

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No.682 of 2024

Present Before:

Justice Zafar Ahmed Rajput

Justice Tasneem Sultana

Appellant : Ibad Ali s/o Ali Nawaz, through
Mr. Arbab Ahmed Khankhel, Advocate.

Respondent : The State, through Mr. Abrar Ali Khichi,
Addl. Prosecutor General, Sindh.

Amicus Curiae : Ms. Farah Khan, Advocate.

Dates of hearing : 30.04.2025 & 14.05.2025.
Date of Judgment : 29.05.2025

JUDGMENT

TASNEEM SULTANA, J. Through this appeal, appellant, Ibad Ali son of Ali Nawaz has assailed the judgment, dated 08.08.2024, passed by the learned Special Judge, CNS, Karachi-South in Sessions Case No. 187 of 2023, arisen out of F.I.R. No. 430 of 2022, registered at P.S Chakiwara, Karachi, under sections 6/9-(2)(3) of the Control of Narcotic Substances (Amended) Act, 2022 ("Act of 2022"), whereby he was convicted under Section 265-II(ii) Cr.P.C and sentenced to suffer R.I. for 02-years with fine of Rs. 100,000/-, in case of default to pay fine he shall suffer S.I. for one month (1) more. He was; however, extended benefit of section 382(b) Cr.P.C.

2. It is alleged that on 09.11.2022 at 1000 hours, Police Party of PS Chakiwara headed by ASI Sanaullah arrested the appellant from Saeedabad near Bismillah Hall Chakiwara, Lyari Karachi on being found in possession of 55 grams of Ice, under memo of arrest and recovery prepared in presence of mashirs PC Peer Muhammad and DPC Shahzad Ali; for that he ws booked in the aforesaid FIR.

3. After usual investigation, police submitted the charge sheet against the appellant. Having been supplied requisite documents as provided under Section 265-C Cr.P.C; the Trial Court framed a formal charge against the appellant, to which he pleaded not guilty and claimed to be tried.

4. To prove its case, prosecution examined four witnesses; PW-1 IO / SIP Sajjad Yousuf at Ex.03, who produced memo of inspection of place of incident, sketch of place of incident, departure and arrival entry regarding inspection proceedings, letter addressed to Incharge CRO, CRO of appellant, departure entry regarding production of accused and deposit of case property to Chemical Examiner, letter addressed to Chemical Examiner for deposit of case property, computerized receipt, arrival entry, chemical examiner report, road Certificate at Ex. 04 to 15 respectively; PW-02, complainant ASI Sanaullah Khan at Ex.16, who produced memo of departure entry from PS, memo of arrest and recovery, FIR, arrival entry / Qaimi at Ex. 17 to 20 respectively; PW-03, PC Peer Muhammad at Ex.21 and PW-04, WASI Tariq Mehmood at Ex.22, who produced attested PS copy of entry of Register No. XIX at Ex. 23.

5. The statement of appellant under section 342, Cr. P.C. was recorded at Ex. 25, wherein he denied the allegations against him and claimed to be innocent. He further deposed that the alleged recovery has been foisted upon him. He, however, neither examined himself on oath to disprove prosecution's allegations, nor even led any evidence in his defence. The Trial Court after hearing the learning counsel for the appellant as well as DDPP for the State convicted the appellant and sentenced him as mentioned above, vide impugned judgment.

6. At the very outset learned counsel for appellant *inter alia*, contended that the appellant was below 18 years at the time of occurrence. He further contended that the learned trial Judge has not duly exercised the jurisdiction vested in him under Section 8 of the Juvenile Justice System Act, 2018 ("Juvenile Act"), according to which the Trial Court was under obligation to hold an inquiry before conducting the trial in order to settle the question of age whether the appellant at the time of occurrence was above 18 years or otherwise. He further contended that the opportunity of a fair trial had not been afforded to the appellant; therefore, the impugned conviction is not legally sustainable. He concluded that in view of serious illegalities as well procedural irregularities, the impugned judgment, on no touchstone, could be considered to be delivered according to law. He prayed that the impugned judgment may be set aside and the appellant be acquitted in the interest of justice or in the alternative, the case be remanded to Trial Court for affording an opportunity of a fair trial to the appellant. —

7. Conversely, Addl: P.G. conceded the age of appellant and has drawn our attention towards diary sheet dated 10.11.2022 and has contended that I.O. SIP Sajjad Yousuf, who produced custody of the appellant and submitted remand report under section 167, Cr.P.C., in clear terms stated that appellant was a juvenile. He further contended that the special case was tried by District & Sessions Judge who by designation is a Juvenile Judge/Court, therefore, no illegality or procedural irregularity was committed. He added that impugned judgment is sustainable under the law.

8. Learned amicus curiae besides arguing verbally on the legal proposition, has also placed on record a written treatise along with case law in support of submissions therein. She has submitted that the Juvenile Justice in Pakistan is significantly influenced by international human rights

obligations, particularly the United Nations Convention on the Rights of the Child (UNCRC), to which Pakistan became a signatory in 1990. The Juvenile Justice System in Pakistan plays a crucial role in ensuring the welfare, protection and rehabilitation of young individuals, who find themselves entangled in the realm of criminal activity. She has further submitted that the introduction of the Juvenile Justice System Ordinance (JJSO) in 2000 marked a significant step forward by introducing a more comprehensive approach to ordinary Juvenile delinquency which was later replaced by the Juvenile Act. It rests on the concept of "best interest of the child" which according to Section 2(a) of the Juvenile Act, mean "*the basis for any decision taken regarding the child to ensure fulfillment of his basic rights and needs, identity, social well-being, physical, emotional and psychological development*". The Juvenile Justice System Amendment Act, 2022 focuses on strengthening child protection, establishing separate juvenile Courts, rehabilitation, reintegration and the potential for diversion from formal Criminal Justice System.

9. She has also submitted that section 2(b) of the Juvenile Act defines "Child" for the purpose of Act, as a person who has not attained the age of eighteen years; section 2(h) states that "Juvenile" means a child, who may be dealt with for an offence in a manner which is different from an adult. According to 2(i) of aforesaid section "Juvenile offender" means a child, who is alleged to have committed or who has been found to have committed an offence. Consequently, the Juvenile Act applies to individuals under eighteen years old. When determining the Juvenility of an accused, the date of the Crime is crucial, not his age at the time. The Juvenile Act classifies offences into 3 categories, heinous, major and minor. She further stated that Section

offender is arrested. Section 8(1) of the Juvenile Act mandates that where an accused appears or claims to be a juvenile the Police shall make an enquiry to determine the age of accused on the basis of Birth Certificate, Educational Certificate or any other pertinent document. However, where such documents are not available they should get him medically examined and brought before a Court under Section 167, Cr.P.C. The Court shall before granting further detention records its findings regarding age of accused. Therefore, initially the statutory responsibility is of the police and in absence of which, the Court of general jurisdiction enjoys the power to determine the age of accused, and if declared to be a juvenile, transfer the case to the concerned Juvenile Court. She contended that irrespective of the fact, whether the issue of the age of an accused is not raised before the Court, it is the obligation of the Trial Court to suspend all further proceedings in a trial and to hold an inquiry to determine the age of an accused person, if and when once it appears to him that such determination is necessary. Learned amicus curiae while emphasizing on diversion, submitted that the Juvenile Act introduces the mechanism of case disposal through diversion under Section 9(2)(3) explicitly empower investigating officer and the prosecution for referring appropriate cases to the Juvenile Justice Committee constituted under Section 10 of the Juvenile Act. Similarly, several judgments were referred by the learned amicus curiae wherein emphasizing that the entire Juvenile Justice System is predicated on the principle of the "best interest of the child". It underscored that, irrespective of the nature of the offence, the investigating officer, trial prosecutors and Courts are under solemn duty to prioritize the welfare and rights of Juvenile offenders throughout the Criminal Justice Process.

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| (i) | PLD 2009 SC 777. | (ii) | 2024 MLD 1962 |
| (iii) | 2024 PCrLJ 772. | (iv) | PLD 2020 SC 356 |
| (v) | 2023 PCrLJ 544 | (vi) | PLD 2024 SC 843 |

10. Heard, record perused.

11. It appears from the record that on 10.11.2022 I.O SIP Sajjad Yousuf produced the appellant in the Court of Judicial Magistrate along with remand report under Section 167, Cr.P.C, and informed the Court that appellant was Juvenile. After submission of final report under Section 173, Cr.P.C, it was observed that the offence is exclusively triable by District and Sessions Court; hence, the R&Ps were sent for trial. Thereafter, the above case was proceeded as a regular criminal trial instead of being proceeded under the Provision of the Juvenile Act.

12. In the above backdrop, we have to resolve following questions:-

- i) Whether the appellant has been denied his fundamental rights guaranteed under the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution") including the right to fair trial and to be treated under the law;
- ii) Whether Trial Court failed to follow the law to try a juvenile under the Juvenile Act.

13. The Chapter of fundamental rights provided in the Constitution, has an important provision in this regard i.e. Article 10-A, which reads as under :-

"Article 10-A Right to fair trial.-- For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process"

The treatment of child offenders should be guided by reformatory approaches. These young individuals, often led astray by difficult circumstances, deserve a chance to find their way back to normal life and

become valuable members of society by focusing on reformation rather than punishment. In *Khawar Kiyana v. The State and others* (PLD 2022 SC 551), Supreme Court of Pakistan ruled out that the Juvenile Justice System in our Country has its ideological roots in the Constitution. It highlighted that Article 25(3) of the Constitution allows the State to make special provisions for safeguarding children. Additionally, Article 25 and 35 mandates the State to protect children.

At present the cases of Juvenile offenders in Pakistan are being dealt under the Juvenile Act. It provides mechanism to protect the rights of a child and way to attend / deal with his case keeping in view the best interest of the child. It would be appropriate to take a comprehensive overview the provisions of the Juvenile Act.

14. Mechanism of the arrest of a Juvenile.

Under Section 5 of the Juvenile Act, the arrest of a Juvenile requires specific mandatory steps to be followed by the officer-in-charge of the police station; (i) after the arrest, the Juvenile Offender shall be kept in an observation home; (ii) the guardian and concerned Probation Officer shall be informed as soon as possible; (iii) the police report prepared shall describe the steps to be taken to refer the matter to the Juvenile Justice Committee for disposal through diversion.

Section 2(P) of the Juvenile Act defines "observation home" as a place where a juvenile shall be kept temporarily after the arrest, on remand, or during any inquiry or investigation. The juvenile offender shall not be detained in an ordinary police station after his arrest.

15. Mechanism of investigation.

Section 7 of the Juvenile Act, provides a distinct investigation

procedure for a Juvenile offender. Under this section the investigation must

be carried out by a police officer above or at the same rank of a Sub-Inspector, under the supervision of the Superintendent of Police or the SDPO. The investigation officer shall also be assisted by Probation Officer or Social Welfare Officer, as notified by the Government to prepare a social investigation report to be annexed with the report prepared under section 173, Cr.P.C.

16. Mechanism of determination of Juvenility.

Section 8 of the Juvenile Act places a clear and structured responsibility on three distinct actors within the criminal justice process. The statutory duty to ascertain the age of the accused is no longer contingent upon a plea raised by the defence, but instead cast as mandatory obligation at each stage of the proceedings (i) At the stage of arrest, the responsibility lies with the Investigating Officer and the Station House Officer (SHO), to make an immediate assessment of the age of the accused and treat them accordingly, if they appear to be a juvenile; (ii) At the stage of remand, the duty shifts to the Judicial Magistrate, who must conduct a preliminary inquiry into the age of the accused and, if necessary, order a formal age determination; (iii) Finally, during the trial, the responsibility lies with the Trial Court to ensure that if any doubt arises regarding the age of the accused, appropriate steps are taken to ascertain and verify whether the accused qualifies as a juvenile under the law.

This three tiered responsibility frame work ensures that Juvenility is determined proactively and not left to the discretion of accused thereby safeguarding the fundamental rights of children in conflict with the law.

17. Mechanism of Disposal of Cases through Diversion.

Section 2(d) of the Juvenile Act defines such mechanism as a means for the juvenile offender to avoid undergoing the formal judicial proceedings.

and instead be diverted to an alternative process. This channel would be used to determine his responsibility, and treatment on the basis of his social cultural, economical, psychological and educational back ground. According to the Section 9 of the Juvenile Act, all minor and major offences shall be compoundable for the purpose of diversion. However, in case of major offences, the Juvenile accused should not be more than 16 years of age to get the benefit of diversion. The process of diversion can be initiated at any stage (investigation, prosecution, or trial) with the consent of accused or his guardian. The case can be resolved through the diversion process with the consent of aggrieved person by adopting different modes such as.

- Restitution: Returning stolen property or compensating for damages.
- Reparation: Repairing any damage case by the offence.
- Apology: A written or oral apology to the victim.
- Community Service: Participating in community Service activities.
- Fines and cost: Payment of fines or Court costs.
- Placement: Placement in a Juvenile Rehabilitation Centre
- Reprimand: Written or oral reprimand.

18. Constitution of Juvenile Justice Committee

The process of diversion was to be completed through the Juvenile Justice Committees as defined under section 2(j) of the Juvenile Act, and this committee was to be formed within three months from the commencement of this act. The committee shall consist on Judicial Magistrate with the powers under Section 30 of the Code, who shall also head the committee, the District Public Prosecutor, a member of local Bar, having at least 7 years standing at the Bar, appointed by the concerned Sessions Judge for a period

of two years and a serving Probation Officer or Social Welfare Officer not below the rank of BPS-17.

19. Procedure of Juvenile Court.

Section 11 provides that the Juvenile Court shall adhere to the procedure outlined in the Code unless otherwise specified by the Juvenile Act. Only specific individuals may be present at Court of Sessions; the Court staff and officers, parties to the case and those directly involved, the Juvenile's guardian, and others as directed by the Court. The Court may order individuals to withdraw to protect the Juvenile's decency or morality. If the Court determines that the presence of Juvenile is not essential at any point, for the purpose of trial, the Juvenile Court may proceed without the Juvenile. If the Juvenile Court found suffering from the serious illness of Juvenile, whether physical or mental, the Court shall send such Juvenile to the hospital or the medical institution, with the cost covered by the State. In case of joint trial, the Court may waive the Juvenile's physical presence, allowing participation through audio-visual technology.

20. Section 14 of the Juvenile Act mandates that probation officer, upon the direction of Juvenile Court, shall assist and prepare the report within the specified time regarding the Juvenile character, educational, social, and moral background; any voluntarily admission of committing offence; evidence of involvement of Juvenile in the offence; the legal assistance provided to Juvenile and their family; steps taken towards mediation or compromise with the complainant or victim; and the possibility of sending the Juveniles to the Juvenile Rehabilitation Center or releasing them on probation. The report of probation officer is to be treated as confidential except, where the Juvenile Court deem it appropriate to communicate its

contents of the report, the Juvenile Court may allow them an opportunity to present the relevant evidence. This information aids the Juvenile Court in making informed, fair and just decisions that prioritize the rehabilitation and reintegration of Juvenile into Society.

21. Reverting to this case, it appears from record that Investigating officer in 167, Cr.P.C. report showed the appellant as a juvenile and CRO Letter (Ex. 7) reflects the age of appellant as 17 years. It also appears from the contents of memo of arrest and recovery (Ex. 18) and FIR (Ex. 19) that the complainant showed the identity of appellant as a "suspicious person". Even in above stated situation, investigating officer failed to initiate any formal determination of the age of appellant under section 8 of the Juvenile Act. This omission resulted in a complete denial of the appellant's statutory rights, particularly those enshrined under Sections 9 and 10 of the Juvenile Act. It further appears that FIR (Ex. 19) was lodged under Section 6/9(2)(3) of the Act of 2022, the punishment thereof is provided as "may extend to three years but shall not be less than two years" along with fine. It is observed that this Act classified three categories of criminal offence; minor, major and heinous. Minor offences includes those for which the Pakistan Penal Code (PPC) or any other law for the time being in force provides maximum sentence up to 3 years, either with or without a fine. Major offences are those for which the PPC or any other law for the time being in force stipulates a sentence of three to seven years, with or without fine. Heinous offences are those which are serious, gruesome, brutal, sensational in character or shocking to public morality and are punishable under the PPC or any other law for the time being in force with death or for life imprisonment or a sentence more than seven years, with or without fine.

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22. The case of appellant falls within the category of minor offence and his case was not proceeded in letter and spirit of the provisions of the Juvenile Act. The failure to invoke these mechanism has materially prejudiced the right of the appellant of a fair trial guaranteed under Article 10-A of the Constitution. Moreover, the arrest and investigation of the appellant were conducted in violation of the mandatory provisions of the Juvenile Act. Section 5 (ibid), expressly prohibits the detention in lock-up or jails. It was also one of the most prerequisite for the investigating officer to include in 173 report of Cr.P.C, a description of the steps taken for referring the case to the Juvenile Justice Committee for diversion. However, charge sheet reflects that the investigating officer failed to comply with these statutory mandates. The record further reflects that appellant's case was proceeded without legal assistance. Trial Court recorded the evidence of 4 PWs and due to absence of Counsel of appellant on all occasions the Court conducted cross-examination although section 3 of the Juvenile Act is very much clear and it was a statutory right of appellant for providing legal assistance on State expenses. From the impugned judgment it also reflects that Trial Court while sentencing the appellant awarded Rigorous Imprisonment, which is flagrant violation in terms of section 16 of the Juvenile Act. The aforesaid provision of law provides that no Juvenile offender shall be committed to prison, ordered to labour, put in fetters, handcuffed or given any corporal punishment at any time while in custody, thus prima facie it appears that Trial Court did not follow the required procedure while handling the case of appellant.

It is also settled proposition of law that, if law provides a thing to be done on a particular manner it ought to be done in that manner or it should not be done at all. This situation leads us to conclude that the frame work of

the Juvenile Act is based on three tiered responsibility but it saddens us to note that because of an inept investigation appellant was denied his statutory right.

23. In case of Muhammad Adnan v. The State (PLD 2018 SC 823), Apex Court "expressed grave concerns over the persistent non implementation of JJSO, 2000, despite it being a special law aimed at protecting children in conflict with the law. The Apex Court highlighted the systematic failures in enforcing the rights and safe guards guaranteed to Juvenile offenders, and underscored the adverse consequences of such neglect on the wellbeing, fair trial rights, and rehabilitation prospects of children subject to criminal proceedings and incarceration.

24. It will not be out of context to mention here that the understanding and implementation of diversion and restorative Justice in Juvenile Criminal Justice System is very dismal which necessitates the comprehensive sincerity training and legal knowledge for all involved parties. However, leaving regret to mourn, we must say that law is not merely formality; it is an obligation. The written statues and regulations are more than ink on paper. The enforcement of a statute is not optional, but a mandatory duty entrusted to every state functionary, a responsibility that comes with authority and power vested in their position. This is not just about compliance rather it is about upholding the rule of law. When these laws are not enforced, the vulnerable are left unshielded.

25. In view of above facts and circumstances, we are of the considered view that the Trial Court has not only disregarded the requisite procedure described for trial of juveniles under the Juvenile Act, but also denied a fair

trial to the appellant, thus it would be expedient and in the interest of justice that this case is remanded for re-trial.

26. For the foregoing reasons, instant appeal is allowed. The impugned judgment is set aside. Case is remanded to Sessions Judge, Karachi-South for retrial under the Juvenile Act. The Trial Court is expected to decide the case at the earliest, preferably within three months.


27. We would like to express our appreciation to Ms. Farah Khan, Advocate, learned Amicus Curiae, for the valuable assistance provided in this case.

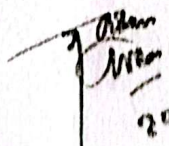

JUDGE


JUDGE

Faheem/PA

Announced by us.

 30/5/25
OMAR SIAL, J

 20/5/25
Muhammad Usman Anwar