

29.08.2019

Present: Convicts [REDACTED] and [REDACTED] have been produced in custody from Central Jail, Faisalabad.
Hafiz Muhammad Shabbir Ahmad, learned DDPP for the State.
Mr. Muhammad Javed, Superintendent Borstal Institute and Juvenile Jail, Faisalabad.
[REDACTED], father of convict [REDACTED]
[REDACTED] (35202-5826256-7).

Order

In compliance with this Court's judgment dated 19.03.2019 in case FIR No.140/2017 registered under Section 376 PPC on 29.06.2017 with Police Station Lohari Gate, Lahore, [REDACTED] and [REDACTED] being juvenile offenders were convicted under Section 377-B of PPC and were sentenced with simple imprisonment of two years each along with fine of five lac each. In default of fine, both convicts had to undergo simple imprisonment of four months each. They were also extended benefit under Section 382-B of Cr.P.C. Victim was also awarded compensation under Section 544-A of Cr.P.C of Rs.2,00,000/- which was to be paid by the convicts in equal proportion of Rs.1,00,000/- each, whereas, in default on their behalf in making payment of this compensation, their fathers/guardians were obliged to pay respectively as they had failed to perform their parental duty in bringing up their children. Vide Para No.25, while issuing detailed instructions to Incharge Borstal Institute for the measures to be taken by him for physical, mental, psychological, intellectual, moral, religious,

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educational, and social development of juvenile convicts during their period under detention, concerned Probation Officer was also directed to help him in preparing this report.

Incharge of Borstal Institute under Section 11 of Juvenile Justice System Ordinance, 2000 was directed to produce the convicts before the Court on first working day after three months of conviction along with the required report to enable the Court to pass appropriate order for further detention or for their release on probation.

Warrants of commitment dated 19.03.2019 in the name of Incharge Borstal Institute through Superintendent District Jail, Lahore were issued to authorize the said Incharge of Borstal institute to receive the said both convicts in his institute and to execute the sentence in accordance with law. Necessary instructions issued in the judgment in view of Section 11 of Juvenile Justice System Ordinance, 2000 were also detailed therein in the warrant again. The order as to production of convicts before the Court on the first working day after conviction was also clearly written in the warrants.

First working day after three months of conviction was 19.06.2019 but neither convicts were produced before the Court nor any explanation was submitted by any concerned. Both the Ahlmads of this Court submitted report on 10.07.2019 that both the convicts who were required to be produced before the Court, were neither produced before the Court nor any report required in the judgment was submitted. In this backdrop, a letter bearing No.54 dated 15.07.2019 was issued in the name of Inspector General Prisons with the direction to produce the convicts before the Court and to submit report that who was responsible in omission in this regard, for 18.07.2019, however, uptill 23.07.2019, this situation persisted.

Again an explanation vide letter bearing No.61 dated 24.07.2019 addressed in the name of IG Prisons, Punjab was issued by requiring him to submit his explanation upon his failure to fix the responsibility for non-production of convicts and to further direct Incharge Borstal Institute concerned to submit his report with the convicts.

Thereafter, undersigned remained on Ex-Pakistan leave followed by Special Casual Leave of summer vacations and presided over the Court today. Record reveals that on 03.08.2019, reply of office of Superintended Borstal Institute and Juvenile Prison, Faisalabad was filed before the Learned Duty Judge which was taken upon today. This letter bearing memo No.4135 dated 29.07.2019 clearly admitted that it was negligence/omission of Incharge Assistant Superintended Warrant and Warrant Munshi of Borstal Institute and Juvenile Prison, Faisalabad. They have also been directed to submit their explanation/show cause notice but no result of these proceedings has been submitted before this Court. Report of Probation Officer and Medical Officer has separately been submitted which are in line with report of Incharge of Borstal Institute and Juvenile Prison, Faisalabad as to satisfactory conduct of convicts during detention.

Today, Superintendent Borstal Institute and Juvenile Prison, Faisalabad while submitting his report disclosed that wall of Borstal Jail, Faisalabad was fell down and all the Juvenile convicts were shifted to Central Jail, Faisalabad vide order of Depute Inspector General of Prisons bearing No.4 dated 02.04.2019. Both the convicts, according to Para No.6 of statement of Mr. Muhammad Javed, Superintendent Borstal Institute and Juvenile Prison, Faisalabad, remained in the Borstal Jail from 17.04.2019 to 20.06.2019.

This Juvenile Court under Section 11-b of Juvenile Justice System Ordinance, 2000 directed that both the convicts were only to be kept in Borstal Institute. Except Borstal Institute, no other institute

was authorized to detain both the convicts. No Officer of Prisons of whatever rank, he might be, is authorized to amend the order of Court except with the leave of Court. Keeping of convicts in jail otherwise than any Borstal institute is against the spirit of judgment and seems a glaring mistake on the part of concerned authority to thwart the way to achieve the objective of JJSO, 2000. No substantive action or any movement seems to have been taken to ensure the detention of convicts in Borstal Institute in accordance of JJSO, 2000.

Although the Superintendent of Prison in attendance today submitted that DIG Prisons, Faisalabad Region, Faisalabad is conducting an inquiry but despite elapse of considerable time, no fruitful result of this inquiry could be shared with this Court either by the concerned Inquiry Officer or by IG Prisons or by the Superintendent Jail concerned.

This is first Child Court of Pakistan and by way of its establishment, this Court is paving its way to future reformation to bring Juvenile Justice System of the country in line with United Nations' Convention on the right of Child, 1992, therefore, it is the right time that its orders be jealously safeguard while remaining with the ambit of JJSO, 2000. For only two months, the juvenile convicts were detained in Faisalabad Jail and report regarding their conduct were submitted even with the recommendation of their release on probation. Minimum stipulated period of three months even was not taken into consideration while submitting this report. For this negligent omission, the concerned authority should be taken to task as per law. Neither Chief Secretary Punjab nor Home Secretary Punjab nor IG Prisons nor Superintendent District Jail, Lahore where under, on 19.03.2019, both the convicts were in custody and neither Superintendent District Jail,

Faisalabad who had no authority to receive the convicts in violation of judgment of this Court nor Superintendent Borstal Institute, Faisalabad seems to have been bothered to implement the judgment in its true spirit of Juvenile Justice System. Therefore, IG Prisons, Punjab is directed to take legal action against the delinquents under intimation of this Court. Copy of this observation be also sent to Chief Secretary Punjab and Home Secretary to the Government of Punjab to perform their duty as to non-compliance of this Court's judgment as well as measure to establish Borstal Institutes in compliance of Juvenile Justice System Ordinance, 2000.

Both the convicts have been heard. Since, the minimum time of three months for which the report was to be submitted, was not reached while they being at Borstal Institute Faisalabad, therefore, keeping in view other circumstances and their omission in making any effort for payment of compensation, this Court does not consider it appropriate to release them on probation. Therefore, they be sent back to serve their remaining period of detention in Borstal Institute and only in Borstal Institute and be dealt with in accordance with law thereafter. Ahlmad is directed to annex these proceedings with the original file.

Announced
29.08.2019

Muhammad Akhtar Bhangoo
Addl. Sessions Judge/Child Court
Lahore