IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.819 of 2019

Arising Out of PS. Case No.-36 Year-2011 Thana- KHANPURA District- Samastipur

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Pandav Kumar, S/o Parmanand Yadav @ Paro Yadav, R/o village- Mujari Chakmahi, P.S.- Khanpur, District- Samastipur.

... ... Petitioner

Versus

The State of Bihar

... ... Respondent

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Appearance :

For the Petitioner	:	Mr. Pankaj Kumar Jha, Advocate
Amicus Curiae	:	Ms. Shashi Priya, Advocate
For the State	:	Mr. Upendra Kumar, APP
For the Victim	:	Mr. Raja Ram Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 07-07-2025

Introduction

The present Criminal Revision petition has been preferred against the impugned judgment and order dated 29.03.2019, passed by learned Fast Track Court-I, Samastipur in Cr. Appeal No. 46 of 2016/152 of 2017, whereby the judgment of conviction and order of sentence passed by learned J.J. Board, Samastipur has been upheld.

Factual Background

2. The factual background of the case is that on the basis of the *fardbeyan* of the victim/minor girl dated 03.03.2011,

Khanpur P.S. Case No. 36 of 2011 was registered on 03.03.2011 against the petitioner and the co-accused/Fulo Kumar for the offence punishable under Section 376(2)(g) of the Indian Penal Code.

3. At the stage of investigation, both the accused persons took plea of juvenility. Hence, their records were transferred to the J.J. Board, Samastipur. However, after investigation, charge-sheet was submitted only against the petitioner finding the co-accused innocent. However, during juvenile inquiry, the co-accused was summoned under Section 319 Cr.PC. But, the record of the co-accused was subsequently separated from that of the petitioner.

4. During the juvenile inquiry, the following twelve prosecution witnesses were examined on behalf of the State: **PW-1**. Victim/informant of this case, **P.W.-2.** Nand Kishore Yadav, **P.W.-3.** Father of the victim, **P.W-4.** Mother of the victim, **P.W.-5**. Harischandra Sahni, **P.W.-6.** Paternal Grandmother of the victim, **P.W.-7**. Bhuvneshwar Sahni, co-villager of the victim, **P.W.-8.** Rajesh Kumar Majhi, Investigating Officer of the case, **P.W.- 9** -Radhiya Devi/grandmother of the victim, **P.W.- 10-**Arhula Devi/co-villager of the victim, **P.W.- 11** – Doctor and **P.W.- 12** -Maternal

grandmother. Some documents were also exhibited, including the medico-legal examination report on behalf of the prosecution.

5. However, on behalf of the petitioner, neither any witness was examined, nor any document was adduced during the inquiry by the J.J. Board.

6. After inquiry, the petitioner was found to be guilty of the offence punishable under Section 376 IPC and he was directed to be kept in the Special Home for two years under Section 15(1)(g) of the J.J. Act.

7. Being aggrieved by the judgment of conviction and order of sentence passed by the J.J. Board, the petitioner herein preferred Criminal Appeal bearing No. 46 of 2016/152 of 2017 before the Sessions Court. However, learned Appellate Court below upheld the judgment of conviction and order of sentence passed by learned J.J. Board against the petitioner. Hence, the present Revision petition has been preferred by the petitioner.

Prosecution Case

8. As per the *fardbeyan,* the petitioner and the co-accused entered the house of the informant/victim at 8 AM when the victim was working in her kitchen and she was alone in her home and her mother was away from home for the

purpose of cultivation work. Thereafter, they put *gamcha* on the mouth and eyes of the victim and took her to a maize field where they committed penetrative sexual assault on her, leading to injury on her private part. After coming home, the victim stated to her mother about the offence committed against her.

Submissions of the Parties

9. I heard learned counsel for the petitioner, learned APP for the State, learned Amicus Curiae and learned counsel for the victim /informant.

10. Ld. counsel for the Petitioner and Ld. Amicus curiae submit that the impugned judgment passed by Ld. Appellate Court below as well as the Judgment and order dated 15.06.2016, passed by Ld. J.J. Board, are not sustainable in the eye of law.

11. They further submit 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. The judgment of conviction is based on perverse appreciation of the evidence. He also submits that even the sentence as passed by learned J.J. Board and learned Children Court are against the object and spirit of the Juvenile Justice Act.

12. However, learned APP for the State and learned

counsel for the victim defend the impugned 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 of conviction. Both the Courts below have properly appreciated the evidence on record and found the petitioner guilty of the offence punishable under Section 376 of the Indian Penal Code. There is also no illegality or infirmity in the sentence passed by learned J.J. Board and learned Children Court and upheld by learned Appellate Court below.

13. They further submit that under revisional jurisdiction, this Court cannot re-appreciate the evidence on record to interfere in the impugned judgment.

14. Learned counsel for the victim and Ld. Amicus Curiae also submit that learned J.J. Board as well as learned Children Court have committed gross illegality by not passing any order regarding compensation to the victim despite the fact that both of them have found the minor girl/informant to have suffered penetrative sexual assault at the hands of the petitioner.

15. However, learned APP for the State contests the submission on behalf of the victim submitting that the Revisional Court cannot pass any order in regard to compensation to the victim in this petition which has been filed

not by the victim but by the convict. He also submits that the victim cannot get benefit of Bihar Victim Compensation Scheme, 2014, because the concerned crime has been committed prior to the Scheme coming into effect on 20.03.2014, whereas the crime has been committed on 03.03.2011.

Extent and Scope of Revisional Jurisdiction of the High Court

16. In view of the submissions of the parties, it would be imperative to discuss the extent and scope of revisional jurisdiction of this Court.

17. As per the statutory provisions and judicial precedents, it is settled principle of law that the revisional jurisdiction conferred upon the High Court is a kind of paternal or supervisory jurisdiction under Section 397 read with Section 401 Cr.PC in order to correct the miscarriage of justice arising out of judgment, order, sentence or finding of subordinate Courts by looking into correctness, legality or propriety of any finding, sentence or order as recorded or passed by subordinate Courts and as to the regularity of any proceeding of such inferior Courts.

18. However, the exercise of revisional jurisdiction by the High Court is discretionary in nature to be applied

judiciously in the interest of justice.

19. Under revisional jurisdiction, the High Court is not entitled to re-appreciate the evidence for itself as if it is acting as a Court of appeal, because revisional power cannot be equated with the power of an Appellate Court, nor can it be treated even as a second appellate jurisdiction. Hence, ordinarily, it is not appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Trial and Appellate Court, unless there are exceptional situations like glaring error of law or procedure and perversity of finding, causing flagrant miscarriage of justice, brought to the notice of the High Court. Such exceptional situations have been enumerated by Hon'ble Apex Court on several occasions which are as follows:-

(i) when it is found that the trial court has no jurisdiction to try the case or;

(ii) when it is found that the order under revision suffers from glaring illegality or;

(iii) where the trial court has illegally shut out the evidence which otherwise ought to have been considered or;

(iv) where the judgment/order is based on inadmissible evidence, or;

(v) where the material evidence which clinches the issue has been overlooked either by the Trial Court or the Appellate Court or;

(vi) where the finding recorded is based on no evidence or;

(vii) where there is perverse appreciation of evidence or;

(viii) where the judicial discretion is exercised arbitrarily or capriciously or;

(ix) where the acquittal is based on a compounding of the offence, which is invalid under the law.

20. However, it has been cautioned by Hon'ble Supreme Court that the aforesaid kinds of situations are illustrative and not exhaustive.

21. In regard to revisional jurisdiction, one may refer to the following judicial precedents:

(i) Akalu Ahir and Ors. vs Ramdeo Ram
(1973) 2 SCC 583
(ii) K. Chinnaswami Reddy vs State of A.P.
1962 SCC Online SC 32
(iii) Duli Chand Vs Delhi Administration
(1975) 4 SCC 649
(iv) Janta Dal Vs H.S. Chowdhary & Ors.
(1992) 4 SCC 305
(v) Vimal Singh Vs Khuman Singh & Anr.
(1998) 7 SCC 323
(vi) State of Kerala Vs. Puttumana I. J. Namboodiri
(1999) 2 SCC 452
(vii) Thankappan Nada & Ors. Vs. Gopala Krishnan
(2002) 9 SCC 393
(viii) Jagannath Chaudhary Vs. Ramayan Singh
(2002) 5 SCC 659
(ix) Bindeshwari Prasad Singh @ B.P. Singh & Ors.

Vs. State of Bihar (Now Jharkhand) & Anr.
(2002) 6 SCC 650
(x) Manju Ram Kalita v. State of Assam
(2009) 13 SCC 330
(xi) Amit Kapoor v. Ramesh Chander
(2012) 9 SCC 460
(xii) Ganesha Vs. Sharanappa & Anr.
(2014) 1 SCC 87
(xiii) Shlok Bhardwaj v. Runika Bhardwaj & Ors.
(2015) 2 SCC 721
(xiv) Sanjaysinh R. Chavan Vs. D. G. Phalke
(2015) 3 SCC 123
(xv) Malkeet Singh Gill v. State of Chhattisgarh
(2022) 8 SCC 204

Findings and Order of this Court

22. I considered the submissions advanced by both the parties and perused the materials on record.

23. I find that allegation of rape is made by the victim/informant against the petitioner and co-accused. In support of the allegation, the victim/informant, in her examination-in-chief, has reiterated her statements as made in her written report. However, in her cross-examination, she has admitted that there is enmity between her family and that of the convict/petitioner herein. She has further deposed that her blood stained clothes were shown to the police. However, she has not deposed that she had handed over such clothes to the police. She had denied the suggestion that on account of enmity, she has falsely implicated the petitioner.

24. I further find that no other prosecution witnesses

are direct eye-witnesses to the alleged occurrence. P.W.-11 is a doctor who examined the injury on the person of the victim. P.W.-8, Rajesh Kumar Majhi is Investigating Officer of the case and all other witnesses are only hearsay witnesses and they are relatives or co-villagers of the victim.

25. P.W.-11, **Dr. Lalita Singh** has deposed in her cross-examination that no spermatozoa was found in the vaginal swab of the victim, though the examination was conducted on the same day of occurrence i.e. 03.03.2011 and she has clearly deposed that she was not in a position to decide whether the rape was committed on the alleged victim. However, she has found injury on the private part of the victim.

26. P.W.-8 is **I.O.** of the case and he has deposed, in his examination-in-chief, that he had found the blood fallen on the ground at the place of occurrence of the alleged rape. However, he has admitted that he did not seize the soil soaked in blood, nor any seizure list was prepared. He has also deposed that he did not get opportunity to see the clothes of the victim having blood stains and hence, there is no question of any seizure of such clothes belonging to the victim.

27. I also find that there is no scientific investigation regarding connection between the alleged offence and the

petitioner like DNA test.

28. In view of the aforesaid facts and circumstances, it would be unsafe and unjust to hold the petitioner guilty of the alleged offence. The prosecution has failed to prove its case against the petitioner beyond all reasonable doubts. Hence, the impugned judgment of conviction of the petitioner is not sustainable in the eye of law.

Sentencing Policy under the J.J. Act

29. 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.

30. Here, it would be pertinent to point out that the alleged occurrence had taken place on 03.03.2011. 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."

31. 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. 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)

32. 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.

33. 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)

34. 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)

35. 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.

36. 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.

37. 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 responsi-ble 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)

38. 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.

39. 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. 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. In paragraph no. 43 of **Jitendra Singh @ Babloo Singh vs.**

State of U.P (2013) 11 SCC 193, also Hon'ble Apex Court has observed that the purpose of the Act is to rehabilitate a Juvenile in conflict with law with a view to reintegrate him into society.

40. 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 a 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)

Sentencing Order Passed in the Case on Hand

41. Coming to the case on hand, I find that as per the Social Investigation Report by the Probation Officer as available on record, there is no criminal antecedent of the Petitioner. As per the co-villagers and representatives of the people, the petitioner was of co-operative nature. As per further report, his father is a labourer and his mother is a housewife and they have one house and two *katha* of land. He has four brothers and three sisters. His eldest brother is also a labourer working in Punjab and Haryana, his second brother is a student, studying in intermediate, his third brother is studying at a *Gurukul* at Samastipur, one of his sisters is married, whereas two other sisters are minor. As per further report, no villagers made any adverse comment against him and as per them, he was not guilty of the alleged offence. The mother of the petitioner, during inquiry, regarding age has deposed that he studies at his village school.

42. However, I find that while passing order under Section 15 of the J.J. Act, 2000, the J.J. Board/Appellate 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 two years, the Board/Court acted against the interest of the petitioner by not providing him appropriate opportunity to continue his studies. He should have also directed District Administration to help the poor family of the petitioner to tide over his economic hardship by way of ensuring benefits of poverty alleviation government schemes.

43. 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.

44. 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.

Compensation to the Victim by the J.J. Board/Children Court

45. From the impugned judgment of conviction and the order of sentence, passed by learned J.J. Board and learned

Children Court, I find that both of them have found the petitioner guilty of penetrative sexual assault committed against the victim/informant of this case. But I find that neither of them has passed any order regarding compensation payable to the victim, whereas, in my considered view, they were duty bound to pass such order.

The Provisions for Compensation to the Victim under the Cr.PC.

46. Here, it is relevant to mention that general principles of compensation to victim in a criminal trial has been provided under Section 357 and 357A Cr.PC and the Bihar Victims Compensation Scheme, 2014 made by the State of Bihar under Section 357A. The word 'victim' has been also defined by Section 2 (wa) of the Cr.PC. These statutory provisions read as follows:

> "**Sec. 2(wa).** "victim" means a person who has suffered any loss or injury caused by reason of the act of omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir
>
> …….
>
> **Sec. 357. Order to Pay compensation : -**
>
> (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied -
>
> (a) in defraying the expenses properly incurred in the prosecution;
>
> (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person

in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

2. If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.

3. When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

4. An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

5. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

Sec. 357A. Victim compensation scheme. -

(1) Every State Government in coordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result or the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied that the compensation awarded under section 357

> is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the Victim has to be rehabilitated, it may make recommendation for compensation.
> (4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
> (5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
> (6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit."

47. In terms of Sec. 357 A of Cr.PC, Bihar Government has made the **Bihar Victims Compensation Scheme, 2014** providing for compensation to victim from State fund named as "Victim Compensation Fund". It has been notified in Bihar Gazette (Extraordinary) dated 20.3.2014 and amended from time to time. It contains the same provisions as provided in Section 357A Cr.PC including eligibility for compensation as well as procedure for grant of compensation. Section 4 of the scheme deals with eligibility for compensation whereas Section 5 of the scheme deals with procedure for grant of compensation. The Schedule annexed to the Scheme

describes the offence/ injuries or loss for which compensation is to be provided by legal services authorities. It has also specified the minimum and maximum amount of compensation provided for specified injures, loss or offence. The discretion to decide the quantum has been left with the State/District legal Services Authorities as per the Scheme. In Section 7 of the Scheme, there is also provision for instituting recovery proceeding by the Legal Services Authority against the wrong doers or the accused responsible for causing loss or injury as a result of the crime committed by him.

48. It is pertinent to notice that there is no limitation prescribed to pay compensation amount by Legal Services Authorities to the victim on recommendation by any Court. Section 8 of Bihar Victim Compensation Scheme deals with Limitation which reads as follows:

> **“8. Limitation**.—No claim made by the victim or his dependents under sub-section(4) of section 357-A of the Act shall be entertained after a period of six months of the crime; Provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.”

49. This limitation is only in regard to the applications by the victims to Legal Services Authority in cases where the offender is not traced or identified or no trial takes place. Even in case of such applications, the Legal Services

Authority is empowered to condone the delay as per its satisfaction for reasons to be recorded in writing. Even there is provision for appeal against the order of District Legal Services Authority before State Legal Services Authority within 90 days of the order and even this limitation of 90 days to file appeal before State Legal Services Authority (in short 'SLSA') is liable to be condoned by the SLSA as per its satisfaction for reasons to be recorded in writing.

50. Now coming to the statutory provision of Section 357 Cr.PC and Section 357 A Cr.PC, it transpires that compensation can be granted under Section 357 Cr.PC only in case of conviction of the accused and such compensation to victim is payable by the convict and not by the State from its State fund. The power to direct payment of compensation to the victim under Section 357 Cr.PC is not only conferred on the Trial Court but even on the Revisional and Appellate Court as provided under sub-Section 4 of Section 357 Cr.PC. The provisions of Section 357 Cr.PC has been recently resorted to by Hon'ble Apex Court in **Harendra Rai Vs. State of Bihar and Ors. 2023 (9) SCC 702** which was a Criminal Appeal filed against acquittal. Here **Hon'ble Apex Court** convicted the Respondent, Prabhunath Singh under Sections 302 and 307 IPC.

and imposed a fine of Rupees twenty five lacs upon the convict and the same was directed to be paid to the legal heirs of the deceased under Section 357(1)(c) CrPC.

51. The compensation under Section 357A of Cr.P.C. is paid from the State compensation fund created under the provisions of Section 357 A by the Government. It is paid in two ways - on recommendation of a Court under Section 357A (2) or Section 357A (3) of the Cr.PC or on an application made by a victim under Section 357A(4) Cr.PC to the Legal Services Authorities for compensation.

52. Section 357A (3) empowers and casts duty upon the Court to recommend compensation at the conclusion of the trial, whether the case ends in conviction, acquittal, or discharge of the accused. In case of conviction, if the Trial Court is satisfied that the compensation awarded under Section 357 Cr.PC is not adequate for rehabilitation of the victim, it is empowered to recommend the District/State Legal Services Authority to pay compensation to the victim from State compensation fund as per the scheme of the Government as made under Section 357A (1) Cr.PC.

53. When the Accused is not traced out or identified,

and no trial takes place, Section 357A(4) allows the victim or his dependents to make an application to the Legal Services Authorities seeking compensation. Section 357 (5) empowers and casts duty upon the Legal Services Authorities to award compensation after due inquiry within two months of the receipt of the recommendation of the Court or application of the victim.

54. The Division Bench of this Court of which I was a part, has elaborately discussed the statutory provisions of the Cr.PC 1973 and the Bihar Victims Compensation Scheme, 2014 in **Sunil Kumar Jha vs. State of Bihar** as reported in **2024 SCC Online Pat 960.** The following relevant judicial precedents were also referred to therein:

(i) Ankush S. Gaikwad Vs. State of Maharashtra,
(2013) 6 SCC 770
(ii) Suresh Vs. State of Haryana,
(2015) 2 SCC 227
(iii) XXXXX Vs. State of Kerala,
2023 SCC OnLine Ker 6708
(iv) Sri D Reddeppa Vs. The State Of Karnataka
MANU/KA/4419/2022
(v)Kamal Sk. Vs. State of West Bengal and Anr.,
(2023 SCC Online Cal 3683)
(vi) Rahul Vs. State (NCT of Delhi),
(2023) 1 SCC 83
(vii) State of Karnataka Vs. Rangaswamy,
2015 SCC OnLine Kar 8587
(viii) Ranjeet Naik Vs. State (NCT of Delhi),
2021 Cri. LJ. 4290
(ix) Piyali Dutta Vs. State of W.B.,
2017 SCC OnLine Cal 8743
(x) District Collector Vs. D.L.S.A.,
2020 SCC OnLine Ker 8292

(xi) Vakalpudi Venkanna Vs. State of Karnataka, 2022 SCC OnLine Kar 1828
(xii) Neeraj Sharma Vs. State of Chhattisgarh, (2024) 3 SCC 125

55. After consideration of the relevant statutory provisions and the case laws in **Sunil Kumar Jha case** (supra), it was held as follows:-

> **"105.** It clearly emerges from the aforesaid statutory provisions and case laws that the Court conducting a criminal trial is duty bound to pass reasoned order, on the conclusion of the trial, regarding compensation to victims as per Section 357 and Section 357 A Cr.PC, irrespective of conviction, acquittal or discharge. Such order has to be passed by the Trial Court even when the victim has not filed an application for compensation. In such order, the Court is required to give finding whether the alleged offence has been committed or not, and if committed who is victim of the committed offence, and if there is any victim in terms of Section 2 (wa) Cr.PC, whether victim is entitled to compensation under Section 357 and Section 357 A Cr.PC and if yes, how much and from whom.
>
> **106.** The Appellate and Revisional Court are equally duty bound to pass such order regarding compensation to the victims in their final judgments even if the appeals/revisions have been filed by a party other than the victim, only condition being that appeal or revision or any other proceeding arising out of the crime is pending before the Court.
>
> **107.** Moreover, victims are entitled to benefits under State Victim Compensation Scheme made under Section 357A Cr.PC even when the concerned offence has been committed prior to the scheme coming into force if the trial, appeal or revision are pending on or after the scheme came into force.
>
> **108.** In case of conviction of the Accused, compensation payable to the victim may be imposed upon the convict as per his paying capacity either by way of fine or otherwise under Section 357 Cr.PC and if the compensation directed to be paid under Section 357 Cr.PC is not sufficient to rehabilitate the victim, the Court is empowered to recommend the Legal Services Authority to pay the compensation to the victim from the State fund created under Victim Compensation Scheme made under

> Section 357A Cr.PC. In case of acquittal of the Accused-Appellant, the Court is duty bound to resort to Section 357A Cr.PC to recommend Legal Services Authorities to pay compensation to the victim as per Victim Compensation Scheme of the State as made under Section 357A Cr.PC.”
>
> (Emphasis supplied)

Applicability of the Provisions of the Cr.PC regarding Compensation to the Victims in Criminal Proceedings Before J.J. Boards/Children Courts

56. Now, the question arises whether the statutory provisions of Cr.PC and the Rules made thereunder in regard to compensation payable to the victims of crimes are applicable to the criminal proceeding before the J.J. Board and the Children Court as constituted and functioning under the Juvenile Justice Act, 2015. The answer is in the affirmative.

57. The J.J. Act has been enacted to deal with children in need of care and protection and children in conflict with law by providing different procedural and substantive law. It has not been enacted to provide any different statutory provisions in regard to compensation payable to the victim of any crime punishable under Indian Penal Code or any other Special Penal Statute like the POCSO Act. Hence, there is no provision provided in the Juvenile Justice Act regarding compensation payable to the victim of a crime. Even the applicability of Cr.PC to the proceeding of inquiries, appeals and revisions as provided under the J.J. Act, 2015 are barred only to the extent there is

specific provision under the J.J. Act, 2015, as apparent from Section 103 of the J.J. Act, 2015.

58. Hence, the general principles regarding compensation to the victim as provided under the Cr.PC or Special Acts like the POCSO Act are equally applicable in criminal proceedings which are required to be conducted by the J.J. Boards or the Children Courts. Like General Criminal Courts or Special Courts, J. J. Board and Children Courts are also duty bound to pass order regarding compensation payable to the victims, if any.

Compensation to the Victim of the Present Case

59. Coming to the case on hand, I find that for want of proof beyond reasonable doubts against the petitioner, he has been found not guilty but informant has been found to have suffered sexual offence, and hence, she has been a victim under Section 2(wa) of Cr.PC.

60. As per the statutory provisions and relevant case laws, it has been already found that the victim is entitled to get compensation under Section 357A Cr.PC irrespective of conviction, acquittal or discharge of the accused. It has been also already found that not only the Trial Courts, but even the Appellate and Revisional Courts are equally duty bound to pass

such order regarding compensation to the victims in their final judgments even if the appeals/revisions have been filed by a party other than the victim, only condition being that appeal or revision or any other proceeding arising out of the crime is pending before the Court.

61. Hence, this Court is duty bound to recommend the Bihar State Legal Services Authority to pay compensation to the victim/informant of this case, as per the Bihar Victim Compensation Scheme 2014, within one month of receipt of this order. As per the report received from the Bihar State Legal Services Authority, the victim has not received any compensation in this case.

62. Accordingly, the present petition is allowed.

63. L.C.R. alongwith copy of this judgment/order be sent back to the Court concerned forthwith.

64. Pending interlocutory Applications, if any, stand disposed of.

65. Learned Registrar General is directed to circulate a copy of this Judgment/Order amongst Presiding Officers of Juvenile Justice Boards and Children Courts of Bihar, besides sending a copy of it to Bihar Judicial Academy for discussion in the training programmes for the Presiding Officers of the

Juvenile Justice Boards and the Children Courts.

66. The assistance provided by learned Amicus Curiae is appreciated. Secretary, Patna High Court Legal Services Committee is directed to pay Honorarium of Rs. 7,500/- to Learned Amicus Curiae within a month of receipt of this order.

(Jitendra Kumar, J.)

Chandan/Shoaib/
S. Ali

AFR/NAFR	A.F.R.
CAV DATE	30.06.2025.
Uploading Date	07.07.2025.
Transmission Date	07.07.2025.