



matter has been remitted back to the Board after setting aside the order of acquittal.

The learned counsel for the revisionists has drawn the attention of the Court towards the Section 101 of the J.J. Act:-

***“Appeals-(1).....***

***(2).....***

***(3) No appeal shall lie from,-(a) any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or.....”***

Referring to above section, it has been submitted that no appeal is maintainable and on that ground the appellate order has been challenged in the present case.

Counsel for the State has supported the order of appellate court but could not dispute the legal position.

Having heard both the parties and from perusal of the Lower Court Records, it appears that the revisionists are below 16 years. In view of age group, the order has to be passed by the J.J. Board under Section 18 of the J.J. Act, if found in conflict with law. The court after due enquiry has found charges not proved, and as such, the enquiry has been concluded in favour of the juvenile.

As per the mandate of the J.J. Act no appeal lies, but the revision lies before this Court under Section 102 of the J.J. Act.

From perusal of the Lower Court Records and pleading of the parties, it appears that Hamja Arif has remained in custody for nine months and Hafiza Arif @ Hifza Arif has been remained in custody for about four months and thereafter the juvenile namely Hamja Arif in Cr. Revision No.1384 of 2016 vide order dated 18.11.2016 has been granted bail and Hifza Arif @ Hafiza Arif has been released on bail vide order dated 14.06.2016 in Cr. Revision No.646 of 2016.

From perusal of the order of the J.J. Board and the appellate order, it appears that the case is on circumstantial evidence. The Board after going through circumstantial evidence has recorded the findings that circumstances do not proof the involvement of the juvenile in the crime. There is lacunae in the prosecution case and considering that lacunae,

benefits has been extended in favour of the juvenile. The appellate court has re-appreciated the entire evidence and has recorded the finding that the court below has not properly appreciated the circumstantial evidence and referring to sections 25 read with Section 27 and Section 8 of the Indian Evidence Act, has recorded the finding that it requires re-trial and the matter has been remitted back.

Further, from perusal of both the judgments, it appears that two views possible and one view has been taken in favour of the juvenile by the Board. I don't find any reason to differ with the finding of the J.J. Board and especially considering the mandate of the J.J. Act that a juvenile cannot be punished rather a correctional method has to be applied. Further, finding of guilt cannot be taken on record.

Thus, considering the entire scheme of the J.J. Act and material available on record, I don't find any reason to differ with the finding recorded by the J.J. Board. Further, the order of the appellate court being without jurisdiction is, hereby, set aside.

As a result, the order dated 20.07.2020 passed by the learned Additional Judicial Commissioner-IV-cum-Special Judge POCSO, Ranchi in Criminal Appeal No.288 of 2018 arising out of G.R. No.772 of 2016 being Dhurwa (T) P.S. Case No.45 of 2016, E. No.145 of 2018 is, hereby, set aside.

Accordingly, the instant criminal revision being Criminal Revision No.691 of 2020 stands allowed.

**(Rajesh Kumar, J.)**