

The State Versus

FIR No. 119 Dated 30.01.2020 U/S 319/15AA P.S SMT

ORDER-6
10.11.2020

Minor [REDACTED] on bail along with his father present. According to the FIR bearing 119 dated 30.1.2020, his mother reported to the local police that he along with other his minor brother was playing in the room in which minor [REDACTED] accidentally fired at his minor brother who died on the spot. Thus the FIR under section 319 read with 15AA was lodged against the accused facing trial.

During course of investigation minor was examined by the medical officer and the department of pathology Bacha Khan Institute along with opinion by the concerned medical officer who has given his report that age of minor is 5/6 years.

When the case was submitted to the prosecution, the concerned APP also contended that the accused is minor

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but proposed that the case be submitted for trial before juvenile court, ignoring section 82 of the PPC which says that "nothing is an offence which is done by a child under the age of ten years of age".

The case was put in the court on 20.06.2020. As stated above that section 82 of PPC is quite clear that nothing is an offence which is done by a child under the age of ten years of age [REDACTED] s/o [REDACTED] cannot be said to be an accused under the aforesaid provision of law.

When a person cannot be designated as accused no formal charge can be framed against that person. The chapter XIX relating to framing of charge is also clear that charge can only be framed when there is commission of an offence. Since it is not an offence under section 82 of PPC, no charge can be framed.

It is in the fitness of the circumstances to say that even police was not competent to lodge the FIR against minor, namely [REDACTED] simply on the ground that it was neither an offence nor it was within the cognizance of the police to have it investigated. The police was required to have inquired into the matter and after finding that

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_____ is below the age of ten years of age, should have filed the inquiry.

In such extra an ordinary circumstances, the minor namely _____ cannot be proceeded to be tried under chapter XXII-A.

It is pertinent to note that this court is competent to acquit the accused under section 265-K Cr.P.C when there is no probability of the accused being convicted. But such application of the aforesaid section of law can only be pressed into action when the court is conducting trial of an accused. Since minor _____ is not an accused under the law therefore, this court is not competent to exercise its powers under section 265-K Cr.P.C rather it is a fit case for cancellation, which was initially the duty of the prosecution to have applied.

It is would have been in the fitness of the circumstances that the learned judicial magistrate who had initially taken cognizance under section 190 Cr.P.C should have looked into the matter. Acting as a post office the learned judicial magistrate forwarded the case to the worthy Sessions judge for trial without applying his mind

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as if it was a fit case for trial or to have it returned to the prosecution for cancellation. He failed to even peruse the case file.

The father of minor had submitted in the court the school certificate in which his dated of birth is shown as 01.03.2015 as well as photo copy of valid license of the weapon of offence which is in the name of [REDACTED] (father of accused), the copy of the same has already been placed by the police in the judicial file. Therefore, the case is returned back to the worthy Sessions Judge, Mardan to return it to the concerned magistrate for acting under the law. Case file is thus returned and be placed before the worthy Sessions Judge Mardan for 12.11.2020.


(Ijaz Ahmad)
Judge Child Protection Court,
Mardan

Judge Child Protection Court
Mardan