



**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Criminal Revisional Jurisdiction)

**Dated : 27<sup>th</sup> June, 2017**

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**Single Bench : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**  
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Crl. Rev. P. No. 05 of 2016

**Petitioner/Revisionist :** State of Sikkim

**Versus**

**Respondents :** Prem Kumar Rai,  
C/o Ram Prasad Rai,  
Aged about 19 years,  
Resident of Lower Barfak,  
West Sikkim.

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**Appearance:**

Mr. J.B. Pradhan, Public Prosecutor and Mr. Karma Thinlay, Addl. Public Prosecutor with Mr. S.K. Chettri and Mrs. Pollin Rai, Asst. Public Prosecutors for State-Petitioner/Revisionist.

Ms. Geeta Gazmer, Law Officer, present in person.

S.I. Thinlay Gyatso Rai, and S.I. Bishan Rai, present in person.

Ms. Rachhitta Rai and Ms. Babita Rai, Advocates for the Respondent.

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**O R D E R**

**Meenakshi Madan Rai, J.**

This Petition under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('JJ Act' for short), filed by the State, challenges the legality and propriety of a segment of Paragraph 16 of the impugned Judgment and Order, passed by the learned Juvenile Justice Board, West Sikkim at



Gyalshing, in JJB Case No. 5 of 2014, State of Sikkim vs. Prem Kumar Rai, on 28.07.2015.

The impugned portion of the Paragraph is extracted herein below;

**"16.** Therefore, copy of this Judgment shall be made over to the Superintendent of Police of West District for ensuring that necessary action is taken on the police personnel involved in the ill-treatment of the juvenile of this case which is evident from his medical report placed in the case file. ...."

It is urged before this Court by the learned Public Prosecutor that although the averments in the Revision Petition was not confined only to the above segment, however, now the Revisionist does not press the other grounds. That, the aforesaid Order has been passed by the Juvenile Justice Board (for short 'JJB'), sans an F.I.R. by the Victim before any Police Station, nor is there a complaint in existence before the State Human Rights Commission. The Juvenile Justice Board unilaterally reached a decision that the Police Personnel who had dealt with the Juvenile were guilty of having committed custodial torture, thereby ordering the Superintendent of Police, West District, to take necessary action, without issuing a Notice to the Police Personnel involved and without affording them an opportunity of placing their defence. The directions have been issued when in fact the Victim who was on trial for offences under Sections 186, 189, 506 of the Indian Penal Code, 1908 read with Section 169(b) of the Sikkim



Police Act, 2008, and undisputedly the Police Personnel were not in the dock. Thus, the conclusion was arbitrarily arrived at with no inquiry being made into the alleged custodial torture by the Police. Reliance has been placed on ***Amit Kapoor vs. Ramesh Chander and Another : (2012) 9 SCC 460***, which has discussed the ambit of the Courts' powers under Section 397 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short). That, in view of the Order being arbitrary with no legal basis, the segment of Paragraph 16 be set aside.

*Per contra*, it was contended by learned Counsel for the Respondent that the impugned segment of the Judgment only directs the Superintendent of Police "to ensure necessary action" without specific directions to take disciplinary action or penalize them, thereby leaving the option to the concerned Senior Police Officer as to whether he should conduct an inquiry, or take other steps. It was also contended that in terms of Section 53 of the JJ Act, no revision lies to this Court and the Revisionist ought to have approached the learned Sessions Judge, West Sikkim at Gyalshing, who had pronounced the Judgment on the Appeal. It had also been averred by the Revisionist that the learned Juvenile Justice Board, West Sikkim at Gyalshing, vide the impugned Judgment ignored the findings of this High Court in ***W.P.(C) No. 25 of 2014 dated 16.10.2015, Prem Kumar Rai & Others vs. State of Sikkim & Others***, wherein it was found that there was no custodial torture on



the Victim. That, in fact, the said Judgment of this High Court was prior in time to the impugned Judgment and therefore, the above submission requires no consideration.

In response, learned Public Prosecutor submits that the JJ Act is a complete Code encompassing provisions for Revision and Appeal and no recourse need be taken under Section 397 of the Cr.P.C. Besides, Section 397 of the Cr.P.C. refers to inferior criminal courts and Section 6 of the Cr.P.C. which defines inferior criminal courts, clearly does not include the Juvenile Justice Board as a criminal court. That, the powers of the Juvenile Justice Board are confined to the provisions of Section 6, Section 14, Section 15 and Section 16, which without doubt does not permit it to issue directions as given in Paragraph 16 of the impugned Judgment and Order, without the Personnel being extended the benefit of a trial.

I have heard the arguments put forth by learned Counsel at length and given due consideration. I have also perused the appended documents and records of the case.

With regard to the arguments on Revision put forth by the Respondent, I am inclined to agree with the submissions of learned Public Prosecutor and I find no error in the steps taken by the State Revisionist in view of the position of law as it obtains in the JJ Act. Besides, as urged, the JJB does not come within the



ambit of a criminal court, therefore, the question of recourse to Section 397 of the Cr.P.C. does not arise, which for brevity is not being discussed at length.

To address the second argument, the impugned Judgment and Order which is relevant for the instant purpose has already been extracted hereinabove for convenience. Although, it was specifically argued by learned Counsel for the Respondent that the learned JJB has not given specifics, however, on a holistic reading of the impugned segment, it is evident that a direction has been issued to the Superintendent of Police to take “necessary action” on the Police Personnel for the ill treatment of the Juvenile, based on his Medical Report. It is evident that the learned JJB took into consideration the Medical Report of the Victim and without extending an opportunity to the Police Personnel to rebut, reached a unilateral finding that custodial torture had been committed. It is relevant to point out that although the Victim had an option of filing an FIR before the concerned Police Personnel or before the State Human Rights Commission, both options were not availed of by the Juvenile. Consequently, without the concerned Police Personnel being afforded an opportunity to defend themselves in a trial, it would be beyond the scope of law to direct action against them. It flies in the face of the principles of natural justice. At the same time, I deem it pertinent to point out that, although subsequent in time to the impugned Order, this Court in ***W.P.(C)***



**No. 25 of 2014 dated 16.10.2015**, had reached the unequivocal finding that no custodial torture had been meted out to the minor victim, the Respondent.

In consideration of all the aforesaid discussions, the above extracted portion of the Judgment and Order of the learned Juvenile Justice Board, West Sikkim at Gyalshing, is hereby set aside.

The impugned Judgment and Order of the learned Principal Magistrate, Juvenile Justice Board, West Sikkim at Gyalshing, stands modified to the above extent.

Copy of this Order be sent to the Juvenile Justice Board, West Sikkim at Gyalshing, for information.

Records of the Juvenile Justice Board, West Sikkim at Gyalshing, be remitted forthwith.

**Sd/-**

**( Meenakshi Madan Rai )**  
**Judge**  
27-06-2017

Approved for reporting :**Yes**  
Internet :**Yes**

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