IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

CRIMINAL REVISION No. 3522 of 2024

CHILD IN CONFLICT WITH LAW

Versus

VINOD KUMAR JAIN & ANR.

Appearance:

SHRI R.K.SHARMA – SENIOR ADVOCATE WITH MS. BHAVYA SHARMA – ADVOCATE FOR THE REVISIONIST

SHRI PRADEEP KATARE – ADVOCATE FOR RESPONDENT NO.1/COMPLAINANT.

SHRI ABHISHEK BHADAURIA – PUBLIC PROSECUTOR FOR RESPONDENT NO.2/STATE

Reserved on : 06.11.2024.
Delivered on : 20.11.2024

O R D E R

This Criminal Revision has been filed under Section 397/401 of the Code of Criminal Procedure, 1973, against the order dated 12th July, 2024 passed by the Seventh Additional Sessions Judge, Bhind, in Criminal Revision Nos. 23/2024 & 25/2024, whereby the learned Additional Sessions Judge has remanded the matter to the JMFC, Bhind, for conducting fresh enquiry to find out as to whether accused/child in conflict with law was below 18 years of age on the date of offence or not.

2. Facts of the case, in brief, are that the accused/child in conflict-with-law was arrested by police Station Kotwali, Distt. Bhind, in connection with Crime No.138/2024 registered for the offence punishable under Section 302 of IPC and Sections 25, 27 of the Arms Act. After arrest, accused/ child in conflict-with-law was produced before the JMFC, Bhind, treating him to be major. Before the JMFC, Bhind, an application was preferred on behalf of the accused/ child in conflict-with-law that he was below 18 years of age on the date of offence, therefore, his trial is to be conducted by the Juvenile Justice Board. The trial Court conducted enquiry and vide order dated 19.03.2024 came to the conclusion that on the date of offence child in conflict-with-law was aged 17 years 6 months and 18 days and sent the matter to the Juvenile Justice Board for hearing.

3. Against the said order, complainant and State of M.P. filed separate revision applications before the learned Seventh Additional Sessions Judge, Bhind, on the ground that order of the JMFC, Bhind, was not in accordance with law and proper enquiry was not conducted. The learned Additional Sessions Judge allowed the revision applications and remanded the matter to the JMFC, Bhind, for conducting fresh enquiry. Hence, this revision has been preferred by the accused/child in conflict-with-law.

4. It is submitted by the learned Senior Counsel for the revisionist that order passed by the learned Revisional Court is unjust and illegal, therefore, it is liable to be set aside. There was no illegality, impropriety and perversity in the order passed by the learned JMFC, Bhind. As per the mark-sheets of revisionist of class 5th, 8th and 10th, the actual date of birth of the revisionist is 02.07.2006, and thus, the revisionist was below 18 years of age on the date of incident, and therefore, the order passed by the learned JMFC, Bhind, did not warrant any interference. The revisionist was initially admitted in Jaiguru Dev Prathmik Vidyalaya, Bindwa, Distt. Bhind. Copy of the application form has been filed as Annexure P/5 showing the date of birth of the revisionist as 02.07.2006 and not as 08.06.2005. In support of this contention, revisionist has also filed copy of horoscope (submitted along with application form in Jaiguru Dev Prathmik Vidyalaya) as Annexure P/6, admission register of the school as Annexure P/7 and a copy of the certificate issued by the Head Master of the said school as Annexure P/8. The learned Senior Counsel has also referred Section 94(2)(ii) of the Juvenile Justice (Care & Protection) Act, 2015 (hereinafter shall be referred to as "the Act of 2015").

5. On the strength of above arguments, learned Senior Counsel for the revisionist submits that order passed by the learned Seventh

Additional Sessions Judge remanding the matter to the JMFC, Bhind, for fresh enquiry is liable to be set aside.

6. Learned counsel for the complainant as well as State supported the impugned order and submitted that the actual date of birth of the revisionist is 08.06.2005 which is recorded in the scholar register of the primary school and as per Section 94 of the Act of 2015 that is the document which is to be resorted for ascertaining the date of birth of the revisionist who is stated to be child-in-conflict with law. They have also submitted other documents with regard to it. Therefore, the order passed by the Revisional Court is lawful and proper. There is no material calling for any interference.

7. Heard learned counsel for the parties and perused the material available on record.

8. At the outset, Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter shall be referred to as "the Rules of 2007") and Section 9 and Section 94 of the Act of 2015 are pertinent to refer which are as infra :-

> "**Rule 12 of the Rules of 2007**
>
> **12.** ***Procedure to be followed in determination of age***. —(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application

for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the *age determination inquiry* shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(*a*)(*i*) the matriculation or equivalent certificates, if available; and in the absence whereof;

(*ii*) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(*iii*) the birth certificate given by a corporation or a municipal authority or a panchayat;

(*b*) and only in the absence of either (*i*), (*ii*) or (*iii*) of clause (*a*) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (*a*)(*i*), (*ii*), (*iii*) or in the absence whereof, clause (*b*) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

Section 9 of the Act of 2015

9 **Procedure to be followed by a Magistrate who has not been empowered under this Act.-**(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but

not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the persons claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.

Section 94 of the Act of 2015

94 Presumption and determination of age.

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

> (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
>
> (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
>
> (iii) and only in the absence of *(i)* and *(ii)* above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:
>
> Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.
>
> (3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

9. In view of the provisions as stated aforesaid, in this case also the preference of evidence as regards the age of present revisionist was to be determined by the Court as provided in Section 94 of the Act of 2015. It is pertinent to mention here that in absence of documents as stated in Section 94(2)(i)(ii) of the Act of 2015, the medical evidence is relevant.

10. In case of **Ram Suresh Singh vs. Prabhat Singh, (2009) 6 SCC 681** the Hon'ble Apex Court in the light of the provisions of Sections 7 & 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter shall be referred to as "the Act of 2000") has held that opinion of Medical Board will be preferred only

when date of birth certificate from school is not available.

11. In case of **Shah Nawaz v. State of U.P. and Anr., AIR 2011 SC 3107** in the light of the provisions of Section 7 of the Act of 2000 and Rule 12 of the Rules of 2007 the Hon'ble Apex Court has ruled that only on the basis of medical opinion of medical board ignoring date of birth mentioned in mark sheet and school certificate is not proper. Preference is to be given to school certificate over medical report. Medical opinion from Medical Board should be sought only when matriculation certificate or school certificate or any birth certificate issued by a corporation or by any Panchayat or municipality is not available.

12. Similar law has been laid down in the case of **Ashwani Kumar Saxena vs. State of M.P., (2012) 9 SCC 750** wherein the Hon'ble Apex Court has observed that age determination inquiry contemplated under Section 7-A of the Act of 2000 read with Rule 12 of the Rules of 2007 enables the Court to seek evidence and in that process the Court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates does the Court need to obtain the date of birth certificate from the school first attended other than a play school. Under Section 7 it is imperative for the Court to make an enquiry and to take such evidence as may be necessary and the Court or the Board can accept as evidence

something more than an affidavit though it need not to be oral evidence.

13. A Coordinate Bench of this Court in the case of **Govind Saini vs. State of M.P.** decided in Criminal Revision No.501/2014 on 28.07.2014 in the light of the provisions of Rule 12 of the Rules of 2007 has held that a plain reading of the provisions of Rule 12 of the Act of 2007 makes it crystal clear that enquiry shall be conducted by the Court or the Board regarding juvenility of the accused. Rule 12(3) mandates that enuqiry shall be conducted by the Court or the Board by seeking evidence. Unless an opportunity is provided to the parties to produce evidence in support of its claim, the finding cannot be said to be legal. Once the accused has claimed himself to be a juvenile and is taking a stand that date of birth which has been entered in the school is not correct, then it was obligatory on the trial Court to hold an enquiry and after giving opportunity of adducing evidence and proper hearing record a finding.

14. A Coordinate Bench of this Court in the case of **Hariom Singh vs. State of M.P**. decided in M.Cr.C.No.5258/2018 on 09.02.2018 has observed that Section 9 of the Act of 2015 clearly provides that when a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that person alleged to have committed the offence and brought before him is a juvenile, he shall forward the

child to the Board having jurisdiction. Thus, the Magistrate is not deprived of his authority to form an opinion as to whether a person brought before him is a juvenile or not. The Court has to form an opinion in that regard for which Court is not precluded from seeking evidence. In the light of the provisions of Section 94 of the Act of 2015, the Court has followed the dictum of Hon'ble Apex Court in the case of **Loknath Pandey vs. State of U.P. and others, AIR 2017 SC 3866** wherein it is held that where different date of births are recorded in different classes, then the date of birth recorded in the first school shall be deemed to be the effective date.

15. Recently the Hon'ble Apex Court in the case of **Rishipal Singh Solanki vs. State of Uttar Pradesh and others, (2022) 8 SCC 602** has summarized the procedure in that regard in para 33 which is as follows :-

> **"33.**What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:
> **33.1.** A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.
> **33.2.** An application claiming juvenility could be made either before the court or the JJ Board.
> **33.2.1.** When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

33.2.2. If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

33.2.3. When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(*a*)(*i*), (*ii*) and (*iii*) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a court is

not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7. This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board

> provided such public document is credible and authentic as per the provisions of the Evidence Act viz. Section 35 and other provisions.
> **33.11.** Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015."

16. On perusal of the aforesaid provisions and the law laid down by the Hon'ble Apex Court in the aforesaid citations, it is clear that the Court should direct an enquiry and verification of age of the accused, but a hypertechnical approach should not be adopted while appreciating the evidence adduced in support of the plea that he was a juvenile. Though it is true that if two views are possible on the enquiry held in this regard, the Court should lean in favour of holding the accused to be a juvenile in borderline cases, but at the same time, it is also imperative for the court to ensure that the protection and privileges under the Act are not misused by unscrupulous persons to escape punishments for having committed serious offences. An obligation has been cast on the Court that where such a plea is raised having regard to the beneficial nature of the socially oriented legislation, the same should be examined with great care. It becomes obligatory for the Court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination

of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. It is an obligation on the court to examine such plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to an accused. The Court must hold an enquiry and to give a finding regarding the age, one way or the other.

17. Now turning to facts of this case, the perusal of order of JMFC, Bhind, shows that he has simply after perusal of the mark-sheets of 5th, 8th and 10 has assumed the age of the present revisionist as 02.07.2006 and accordingly found that he was, on the date of offence having age of 17 years 6 months and 18 days and discarded the scholar register of primary school mentioning the date of birth of present revisionist as 08.06.2005 on the ground that if two views are possible on the same evidence, the Court should lean in favour of holding the accused to be juvenile in borderline cases. But such conclusion cannot be appreciated in the light of provisions contained in Section 9 and 94 of the Act of 2015 as well as other enabling provisions of the said Act and various pronouncements in this behalf. It was imperative for the JMFC, Bhind, to conduct an enquiry as contemplated in Section 94 of the Act of 2015 and provide an opportunity to the parties to lead evidence on the point as the documents filed on behalf of the parties

are contradictory to each other and it raises suspicion about the genuineness of the documents. After a comprehensive enquiry as contemplated in Section 94 of the Act of 2015 if the Magistrate reaches to a conclusion that two views are possible, then the said approach may be adopted but before conducting such enquiry directly jumping to the conclusion cannot be said to be legal and valid.

18. It is pertinent to mention here that in this Criminal Revision various documents have been filed on behalf of the revisionist and respondent No.1. Along with the copy of mark-sheets of class 5th, 8th and 10th the Revisionist has filed copies of *Pravesh Avedan Patra* of Jayguru Dev Prathmik Vidyalaya Bindwa, horoscope, scholar register, a certificate issued by Head Master of that school dated 14.08.2023, registration form, school leaving certificate, copy of admission register of the school and certificates dated 13.07.2024 and 08.04.2024 which also shows the date of birth of the revisionist as 02.07.2006.

19. Contrary to that, respondent/complainant has submitted the copies of documents in the form of certificate dated 26.06.2024 issued by Head Master of Govt. Middle School Bindwa, scholar register having the details of students, certificate of other school dated 23.08.2024, copy of Samgra Parivar Card, voter list and form of voter list as well as the copy of the FIR of Crime No.263/2024 of police Station Bhind, Kotwali by which an offence under Sections 353 and

506 of IPC has been registered against the father of present revisionist and Ravindra Singh Bahdauria. The report was lodged by Kiran Bhadauria, who happens to be an Anganwadi Karyakarta, to the effect that accused persons by applying criminal force and giving threat have got issued a false certificate from her.

20. These documents probably were not before the JMFC, Bhind, therefore, let these documents be filed before the JMFC by both the parties and a comprehensive enquiry be conducted in the matter to determine the age of the revisionist keeping in view the provisions of the JJ Act and law rendered by Hon'ble Apex Court and this Court.

21. The revisionist has relied upon the decision of Hon'ble Apex Court in the case of **Saroj and others vs. Iffco- Tokio General Insurance Co. & Ors.** passed in Civil Appeal arising out of SLP(C)Nos.23939-23940 of 2023 and also the directions issued by Unique Identification Authority of India in respect of Adhar Card and submitted that the purpose of Adhar card is different. It cannot be resorted to/for determining the age of card holder. Similar view has been taken by the Coordinate Bench of this Court in the case of **Manoj Kumar Yadav vs. State of M.P. , ILR 2023 MP 1667**, in which it is held that Adhar card is not a proof of age of the prosecutrix. Her age is to be necessarily determined in terms of Rule 12 of the Rules of 2007 or Section 94 of the Act of 2015.

22. Having considered the law laid down in aforesaid cases, it is crystal clear that the age mentioned in Adhar card or Samgra Parivar Card or voter list is not material. The age of the revisionist is to be determined strictly in the light of the provisions as contained in Section 94 of the Act of 2015, but the documents on record in this case raises a suspicion about its genuineness, therefore, a comprehensive enquiry is required.

23. Eventually, the impugned order whereby learned Seventh Additional Judge, Bhind, has directed the JMFC, Bhind, to enquire into the matter afresh for determining the age of the revisionist, seems to be lawful, proper and require no interference.

24. Consequently, this Criminal Revision being bereft of merits is hereby **dismissed**.

(RAJENDRA KUMAR VANI)
JUDGE

ms/-