

Heard before charge.

According to advocate for Child in Conflict with Law (herein after referred to as CCWL, for short), though offence alleged against the CCWL are under Sections 366, 376(i), 376(n) of IPC and Sections 5(L) and 6 of POCSO Act, 2012 and Section 3(1),(w),(ii), 3(2) (va) of SC and ST (Prevention of Atrocities) Act, 2015, Section 366 of IPC attracts only in respect of woman and not in respect of victim, who is a child. Further, it also applies only if accused commits an offence of kidnapping, abducting or inducing a woman, but in this case victim has voluntarily gone with the CCWL. Nowhere in her statement recorded under Section 164 of Cr.P.C. she has stated that, it is the CCWL who has kidnapped or abducted her. Further, victim and mother of the victim have not given consent for medical examination. Further it is argued that since victim has not given any statement alleging commission of rape on her, even Section 5(L) and 6 of POCSO Act, also do not attract and hence, Section 3(1),(w),(ii), 3(2) (va) of SC and ST Act, also do not attract as it relates to woman and with

regard to property and not with regard to person. Therefore, CCWL is entitled for discharge.

Per contra, learned public prosecutor has argued that, there is prima-facie case against the CCWL and hence, charge has to be framed.

It is pertinent to note here that, while framing charge, Court has to take into consideration all the available statements and material documents to ascertain which provision of law attracts to particular set of facts and even if wrong provision is mentioned, charge has to be framed under proper provision of law.

At this juncture, it is pertinent to make note of the brief allegations made in the charge sheet that, CCWL belongs to Marati community, whereas victim/CW.2 who is a minor belonging to scheduled tribe and CCWL was well aware of the same and he without the permission of CW.2 and her family members, took her to Ramadevara Betta, where he made her to stay with him till 20.10.2021 and against her wish, committed rape on her. He also induced and threatened her and from 20.10.2021 to 24.10.2024 he had repeatedly committed aggregated sexual assault on her.

It is pertinent to note here Section 10 of the Indian Penal Code, which denotes 'man' and 'woman'. The word 'man' denotes a male human being of any age and "woman" denotes a female human being of any age. The age certificate of the victim produced before the Court show her date of birth as 04.07.2008 and Cast certificate shows that she belongs to scheduled tribes. It is also important to note here that, not subjecting the victim for medical examination will not be considered against the victim as it is her prerogative to give consent or refuse to give consent for medical examination. However, duty cast upon the Medical Officer and the concerned Police Officer to convince the victim and her guardian to subject her for medical examination, but for non subjecting the victim for medical examination at this stage cannot be held as it is a false case. Moreover, statements of all the witnesses and available materials prima-facie show that, there is a case against the CCWL as alleged in the charge sheet. Therefore, argument of learned advocate for the CCWL does not hold good and charge has to be framed for the allegations made in the charge sheet.

At this juncture, it is also important to note here that, accused is a CCWL and Juvenile Justice Board (herein after referred to as JJB, for short) has passed order under Section

18(3) of Juvenile Justice (Care and Protection of Children) Act, 2015 considering the report of Dr. V.S.T Krishna, Psychiatric and Social Worker, Mysuru.

JJ Board by considering the report of Dr. VST Krishna, Psychiatric and Social Worker, Mysuru and also enquiring the CCWL, by posing general questions formed an opinion that, he is having mental capacity to commit such offence and he has got ability to understand the consequences of the offence and opined proper to transfer the trial of the case relating to the CCWL to the Children's Court.

It is pertinent to note here the Judgment reported in 2023 **SCC Online SC 1255 (Ajith Gurjar Vs. State of Madhya Pradesh)**, wherein Hon'ble Supreme Court of India discussed regarding what is required to be done by the JJ Board, while holding an enquiry for making a preliminary assessment with regard to mental and physical capacity of the juvenile in conflict with law to commit such offences. Based on the preliminary assessment, Section 18(3) of JJ Act empowers the Juvenile Justice Board to pass an order for transferring the trial of the case to the Children's Court which has jurisdiction to try such offences. Even in the Judgment reported in **Criminal Appeal No.100145/2021 (Siddesh Baramappa Channagiri**

Vs. State of Karnataka, Hirekerur Police Station) Hon'ble High Court has issued guidelines to JJ Board as well as Children's Court, to follow proper procedure while holding preliminary assessment into heinous offences.

It is important to note here that, after receipt of preliminary assessment from the Board, Children's Court may decide whether there is a need for trial of a child as an adult. As per the provisions of Criminal Procedure Code 1973, if the Court is satisfied that the child needs to be tried as an adult as per the provisions of Criminal Procedure Code, Children's Court can proceed with Trial and thereafter pass an appropriate order subject to the provisions of Section 19 and 21 of JJ Act. If the Court comes to the conclusion that there is no need for trial of the Child as an adult instead of sending back the matter to the Board, Court itself is empowered to conduct an enquiry and pass appropriate orders in accordance with provisions of Section 18 of JJ Act.

In the case on hand, Doctor has given opinion that:-

“Conclusion:-

Mr. Abhishek, had an average educational performance with good sports record and a school dropout at 9th Std (Kabadi Village/Tq Level

represented). He has the abilities to comprehend the events that lead to conflict with law. His interview performance provide a basic understanding that he is not found to be reporting with any identifiable abnormalities and abnormalities in his daily functioning. He is found to be independent in his day to day living”.

As already noted supra, on receipt of the report, JJ Board has evaluated his mental condition as to capability of understanding the consequences of alleged offence and decided that he has mental capacity to commit such offence and was having ability to understand the consequences of the offence. Therefore, I opine that, CCWL shall be tried for the alleged offences before this Court/Children’s Court.

Hence, charge is framed.

Prl. District and Sessions Judge,
Mysuru.