



THE HIGH COURT OF SIKKIM AT GANGTOK

J U D G M E N T

S.B. Crl. Rev. P. No. 08 of 2014

State of Sikkim

.... **Petitioner.**

- versus -

1. Rewas Gurung,
S/o Sandup Gurung,
Aged about 17 years,
Resident of Borbotey,
Chackung, West Sikkim.
2. Vivek Chettri,
S/o Dhan Bahadur Chettri,
Aged about 17 years,
Resident of Singling,
Soreng, West Sikkim.
3. Atit Subba,
Son of H.R. Subba,
Aged about 17 years,
Resident of Barakheley,
Singling, West Sikkim.

.... **Juveniles/
Respondents.**

CORAM

**HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N. K. JAIN**

Date of Judgment : 25.06.2014



For Petitioner : M/s. Karma Thinlay, Addl. Public Prosecutor with S.K. Chettri and Pollin Rai, Asstt. Public Prosecutors.

For Respondent No. 1 : Mr. Rewas Gurung, respondent No. 1, in person.

For Respondents No. 2 and 3 : M/s. Kumar Sharma and Bhupendra Giri, Advocates.

Mr. Vivek Chettri, respondent No. 2 and Mr. Atit Subba, respondent No. 3, in person.

Jain, CJ (Oral) .

Learned Principal Magistrate, Juvenile Justice Board, West District at Gyalshing vide her letter/Memo No. 544/2014/CJM (W) dated 26th May, 2014, has referred this matter to this Court stating therein that she has decided the Juvenile Justice Board Case No. 06 of 2013 vide judgment dated 29th August, 2013, sitting alone, whereas as per proviso to Section 5 (3) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'the Act of 2000'), any matter of Juvenile Justice Board has to be decided finally by at least two members of the Board including the Principal Magistrate. She has further



mentioned that the said judgment is contrary to proviso of Section 5(3) of the Act of 2000. However, the Board does not have any power to recall such an order, therefore, this Court should pass an appropriate order. The aforesaid letter was ordered to be registered as Crl. Revision Petition.

2. The Revision Petition was admitted and notice was issued to the respondent. In response to show cause noticed, respondent No. 1, Rewas Gurung is present in person. Respondent No. 2, Vivek Chettri and respondent No. 3, Atit Subba, are also present in person along with their learned counsel.

3. The learned Addl. Public Prosecutor submitted that the present matter is fully covered by a decision of this Court dated 02nd June, 2014 passed in SB Crl. Rev. P. No. 05 of 2014 State of Sikkim vs. Prakash Chettri. Therefore, the impugned order passed by the Principal Magistrate, Juvenile Justice Board, West District at Gyalshing be set aside and the matter be remanded back to Juvenile Justice Board,



West Sikkim, for deciding the case afresh in accordance with law.

4. Mr. Bhupendra Giri and Mr. Kumar Sharma, learned counsel appearing on behalf of respondents No. 2 and 3 submitted that juveniles attended the trial of the case for more than one and half years, therefore, they suffered a lot and in these circumstances the order of the Principal Magistrate, JJB, West Sikkim may not be set aside. They further submitted that although the judgment of the Principal Magistrate is contrary to proviso to Section 5(3) of the Act of 2000, but so far as evidence recorded by the Principal Magistrate is concerned, the same may be taken into consideration and the case be heard finally without fixing the case for recording the evidence again in the case. They further submitted that juveniles do not want to adduce any evidence and rely upon the same evidence, which was recorded in the case earlier by the Principal Magistrate.

5. Mr. Karma Thinlay, learned Addl. Public Prosecutor also submitted that the evidence recorded earlier by the



Principal Magistrate, while sitting alone, can be taken into consideration, as Principal Magistrate was competent to record the evidence in absence of other members of the Board. He, therefore, agreed to the submissions of learned counsel for the respondents that Juvenile Justice Board, West Sikkim be directed to hear the case finally and decide the same afresh, in accordance with law.

6. After considering submissions of learned counsel for the parties, I find substance in submissions of learned counsel for the parties. The Principal Magistrate could not have decided the case finally, while sitting alone, as the case could have been decided finally by at least two members of Board including the Principal Magistrate. So far as recording of evidence and other proceedings are concerned, the same can be done by a Member of Board as there appears to be no bar in this regard in the Act or Rules.

7. In view of above, it would be appropriate to direct the Juvenile Justice Board to fix the case for final



arguments, as agreed by the learned counsel for the parties, decide the same afresh, in accordance with law.

8. Consequently, this Crl. Rev. Petition is allowed. The impugned judgment dated 29th August, 2013 passed by the Principal Magistrate, Juvenile Justice Board, West Sikkim at Gyalshing in JJB Case No. 06 of 2013 is set aside. The case is remanded to the Juvenile Justice Board, West Sikkim at Gyalshing for deciding the case afresh in accordance with law, after hearing both the parties and keeping in view the observations made hereinabove.

9. The parties are directed to appear before the Juvenile Justice Board, West Sikkim at Gyalshing On 09.07.2014, as prayed and agreed to by the learned counsel for the parties. The Registry is directed to send back the record of the case to the Juvenile Justice Board, West Sikkim at Gyalshing forthwith.

(N.K. Jain)
Chief Justice
25.06.2014

