

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Cri. Appeal No.853-P/2019

Irshad Khan son of Enayat Ullah Khan,
r/o Mohallah Gul Bacha Wadpaga,
Peshawar.

Appellant (s)

VERSUS

Bilal son of Master Daulat Kha,
r/o Mohallah KJandi Awan, Wadpaga,
Peshawar; and

The State.

Respondent (s)

For Petitioner :-

Mr. Shabbir Hussain Gigyani, Advocate.

For State :-

Mr. Arshad Ahmad AAG.

For respondent No.1.

Sahibzada Riyazat ul Haq, Advocate.

Date of hearing:

02.03.2020.

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through this criminal appeal, Irshad Khan, the appellant-complainant, has questioned the order dated 24.06.2019, passed by the Sessions Judge/Child Protection Court/Judge Juvenile Court, Peshawar, whereby his application for transfer of case/trial of accused/respondent, namely, Bilal from the Court constituted under the Khyber Pakhtunkhwa Child Protection & Welfare Act, 2010, to the Juvenile Court under the Juvenile Justice System Act, 2018, has been turned down.

2. Facts in brief forming the background of the instant appeal are that appellant is complainant of case FIR

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No.775 dated 21.05.2016, registered under sections 302/324/34 PPC, at Police Station Chamkani, wherein he besides co-accused has charged accused/respondent Bilal for committing murder of Muhammad Naeem deceased, an attempt to commit murder of Irshad Khan, Muhammad Iqbal and Ashfaq and causing firearm injuries to Muhammad Iqbal.

3. After arrest of the accused/respondent Bilal and completion of investigation, he being a juvenile, *challan* under the Juvenile Justice System Ordinance, 2000 was submitted against him before the learned Juvenile Court/Additional Sessions Judge-X, Peshawar on 05.10.2017, where he was formally charge sheeted on 05.10.2017 to which he pleaded not guilty and claimed trial. The trial was in progress, when in the meantime, Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, was promulgated, consequently, vide an administrative order No.1655-73 dated 15.03.2019, of learned Sessions Judge, Peshawar, all criminal cases registered under the Child Protection & Welfare Act, 2010 and Juvenile Justice System Ordinance, 2000 and Juvenile Justice System Act, 2018, were entrusted to the Court of Additional Sessions Judge, Peshawar, constituted as a special Court under the Child Protection & Welfare Act, 2010. The complainant/appellant submitted an application to the learned trial/Special Court for transfer of the case to

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the Juvenile Court, but the same was dismissed vide order dated 24.06.2019, hence, this appeal.

4. Arguments of learned counsel for the parties heard and record perused.

5. The only legal point in this case for consideration and determination is whether accused/respondent Bilal, who at the time of occurrence was below eighteen years of age i.e. a juvenile, is to be tried by the Juvenile Court constituted/established under section 4 of the Juvenile Justice System Act, 2018 (*to be referred hereinafter as the "Act of 2018"*) vide notification No.SO(Judl)/HD/Gen/P-312/2020/Vol.I-I:- dated 29.01.2020, or the Special Court constituted/established under section 15 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 (*to be referred hereinafter as the "Act of 2010"*)?

6. Admittedly, both, the Act of 2010 and Act of 2018, are having the status of Special Laws. The former is the Provincial Legislation, whereas, the latter is enacted by the Federal legislator. Preambles of both the Acts reveal that these are dealing with child/children but in two different situations. The Act of 2018, provides for criminal justice system and social reintegration of **juveniles**, whereas, the Act of 2010, has been enacted to provide care, protection, maintenance, welfare, training, education, rehabilitation and reintegration of **"children at risk"** in the Khyber Pakhtunkhwa. Under the section 2(h) of the Juvenile

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Justice System Act, 2018 “**Juvenile**” means, a child who may be dealt with for an offence in a manner which is different from an adult while the purpose, aim and object of the Act of 2010, is the protection, welfare, training, education, rehabilitation and reintegration of the children who are at risk and not accused, therefore, the same cannot be stretched in such a way so as to give shelter to a juvenile who is accused of an offence. “**Child at risk**” has been defined under section 2(1)(e) of the Act of 2010, in the following words:-

“**Child at risk**” means a child in need of protection, who

(i) is at risk, including an orphan, child with disabilities, child of migrant workers, child working and or living on the street, child in conflict with the law and child living in extreme poverty.

(ii) Is found begging; or

(iii) Is found without having any home or settled place of abode or without any ostensible meaning of subsistence; or

(iv) Has a parent or guardian who is unfit or incapacitated to exercise control over the child; or

(v) Lives in a brothel or with a prostitute or frequently visits any place being used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral or depraved life; or

(vi) Is being or is likely to be abused or exploited for immoral or illegal purposes or gain; or

(vii) Is beyond the parental control; or (viii) Is imprisoned with the mother or born in jail;

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(ix) Has lost his parents or one of the parents and has no adequate source of income; or 4

(x) Is victim of an offence punishable under this Act or any other law for the time being in force and his parent or guardian is convicted or accused for the commission of such offence; or

(xi) Is left abandoned by his parent or parents as the case may be, which will include a child born out of wedlock and left abandoned by his parent;

7. After going through preambles of both the Acts (ibid) coupled with the meaning of “**child at risk**” under section 2(e) of the Act of 2010 and “**Juvenile**” under section 2(h) of the Act of 2018, it can be safely held that in the instant case accused/respondent Bilal, being a juvenile, does not fall within ambit of “**Child at risk**” rather, comes within the meaning of juvenile under the Juvenile Justice System Act, 2018. Had the appellant/complainant of the instant case was a victim child within the meaning of section 2(e) of the Act of 2010, and the accused/respondent a Juvenile accused, then the case of the accused was to be tried by the Court established under the Khyber Pakhtunkhwa Child & Welfare Protection Act, 2010, but in the case in hand, the situation is contrary. Here the complainant/appellant is neither minor nor child, rather the accused-respondent is a juvenile, obviously complainant cannot be held as a “**child at risk**”, therefore, the accused/respondent is to be tried by the Juvenile Court established/constituted under section 4 of the Juvenile

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Justice System Act, 2018. In essence any offence committed by a juvenile or adult against a "child at risk", shall be triable by the Court established under the Khyber Pakhtunkhwa Child Protection & Welfare Act, 2010, while an offence committed by a child against an adult shall be tried by the Court created under the Juvenile Justice System Act, 2018. The findings of the learned trial Court in the impugned order are thus misconceived.

8. Resultantly, this appeal is allowed. The impugned order of the learned trial court dated 24.06.2019, is hereby set-aside. The case/trial of accused Bilal is withdrawn from its diary and entrusted to the Special Court established/constituted under the Juvenile Justice System Act, 2018 for onward proceedings. The worthy Sessions Judge, Peshawar, is directed to do the needful.

9. The Additional Registrar (Judicial) of this Court shall circulate copy of this judgment amongst the Sessions Judges/Juvenile Courts/and Courts established under the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, in the entire Province for guidance.

Announced:

02.03.2020

M. Siraj Afridi PS

Rooh ul Amin Khan
JUDGE