-trial avenues for the juvenile to make an honest living.”

(Emphasis supplied)

35. Coming back to the case on hand, I find that as per the Social Investigation Report of the Probation Officer as available on record, there is no criminal antecedent of the petitioner and as per the co-villagers, he bears a very good conduct and he is a bright student and he has secured 75 per cent marks in his matriculation examination and he wants to do B. Tech at Chennai, where his brother is also pursuing the course of B.Tech. As per further report, the family of the petitioner is a joint one comprising grand parents besides his parents and two elder brothers and his father being a farmer,



cultivating five *bigha* of land. His eldest brother is doing B.Tech at Chennai and his second elder brother is taking ITI course. As per further report of the Probation Officer, on the date of the alleged occurrence, he had gone to Chanpatiya Block for paddy seeds, where he met co-accused, Prince who was acquainted with the victim and started taking tea with him. Prince was having a stolen motorcycle and he was carrying a bag when the people who had assembled at the *chowk* started doing inquiry with the co-accused, Prince regarding the motorcycle. He fled away leaving behind his motorcycle and the bag. The persons who had assembled there also started beating the petitioner considering him the friend of Prince and subsequently, police came and apprehended the petitioner.

36. Under such facts and circumstances, I find that while passing order under Section 15 of the J.J. Act, 2000, the J.J. Board/Court has not taken into consideration the Social Investigation Report to decide what was in the best interest of the petitioner. By sending him to special home for three years, the Board/Court acted against the interest of the petitioner by not providing him appropriate opportunity to continue his studies.

37. As such, in view of the aforesaid facts and



circumstances, both the judgment of conviction and the order of sentence passed by the J.J. Board and learned Appellate Court below are not sustainable in the eye of law, and hence, they are liable to be set aside.

38. Accordingly, the present petition is allowed, setting aside the judgment of conviction and the order of sentence passed by learned J.J. Board and the Appellate Court below, acquitting the petitioner of all the charges.

39. A copy of this judgment/order be circulated amongst the Presiding Officers of the J.J. Boards and Children Courts of the State of Bihar. A copy of this judgment/order be also sent to the Bihar Judicial Academy for discussion in the training programmes for the Presiding Officers of the J.J. Boards and Children Courts.

40. Lower Court Records be sent back to the Courts concerned.

(Jitendra Kumar, J.)

Chandan/Ravi
Shankar/Shoaib

AFR/NAFR	A.F.R.
CAV DATE	28.04.2025.
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