## IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

## CRIMINAL APPEAL No.15 /2016

Under Section 101(i) of Juvenile Justice (Care and Protection of Children) Act, 2015

[From the Order dated 18.05.2016 passed by the J.J.B, Morigaon in Mayong P.S. Case No. 69/2016]

PRESENT: Mr. M. Ahmed,

Sessions Judge, Morigaon, Assam.

Appellant :- Md. Sahar Ali,

-Vs-

Respondents :- State of Assam.

## Appearance :

For the Appellants : Mr. R. Islam, Advocate.
For the Respondent : Mr. A. Kalam, Ld. P.P.

Date of Hearing : 17.06.2016.

Date of Judgment : 28.06.2016.

## JUDGMENT

1. Comes under challenge in this appeal so preferred U/S 101(i) of Juvenile Justice (Care and Protection of Children) Act,2015 is the order dated 18.05.2016 passed by Juvenile Justice Board, Morigaon i/c with Mayong P.S. Case No.69/2016 U/S 493/376 of IPC read with section 6 of POCSO Act whereby the Ld. Principal Magistrate J.J.B., Morigaon rejected the Zimma petition of the appellant through which he being the natural guardian father of Juvenile in conflict with law Sahar Ali has sought for his custody. According to the appellant, his minor son (juvenile) was apprehended by police agency of Mayong PS i/c with Mayong PS Case No.69/16 U/S 493/376 of IPC R/W section 6 of POCSO Act. It is further contended that on being so produced, the Ld. Principal Magistrate in-

charge JJB, Morigaon sent the Juvenile to observation home. Subsequently, upon receipt of ossification test report, the Ld. Board had declared his son accused Sahar Ali as juvenile in conflict with law after enquiry and sent the juvenile to observation home. On 18.05.2016, the appellant filed a petition praying for taking custody as natural guardian of the said juvenile with further intimation to the Ld. Board that if his prayer is allowed with imposition of condition/conditions; he would keep the juvenile at a distant place far away from the contact of the victim girl. However the Ld. Principal Magistrate in-charge JJB, Morigaon rejected the said Zimma petition with observation that if the Juvenile is given in custody to his father, then he would come in contact of the victim girl who resides next door having a common courtyard.

- 2. The appellant feels highly aggrieved with the impugned order and he has challenged the same on various grounds. According to the appellant, the Ld. Principal Magistrate in-charge JJB, Morigaon has erred in law in rejecting the zimma petition as the Ld. Board has failed to take into account the fact that the Juvenile in conflict with law may be nourished and reformed in a better manner under the natural guardian's observation. It is further contended that the Ld. Board has further failed to take into consideration general principal of care and protection of children as enshrined U/s 4 of the Juvenile Justice Act. It is also contended that the Juvenile in conflict with law has been kept in observation home since 29.04.2016 and due to such long detention, his mental and health condition has started deteriorating. As such, the impugned order is not just and proper and it is liable to be set aside.
- 3. I have heard Ld. Counsel of both sides on this matter. Upon going through the called for case record, it has emerged that the Juvenile in conflict with law Sahar Ali son of the appellant allegedly established physical relationship with a 13 year old girl/daughter of informant Kuddus Ali of village Hatimuria under inducement that he will ultimately marry her. Their clandestine relationship got exposed. The matter was agitated at the local level. But no solution could be reached at. Finally, the informant filed a written ejahar against this juvenile in conflict with law. It has further emerged upon attentive perusal of the case record that a thorough enquiry was conducted by the Ld Board. The said accused was subjected to ossification test and this report has affirmed that the accused was juvenile in conflict with law. Thereafter the appellant has moved a zimma petition and vide the impugned order dated 18.05.2016 the Ld. Board rejected

the same with observation that the alleged victim in her statement U/S 164 of Cr.P.C. deposed that she shares common courtyard with the J.C.L. So, his custody to his father shall again take him to the same environment where the crime was alleged to have been committed.

4. This appeal is filed U/S 101 of Sub-Section 1 of Juvenile Justice (Care and Protection of Children Act, 2015) and it reads as under:

Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate.

- 5. Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.
- 6. In this appeal the appellant had challenged the order of the Ld. Principal Magistrate JJB, Morigaon on the ground that he being the father of the JCL, custody must have been granted in his favour. This court does not agree as only being father of JCL, he cannot claim as of right that as soon as an accused is declared as JCL, in each and all cases father must be granted custody. It depends upon various factors. The JCL is facing a serious allegation of deflowering a minor girl simply aged about 13 years who lives next door to his house having a common courtyard. So, if given custody in favour of the appellant, his having access to the little girl cannot be completely ruled out. Even the appellant made a vague claim that he will take the JCL far off so that there is no chance of the victim ever seen or coming in contact with the JCL. If it is so, then he could have provided all particulars regarding the place, name of person, relation and etc. so that the JCL could have been lodged there to his safety and comfort and his availability before the Board as and when his appearance might be warranted. It further surfaces that on this matter a village mel was organized but it bore no fruit. So, the JCL may face danger to his life if set at large under the custody of

his father who could not naturally can keep watch upon each and every activity of the JCL.

- 7. The Ld. Principal Magistrate, JJB has not committed any error or illegality while passing the impugned order. It cannot also be accepted without having report from the authority concerned that being kept at the observation home, the JCL is subjected to mental torture. If the appellant suffers from such apprehension, he can approach the Ld. Board for relief and appropriate action.
- 8. Having found no merit, this appeal stands dismissed. Send down the LCR along with a copy of this order.

Judgment delivered today on  $28^{\text{th}}$  day of June, 2016 in the open Court under my hand and seal.

Dictated and corrected by me

Session Judge, Morigaon.