



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. _____ OF 2026
(ARISING OUT OF SPECIAL LEAVE PETITION (CRIMINAL) NO. 5654 OF 2026)**

MAHAVIR @ AVNISH

...Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH

...Respondent(s)

J U D G M E N T

SHREE CHANDRASHEKHAR, J.

Leave granted.

2. The convict, who was found a juvenile on the date of commission of the crime, is aggrieved by the decision in Miscellaneous Criminal Case No. 24675 of 2018 rendered by a learned Single Judge of the High Court of Madhya Pradesh at Gwalior; that the High Court in exercise of its jurisdiction under section 482 of the Code of Criminal Procedure, 1973 cannot interfere with or reopen the judgment of conviction passed against him under section 201 Part II of the Indian Penal Code, 1860 which attained finality up to the Supreme Court.

3. A crime under sections 302, 304B and 201 read with section 34 of the Indian Penal Code was registered on 17th September 2004 *vide* FIR No. 489 of 2004 against Ramji Lal who is the father-in-law, Munni Devi who is the mother-in-law, Pramod who is the husband and Mukesh and Mahavir alias Avnish, who are the brothers-in-law of the victim Bhuri. The allegations against them are that they tortured Bhuri in connection to demand of dowry, committed her murder within 7 years of marriage and caused disappearance of evidence. The incident took place on 13th September 2004, but a First Information Report was lodged on 17th September 2004. The dead bodies of Bhuri and her infant daughter Guddi were found on the railway track near village Sikrauda in the district of Morena (M.P.). It is the case of prosecution that Badri Baghel, who was a Gangman with the Railways, first saw the dead bodies on the railway track. Though a large crowd had gathered there, the accused persons forcibly lifted the dead bodies and performed the cremation rituals. It is alleged that the accused persons did not inform the police or the relatives of Bhuri and caused disappearance of evidence by cremating the dead bodies. After the investigation, a chargesheet was filed in the Court and the accused persons were sent up for trial to face the charge under sections 302, 304B and 201 read with section 34 of the Indian Penal Code. During the trial, the prosecution produced 13 witnesses to prove the charge against the accused persons of committing murder, dowry death and causing disappearance of evidence. PW2 Ram Lakhani, PW4 Ram Naresh and PW5 Ram Veer, who are the brothers of Bhuri, did not support the prosecution case and stated in the Court that the accused persons never demanded any dowry nor did Bhuri ever

complain about demand of dowry or her harassment at the hands of the accused persons. Even PW3 Mahadevi, who is the mother of Bhuri, did not make any allegation against the accused persons. PW6 Santosh, PW7 Ram Ikhtiyar, PW10 Shiv Dayal and PW11 Ram Het also did not support the prosecution and were declared hostile. PW9 Mahesh and PW10 Shiv Dayal, who are the independent witnesses, deposed from the dock that they had no knowledge about any demand of dowry by the accused persons. These witnesses were cross-examined by the prosecution with permission of the Court but nothing material could be elicited from them to establish complicity of the accused persons in the crime. The charge of murder and dowry death was not proved and the accused persons were convicted under section 201 Part II of the Indian Penal Code. The trial Judge extensively referred to and believed the testimony of PW1 Badri Baghel, who had first seen the dead bodies, and held that it was proved beyond reasonable doubt that the dead bodies of Bhuri and Guddi were lying on the railway track and the accused persons lifted the dead bodies from the railway track. The trial Judge further held that the accused persons cremated Bhuri and Guddi and, therefore, caused disappearance of the dead bodies.

4. By the judgment dated 21st December 2005 passed in Sessions Case No. 129 of 2005, the accused persons were sentenced to rigorous imprisonment for 3 years and a fine of Rs.1000 each under section 201 Part II of the Indian Penal Code, with a default stipulation to undergo rigorous imprisonment for 6 months. Ramji Lal, Pramod, Mukesh, Munni Devi and Mahavir alias Avnish challenged the said judgment in Criminal Appeal No. 5 of 2006 which came to be dismissed by the High Court by the judgment dated 17th March 2017. Mahavir

alias Avnish, the appellant, challenged the judgment passed in Criminal Appeal No. 5 of 2006 before this Court. The said petition was registered as Special Leave Petition (Crl.) No. 4286 of 2018 and it was dismissed as withdrawn on 11th May 2018. Thereafter, the appellant approached the High Court of Madhya Pradesh at Gwalior in Miscellaneous Criminal Case No. 24675 of 2018 which was filed under section 482 read with section 362 of the Code of Criminal Procedure, 1973 seeking recall of the judgment dated 17th March 2017 passed in Criminal Appeal No. 5 of 2006.

5. Before the High Court, the appellant raised the plea of juvenility and specifically pleaded that he was unaware of the laws relating to a juvenile or that a juvenile has special rights. He further pleaded that the juvenility of a child accused of committing a crime goes to root of the matter, but the trial Court did not reflect on this aspect of the matter. He contended that the High Court when seized with Criminal Appeal No. 5 of 2006 overlooked a fundamental fact that he was a juvenile aged about seventeen years when the alleged crime was committed. The decision in “*Abdul Razzaq v. State of U.P.*”¹ was pressed into service on behalf of the appellant to persuade the High Court to recall the judgment of conviction passed against him on the ground that the claim of juvenility can be raised even after final disposal of the case and the delay in raising such a claim cannot be a ground to deny the statutory benefit accruing to a juvenile. It was further contended on his behalf with reference to “*Pratap Singh v. State of Jharkhand & Anr.*”² that the claim of juvenility must be decided with reference to the date of

¹ (2015) 15 SCC 637

² (2005) 3 SCC 551

commission of the offence. He relied on the marksheets of primary school and middle school whereunder his date of birth was recorded as 1st July 1987. The judgments rendered in *“Dharambir v. State (NCT of Delhi) & Anr.”*³, *“Satish @ Dhanna v. State of M.P. & Ors.”*⁴ and *“Vinod Katara v. State of U.P.”*⁵ were also cited on behalf of the appellant to impress upon the High Court to recall its earlier judgment and grant him the benefit of juvenility without remitting the matter to the Juvenile Justice Board (in short, JJ Board). On merits, it was contended on behalf of the appellant that he could not have been convicted under section 201 Part II of the Indian Penal Code because he was acquitted of the charge under sections 302 and 304B of the Indian Penal Code. As regards the testimony of PW1 Badri Baghel, who allegedly had first seen the dead bodies on the railway track, it was contended that his evidence could not be the foundation for recording his conviction as this witness in the cross-examination stated that he had never seen the accused persons.

6. The High Court referred to the laws on juveniles that the regular criminal Courts are divested of their jurisdiction to try an accused who was a juvenile on the date of offence and to sentence him in the manner applicable to adults. The High Court also took note of the relevant statutory provisions including section 7A of the Juvenile Justice Act, 2000 (in short, JJA 2000) which casts a mandatory obligation on the Courts to conduct an inquiry whenever a claim of juvenility is raised or appears from the materials on record. But then, the High Court

³ (2010) 5 SCC 344

⁴ (2009) 14 SCC 187

⁵ (2023) 15 SCC 210

proceeded to draw a distinction between inherent jurisdiction of the High Court under section 482 of the Code of Criminal Procedure and plenary powers of the Supreme Court under Article 142 of the Constitution of India and dismissed the petition on the ground that the judgment of conviction of the appellant has become final and cannot be revisited by the High Court under section 482 of the Code of Criminal Procedure.

7. In the present proceeding, it was pointed out on behalf of the appellant that an inquiry was caused by the JJ Board, Morena pursuant to an order passed by the High Court and it was found that the appellant was below the age of eighteen years on the date of occurrence. On 7th April 2026, while issuing notice on the Special Leave Petition, the following order was passed by this Court:

“1. Vide judgment dated 21.12.2005 passed by the Second Additional Sessions Judge, Morena in 1 Sessions Case No.129/2005, the petitioner was convicted for committing offence under section 201 of the Indian Penal Code, 1860 (“IPC”) while acquitting him of the charges under section 302/34 of the IPC with regard to murder of Bhuri and Guddi as also for the charges under section 304B of the IPC. The said judgment was affirmed by the High Court and, thereafter, the Special Leave Petition preferred by the petitioner bearing SLP (Crl) No.4286/2018 was dismissed as withdrawn.

2. After the dismissal of the SLP, petitioner moved the High Court under section 482 of the Criminal Procedure Code, 1973 seeking recall of the judgment dated 17.03.2017, in which his appeal was dismissed by the High Court, on the ground that on the date of offence, petitioner was a juvenile. The High Court directed an inquiry by the Juvenile Justice Board to ascertain the petitioner’s claim about his juvenility. The Juvenile Justice Board, in its report dated 11.05.2019 recorded a finding after inquiry that petitioner’s date of birth is 01.07.1987. Therefore, as on the date of occurrence, i.e., 13.09.2004, he was aged about 17 years 2 months and 12 days and thus, he was a juvenile on the date of offence. Despite this report, the High Court has rejected petitioner’s prayer on the ground that the Special Leave Petition having already been dismissed, the High Court has no jurisdiction to reopen the matter.

3. Having considered the submissions made by the learned counsel for the petitioner and on perusal of records as also on the basis of judgments rendered by this Court in the cases of Abuzar Hossain Alias Gulam Hossain Vs. State of West Bengal, reported in (2012) 10 SCC 489 and State of Madhya Pradesh Vs. Ramji Lal and Anr., reported in (2025) 5 SCC 697, we are inclined to entertain this petition.

4. Issue notice to the respondent, returnable within six weeks.”

5. Mr. Surjeet Singh, learned counsel appears for the respondent – State of Madhya Pradesh and accepts notice. Let counter-affidavit be filed within four weeks from today.

6. In the meanwhile, petitioner shall be released on bail on such terms and conditions as may be imposed by the trial court.”

8. Mr. Prashant Shukla, the learned counsel for the appellant contended that the scope of interference by the High Court and this Court in the matters concerning fundamental rights and socially oriented beneficial legislations is vast and cannot be confined to a straitjacket with a fixed formula. On the other hand, Mr. Aditya Vaibhav Singh, the learned State counsel contended that the procedural safeguards to weed out fake claims must be given due consideration and the jurisdictional corrections can be done only in accordance with law. The decisions in “*Jitendra Singh alias Babboo Singh & Anr. v. State of Uttar Pradesh*”⁶ and “*Parag Bhati v. State of Uttar Pradesh & Anr.*”⁷ were referred to on behalf of the State to contend that the claim on juvenility if raised belatedly must be scrutinised carefully and the accused person cannot be declared a juvenile on a mere asking, and only if he produces reliable evidence.

9. The Preamble to the Declaration of the Rights of the Child, 1959 states that mankind owes to the child the best it has to give. It

⁶ (2013) 11 SCC 193

⁷ (2016) 12 SCC 744

proclaimed that the child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in the conditions of freedom and dignity. About half a century before that, the League of Nations adopted the Geneva Declaration on the Rights of the Child, 1924 which articulated that all people owe the children a right to special help in times of need, economic freedom and protection from exploitation. In 1946, the United Nations General Assembly established the International Children's Emergency Fund, commonly known as UNICEF, with an emphasis on children throughout the world. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 commonly referred to as the Beijing Rules laid down the principles of Justice System that promise to protect the best interests of children. The Beijing Rules stressed on the well-being of the juvenile and proclaimed that it is the responsibility of the Government to develop conditions for meaningful life of a juvenile. It suggested that the Juvenile Justice should be an integral part of the national development program and social justice. Not to forget, the widely acclaimed Convention on the Rights of the Child, 1989 (in short, UNCRC) recognizes the role of children as social, economic, political, civil and cultural actors. It speaks of a children's right to survival, right to protection, right to development and right to participation.

10. All these international covenants emerged from the social doctrine that the State has a *parens patriae* interest in preserving and promoting the welfare of children. The *parens patriae* jurisdiction is an

ancient prerogative jurisdiction of the Crown going back to 13th century under which the Crown had both the power and duty to protect the person and property of those who were unable to protect themselves. This right and duty, as Lord Eldon noted in “*Wellesley v. Duke of Beaufort*”⁸ were founded on the obvious necessity that the law should place somewhere the care of persons who are not able to take care of themselves. The King was considered responsible for and in charge of everything involving the children. They had no legal rights and were considered as wards of the Court, which was to look after their welfare. Lord Redesdale in “*Wellesley v. Wellesley*”⁹ observed that *parens patriae* jurisdiction was exercised by the Court of Chancery since the time of Lord Somers. He further observed that: “they all say, that it is a right which devolves to the Crown, as *parens patriae*, and that it is the duty of the Crown to see that the child is properly taken care of”. Lord Denning M.R.¹⁰ held that the *parens patriae* jurisdiction which is now vested in the High Court of Justice can be exercised by any Judge of the High Court. In the United States, the majority view in “*Schall v. Martin*”¹¹ authored by Justice Rehnquist held that due process clause is applicable in juvenile proceedings while recognizing that State has a *parens patriae* interest in the welfare of child. Justice La Forest of the Supreme Court of Canada¹² made a pertinent observation that from the earliest time, the sovereign as *parens patriae* was vested with the care of the mentally incompetent.

⁸ (1827) 2 Russ. 1, 38 E.R. 236

⁹ (1828) 2 Bli. N.S. 124, 130

¹⁰ *In re L (An Infant)* : (1968) P. 119, 156

¹¹ (1984) SCC OnLine US SC 126

¹² *Eve v. Mrs. E*: (1986) SCC OnLine Can SC 58

11. The State, through the Courts, acts in the best interests of the children and protects them from growing up as ill-prepared members of the society. In “*Commonwealth v. Fisher*”¹³ the Pennsylvania Supreme Court conveyed the legal authority of the Juvenile Courts under *parens patriae* as under:

“To save a child from becoming a criminal, or from continuing in a career of crime,.. the legislatures surely may provide for the salvation of such a child, if its parents or guardians be unable to unwilling to do so, by bringing it into one of the Courts of the state without any process at all, to subject to the state’s guardianship and protection.”

12. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed to them. Article 15 of the Constitution of India prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. This prohibition, however, does not prevent the State from making any special provision for women and children. Similarly, Article 39 directs the State to frame a policy to protect the children of tender age. It further provides that the children should be given opportunities and facilities to develop in a healthy manner and under conditions of freedom and dignity. The mandate to protect children goes further and provides under Article 45 that the State shall endeavor to provide early childhood care and education for all children until they attain the age of six years. The penal laws in India also protect the child under twelve years of age of immature understanding. Section 82 of the Indian Penal Code provides immunity from criminal prosecution to a child under seven years of age. A child under twelve years of age is also protected under General Exceptions under section 83 which provides that a child above seven years of age

¹³ 213 Pennsylvania 48 (1905)

and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his act on that occasion, shall not be liable for committing any crime. The Supreme Court recognized the concept of *parens patriae* in “*Mahant Ram Saroop Dasji v. S.P. Sahi & Ors.*”¹⁴. The *parens patriae* jurisdiction recognizes the need to act for the protection of those who cannot care for themselves. As seen above, this jurisdiction is exercised in the best interest of the person who cannot protect or defend himself. The State takes upon itself a duty to save a child from becoming a criminal and to spend his early years in jail with stigma and disgrace. The State takes the role of *parens patriae* to shield a child from the consequences of a career of waywardness. Wherever the children are not in a position to secure their rights, the State must come into the picture and protect the rights of the children. In “*Sheela Barse (II) & Ors. v. Union of India & Ors.*”¹⁵ this Court held it as the duty of the State to look after the children and ensure full development of their personality. The National Policy for the Welfare of Children which was first adopted in 1974 declared that :

“The nation’s children are a supremely important asset. Their nurture and solicitude are our responsibility. Children’s programmes should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our large purpose of reducing inequality and ensuring social justice”.

13. The Juvenile Justice system in the country has evolved in response to the domestic and international calls for a change in the system. The expression Juvenile Justice was used for the first time in

¹⁴ AIR 1959 SC 951

¹⁵ (1986) 3 SCC 632

State of Illinois in 1899 and the first Juvenile Court was created in Cook County, Illinois in the same year. The Illinois Juvenile Court Act, 1899 provided an entirely separate system of Juvenile Justice. It was the first statute in the United States that created Courts with jurisdiction over all matters concerning neglected and delinquent children. The seeds of Juvenile Justice System were sown in India through the Apprentices Act, 1850. The concept gained momentum in the enactments of the Indian Penal Code, 1860 and the Reformatory Schools Act, 1876. Then came the recommendations by the Indian Jail Committee (1919-1920) which suggested that (i) the juvenile offenders should be treated differently from the adult offenders (ii) juvenile offenders should not be detained and (iii) juvenile Courts should be constituted. Several States responded swiftly and made laws for the care and protection of children. The Tamil Nadu Children Act, 1920 made provisions for care, protection, welfare, education and rehabilitation of neglected and delinquent children. The detention of the children in jail was strictly prohibited. It introduced the Juvenile Code Model for the first time in India. It defined child and young person and provided the sentence that cannot be inflicted on a child. Soon thereafter a legislation wave swept the country and Bengal Children Act, 1922, Bombay Children Act, 1924, Bombay Children Act, 1948, East Punjab Children Act, 1949, Hyderabad Children Act, 1951, Saurashtra Children Act 1954, Mysore Children Act, 1964, Bihar Children Act, 1970, Rajasthan Children Act, 1970, and Odisha Children Act, 1982 came to be enacted in the respective States. The Children Act, 1960 which was made applicable to the Union Territories addressed some of the issues, but several other States had no law to deal with the children, young people and delinquent juvenile.

*“Sheela Barse II”*¹⁵ stressed on the desirability to have complete uniformity in the Juvenile Justice System across the country. This Court observed that the Central Government should initiate Parliamentary Legislation on the subject instead of each State having its own Children’s Act.

14. The Juvenile Justice Act, 1986 (in short, JJA 1986) provided a uniform Juvenile Justice System across whole of India. It was modeled on the pattern of the United Nations Declaration of the Rights of the Child, 1959 which recognizes the children’s rights to education, healthcare and a supportive environment among other rights. It provided for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles. It also made provisions for juvenile homes, observation homes, special homes, place of safety, probation officer, etc. It incorporated a significant provision in section 3 which contemplated the continuance of inquiry in respect of a juvenile who had ceased to be a juvenile and provided that any inquiry initiated against a juvenile may be continued and orders may be made in respect of such person as if he had continued to be a juvenile. Section 18 contained a non-obstante clause to the effect that any person who appears to be a juvenile delinquent shall be released on bail with or without surety notwithstanding any provision in the Code of Criminal Procedure, 1973 or in any other law for the time being in force. An exception was also carved out that a juvenile delinquent shall not be released on bail if there is reasonable ground for believing that his release is likely to bring him into association with any known criminal or expose him to moral danger or that his release would defeat the ends of justice. Sub-section (2) of section 18 puts a bar on keeping

in a police station or jail any person accused of committing a bailable or non-bailable offence who apparently is a juvenile until he can be brought before the Juvenile Court. Section 20 required a Juvenile Court to hold an inquiry in accordance with the provisions of section 39 of the Act and to make such order in relation to the juvenile as it deems fit. Section 21 makes provision for release of delinquent juveniles (i) after advice or admonition or, (ii) on probation of good conduct or, (iii) by imposing fine. Section 22 which also starts with a non-obstante clause provided that no delinquent juvenile shall be sentenced to death or, imprisonment or, committed to prison in default of payment of fine or in default of furnishing security. It made two categories of juveniles; delinquent juvenile and neglected juvenile. A delinquent juvenile is defined under section 2(e) to mean a juvenile who has been found to have committed an offence. Section 2 (l) states that a neglected juvenile means a juvenile who (i) is found begging; or (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; or (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads immoral, drunken or depraved life; or (v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain. However, there was no uniformity in the age of a boy and a girl who were to be declared as delinquent juveniles. The threshold age for a boy to be considered as a juvenile was sixteen years, whereas for a girl it was eighteen years. Section 2(h) defined juvenile to mean a boy who was below the age of

sixteen years or a girl who has not attained the age of eighteen years. This led to ambiguity and confusion. The working of the JJA 1986 faced several other practical difficulties and it was replaced by the JJA 2000. It was in tune with the UNCRC which mandates under Article 2 that the children be protected from all forms of discrimination irrespective of their race, sex, color, religion, nationality or ethnic background.

15. The Preamble to the JJA 2000 states that it is an Act to provide for proper care, protection and treatment of the juveniles in conflict with law and children in need of care and protection by catering to their development needs. It envisages a child-friendly approach in the adjudication and disposition of matters keeping in mind the best interest of children and ultimately leading to their rehabilitation. In the Statement of Objects and Reasons, it states that much greater attention is required to be given to children in conflict with law or those in need of care and protection. It further states that there is also an urgent need for creating adequate infrastructure and involvement of the family, voluntary organizations and community to achieve the object behind the JJA 2000. It refers to clause (3) of Article 15, clause(e) and (f) of Article 39 and Articles 45 and 47 of the Constitution of India and states that it is the primary duty of the State to ensure that all needs of the children are fulfilled and that their basic human rights are fully protected. The JJA 2000 brought all children below the age of eighteen years within its fold and made two categories of children, viz. (i) juvenile in conflict with law, and (ii) child in need of care and protection. It brought uniformity in the age of the child under section 2(k) and provided that a juvenile or child means a person who has not attained eighteenth year of age. The JJA 2000 retained

section 3 of the JJA 1986 in its original form and provides for continuation of the inquiry in respect of juveniles who had ceased to be juvenile. Section 7A (as introduced by the 2006 Amendment), which is construed as a mandatory provision provides that the Courts shall make an inquiry and take such evidence as may be necessary for determining the age of an accused person who makes a claim of juvenility. It further provides that the Court can start an inquiry *suo moto* if it is of the opinion that the accused person was a juvenile on the date of commission of the offence. After an inquiry is conducted, the Court is required to record a finding whether the person is a juvenile or not and state his age as nearly as possible. Section 14 contemplates an inquiry by the JJ Board within a period of 4 months when the juvenile is produced before the Board. Section 15, which retains most part of section 21 of the JJA 1986 as to the order that may be passed against a juvenile, makes it obligatory for the Board to obtain a social investigation report on the juvenile either through a probation officer or a recognized voluntary organization or otherwise before passing an order under section 15. It is provided under section 16 that no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life or committed to prison in default of payment of fine or default of furnishing security. Section 19 takes care of future employment of a juvenile and provides that a juvenile who has committed an offence shall not suffer disqualification if attached to a conviction for any offence. Section 20 keeps alive and continues the proceedings in respect of a juvenile pending in any Court on the date on which the JJA 2000 came into force. It further provides that if the Court finds

that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward him to the Board which shall pass orders in respect of him in accordance with provisions of the JJA 2000. It further provides that the Board may, for any adequate and special reason to be recorded in the order, review the case and pass proper order in the interest of such juvenile. Besides this proviso an explanation was also added in section 20 by an amendment in the year 2006 which further clarified that the determination of juvenility of a child shall be in terms of clause (l) of section 2 in all pending cases including trial, revision or any other criminal proceedings, even if the juvenile ceased to be so on or before the date of commencement of the JJA 2000. The Explanation further states that the provisions of this Act shall apply as if the said provisions had been in force for all purposes and at all material times, when the alleged offence was committed.

16. The brutal Nirbhaya¹⁶ case became the nation's voice for a change in the existing laws to deal with the juveniles with sufficient maturity. The Juvenile Justice Act, 2015 (in short, JJA 2015) was brought on the statute book and came into effect from 15th January 2016. Section 2 (13) refers to the child in conflict with law and provides that a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of the crime is a child in conflict with law. It makes a distinction between petty offence, serious offence and heinous offence. The petty offences include the offences for which the maximum

¹⁶ Mukesh & Anr. v. State (NCT of Delhi) & Ors. : (2017) 6 SCC 1

punishment provided under any law is 3 years and any offence for which the punishment is imprisonment for 3 to 7 years has been categorized as a serious offence. It further provides that a heinous offence would be such offence for which the minimum punishment provided under any penal statute is imprisonment for 7 years or more. This categorization of offences in three groups is for the purpose of inquiry and preliminary assessment by the JJ Board which is constituted under section 4 in each district. Under section 14, the Board holds an inquiry when a child alleged to be in conflict with law is produced before it and the Board is empowered to pass such orders in relation to such child as it deems fit. Sub-section (4) to section 14 provides that the inquiry proceedings for petty offences shall stand terminated if they remain inconclusive even after an extended period. However, for completion of inquiry in relation to serious or heinous offences, the Board shall be granted further extension of time by the Chief Judicial Magistrate/Chief Metropolitan Magistrate for the reasons to be recorded in writing. Section 94 requires the Committee or the Board to make an assessment of age of the child based on his appearance and proceed with the inquiry without waiting for further confirmation of the age. Sub-section (2) removes any doubt whatsoever regarding the documents which shall be held proof of the date of birth. The provisions made under section 94 read as under:

“(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.”

17. A significant change brought in by the JJA 2015 is incorporated under section 15 which deals with a child who has completed or is above the age of sixteen years and who is alleged to have committed a heinous offence. It contemplates a preliminary assessment by the JJ Board relating to the physical and mental capacity of the child who has committed a heinous offence and is between the ages of sixteen and eighteen years. On assessment of the ability to understand the consequences of the offence and its circumstances, the JJ Board shall have an option to transfer the matter to the Children’s Court if it concludes that there is a need for further trial. Such a child is sent to a place of safety for reformation and rehabilitation up to the age of twenty-one years if he is found on trial, guilty of committing a heinous offence. On completing the age of twenty-one years, an evaluation of the child is conducted by the Children’s Court which may either release the child or transfer him to an adult jail for the rest of the term of imprisonment. Section 18 provides the manner in which and the punishment to which the juvenile can be subjected to, except the award

of death sentence or life imprisonment without the possibility of release.

18. The JJA 2015 is a very exhaustive legislation which seems to take care of every aspect of the Juvenile Justice. It is spread over 112 sections and appears to be a complete Code in itself. The way every provision has been framed starting from the Preamble gives the impression that the JJA 2015 is intended to provide a wholesome solution to the problems relating to children. The definition clause spread over 61 clauses in section 2 defines child; abandoned child; child in conflict with law; child in need of care and protection; child legally free for adoption; orphan; surrendered child; juvenile etc. It defines juvenile to mean a child below the age of eighteen years. Similarly, child has been defined to mean a person who has not completed eighteen years of age. Section 2 (9) provides that the best interest of child means the basis for any decision taken regarding the child for fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development. In the JJA 2015, there is a separate chapter devoted to the rehabilitation and social reintegration of the children. It provides that the process of rehabilitation and social integration of the children shall be undertaken preferably through family-based care, based on the individual care plan of the child. It further provides under sub-section (2) of section 39 that the process of rehabilitation and social integration of the child in conflict with law shall be undertaken in the observation homes if the child is not released on bail. Today this is the umbrella Act on child protection. It lays down, in section 3, the general principles on

protection of the child's rights. The most important principle under section 3 is the principle of presumption of innocence, which provides that all children should be presumed to be innocent and not have any criminal intent till the age of eighteen years. The other general principles incorporated under section 3 are; (i) Principle of dignity and worth, (ii) Principle of participation, (iii) Principle of best interest, (iv) Principle of family responsibility, (v) Principle of safety, (vi) Principle of positive measures, (vii) Principle of non-stigmatizing semantics, (viii) Principle of non-waiver of rights, (ix) Principle of equality and non-discrimination, (x) Principle of right to privacy and confidentiality, (xi) Principle of institutionalization as a measure of last resort, (xii) Principle of repatriation and restoration, (xiii) Principle of fresh start, (xiv) Principle of diversion, and (xv) Principles of natural justice. This is remarkable that the provisions under sections 22, 23, 24 and 25 are intended to confer every conceivable benefit to a child alleged to be in conflict with law. Section 22 provides that no proceeding against a child shall be instituted or any order be passed under Chapter VIII of the Code of Criminal Procedure, 1973. Section 23 puts a bar on the joint trial of a child in conflict with law and a person who is not a child. Section 24 removes stigma of conviction and provides that a child who has committed an offence shall not suffer disqualification, if any attached to a conviction. All these provisions start with a non-obstante clause and clearly protect the interest of a child in conflict with law. Section 25 is also in sync with the legislative intendment that a child alleged or found to be in conflict with law is not denied any benefit under this Act. It provides that all pending

proceedings before any Court on or before the commencement of the JJA 2015 shall be continued as if this Act had been enacted.

19. Given the purpose behind the JJAs, every Court is obliged to give effect to the child welfare legislations. The Courts are required to adopt the route of purposive interpretation whenever a progressive beneficial legislation is under review. It is the duty of the Court to discern the object behind each provision in the context of the background in which a particular provision is framed and enacted. We may also recollect that long back “*Sheela Barse (II)*”¹⁵ sent a message to the nation that it is a duty of all Courts to give retrospective effect to the child-related legislations so as to ensure that the children are not denied the legal protection that the legislature intends to confer upon them. The provisions of the JJAs must be given their fullest meanings and should receive wide interpretation to cover every conceivable circumstance leaning in favor of the children. A review of the case laws indicates that the Legislature and the Judiciary both have been acting in tandem with each other when it comes to protecting the rights of children. The first landmark decision which expounded a child-related legislation came in “*Umesh Chandra v. State of Rajasthan*”¹⁷. This Court held that the relevant date for the applicability of the Rajasthan Children Act, 1970 is the date on which the offence is committed. This Court visualized a situation where the child may have crossed the threshold age and ceased to be a child by the time the case comes up for trial and held that the relevant date for age determination shall be the date of occurrence and not the date of trial. In “*Gopinath Ghosh v.*

¹⁷ (1982) 2 SCC 202

*State of West Bengal*¹⁸ a plea was raised for the first time before this Court that Gopinath Ghosh was below eighteen years on the date of occurrence and was, therefore, a child as defined under section 2(d) of the West Bengal Children Act, 1959. He along with Bharat Ghosh and Jagannath Ghosh was convicted under section 302 read with section 34 of the Indian Penal Code for committing murder on 19th August 1974. His conviction was confirmed by the High Court, and he approached this Court in a Special Leave Petition. Pursuant to an order passed by this Court, an inquiry was conducted in which both parties were permitted to lead evidence. The concerned Judge recorded a finding in his report that Gopinath Ghosh was aged between sixteen and seventeen years on the date of offence. Unfortunately, the jurisdiction of the trial Court to hold the trial of Gopinath Ghosh and to sentence him to suffer imprisonment for life was never questioned before any Court. This Court held that it was not proper to allow such a technical plea and thwart the benefit of the Act being extended to him, if he was otherwise entitled to it. In *"Bhoop Ram v. State of U.P."*¹⁹ a plea of juvenility was raised for the first time before this Court. Bhoop Ram was less than sixteen years of age as on 3rd October 1975, when the offence was committed. He relied upon a school certificate which recorded his date of birth as 24th July 1960. However, in the report pursuant to an inquiry conducted by the Sessions Judge, it was recorded that Bhoop Ram would have completed sixteen years on the date of occurrence. This Court held that the school certificate shall prevail over the opinion of the doctor if no doubt is raised about

¹⁸ (1984) Supp. SCC 228

¹⁹ (1989) 3 SCC 1

truthfulness of the entries in the certificate. Bhoop Ram was treated as a child within the meaning of section 2(4) of the UP Children Act, 1951 and the sentence imposed upon him was quashed while sustaining his conviction for murder. "*Pradeep Kumar v. State of UP*"²⁰ followed the same line of reasoning and the sentences imposed upon Pradeep Kumar and Krishan Kant were quashed upon a finding that they were below the age of sixteen years as on the date of occurrence. Aligning with these decisions, "*Bhola Bhagat v. State of Bihar*"²¹ held that the benefits of the Bihar Children Act, 1970 should not be refused on technical grounds. There were three convicts who were claiming benefit under the Act on the ground that they were below the age of sixteen years on the date of offence and, therefore, should have been treated as child within the meaning of section 2(h). This Court held that in case there is any doubt about genuineness of the plea of juvenility, then the Court must make due inquiry by giving opportunity to the parties to establish their claims and record a positive finding regarding the age of the accused. Upon holding that Bhola Bhagat, Parbhunath Prasad and Chandra Sen Prasad were children as on the date of offence, this Court quashed the sentence awarded to them while sustaining their conviction for murder.

20. These decisions consistently held that the relevant date for determination of the age of juvenile is the date of commission of the offence. But, in the meantime, a 2-Judge Bench of this Court²² struck a discordant note and held that the age determination of the juvenile

²⁰ (1995) Supp 4 SCC 419

²¹ (1997) 8 SCC 720

²² Arnit Das v. State of Bihar : (2000) 5 SCC 488

must be with reference to the date of his production before the Court and not the date of occurrence of the offence. This conflict was finally resolved by a 5-Judge Bench in "*Pratap Singh*"² which affirmed that the reckoning date for the age determination is the date of commission of the offence. It further held that the JJA 2000 must be applied to the pending cases provided the accused was below eighteen years of age on 1st April 2001, that is, when the JJA 2000 came to be enforced. This restriction on applicability of the JJA 2000 deprived the benefit of the JJA 2000 to a juvenile who was below the age of eighteen years on the date of offence. The Government brought in amendments to obviate the possible denial of benefit to a juvenile under the JJA 2000. The Parliament introduced section 7A which provided that whenever a claim of juvenility is raised before any Court, or a Court is of the opinion that the accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry and take such evidence as may be necessary so as to determine the age of such person, and shall record a finding whether the accused is a juvenile or not, stating his age as nearly as possible. Proviso to section 7A further manifests the legislative intendment to extend the benefit of the Act to the juvenile even if he ceased to be a juvenile on or before the date of commencement of this Act. It provides that a claim of juvenility may be raised before any Court, and it shall be recognized at any stage even after final disposal of the case. It further provides that such a claim of juvenility shall be determined in terms of the provisions contained in this Act and the rules framed thereunder and not as per the provisions of the Code of Criminal Procedure. "*Vaneet Kumar Gupta v. State of*

*Punjab*²³ further reiterated that the plea of juvenility can be raised at any stage, even after the final disposal of the case. However, this Court raised a word of caution and observed that if the plea of juvenility was not raised before the Courts below and is raised for the first time before this Court, the judicial conscience of the Court must be satisfied by placing adequate and satisfactory material that the accused was below the age of eighteen years on the date of offence.

21. Another significant development in judicial interpretation as to applicability of the JJA 2000 came in *"Hari Ram v. State of Rajasthan & Anr."*²⁴. The accused was not a juvenile under the JJA 1986 as he had crossed the age of sixteen years. According to the father of Hari Ram, his date of birth was 17th October 1982 and he had crossed the age of sixteen years and thirteen days on the date of offence. The Sessions Judge determined his age to be below sixteen years on the date of offence and directed a trial by the JJ Board. This all happened after the enforcement of the JJA 2000 with effect from 1st April 2001. This Court held that Hari Ram must be treated as a juvenile even though he had attained the age of eighteen years on or before the commencement of the JJA 2000. Similarly, in *"Dharambir"*³ the accused was not a juvenile on the date of offence under the JJA 1986. He was convicted under sections 302 and 307 read with section 34 of the Indian Penal Code. His conviction was maintained by the High Court but by the time Criminal Appeal filed by him was dismissed, the JJA 2000 had come into force. The plea of juvenility was raised for the first time before this Court and his age as on the date of offence was determined to be sixteen years

²³ (2009) 17 SCC 587

²⁴ (2009) 13 SCC 211

nine months and eight days. This Court laid stress on proviso to sub-section (1) of section 7A of the JJA 2000 and referred to the decision in "*Hari Ram*"²⁴ to hold that all persons who were below the age of eighteen years on the date of commission of the offence, even prior to 1st April 2001, must be treated as juvenile notwithstanding that the claim of juvenility was raised after the person had attained the age of eighteen years on or before the date of the commencement of the JJA 2000 or was undergoing sentence upon his conviction. The delay in making a claim of juvenility is not fatal is again reiterated in "*Jitendra Singh*"⁶. As to the nature of inquiry for age determination, "*Ashwani Kumar Saxena v. State of Madhya Pradesh*"²⁵ criticized the manner in which the trial Court had conducted an inquiry for age determination of the accused. It held that the inquiry under section 7A is not some sort of investigation or a trial under the Code of Criminal Procedure and the inquiry contemplated under section 7A must be held under the provisions of the JJAs and the Rules framed thereunder. This Court further held that a medical opinion can be obtained in cases where no documentary proof such as Matriculation Certificate or equivalent Certificate, or a birth Certificate from the school is not available. Even so the birth Certificate given by a Corporation or a Municipal Authority or a Panchayat shall suffice the purpose and there is no question of obtaining medical opinion from the Medical Board.

22. The next stage in the adjudicatory process concerning the juvenile pertains to the nature of order that can be passed by the Court when the convict is found to be a juvenile on the date of offence.

²⁵ (2012) 9 SCC 750

A 3-Judge Bench of this Court in *“Karan alias Fatiya v. State of Madhya Pradesh”*²⁶ dwelt upon the issue as to whether the conviction of a person who was juvenile on the date of occurrence should be set aside. This Court reflected on the previous judgments of the Court in *“Ashwani Kumar Saxena”*²⁵, *“Jitendra Singh”*²⁶, *“Raju v. State of Haryana”*²⁷, *“Ashok Kumar Mehra v. State of Punjab”*²⁸, *“Satya Deo v. State of U.P.”*²⁹ and *“Mahesh v. State of Rajasthan”*³⁰, and observed that different Benches of this Court have adopted different parameters. While a few judgments interfered with the order of sentence and maintained the conviction of the juvenile, there are cases which did not discuss the issue of whether the conviction of the juvenile should be set aside. In *“Karan”*²⁶ this Court held that the merits of the judgment of conviction can be tested by the Court and set aside in appropriate cases.

23. Coming back to the facts of this case, we observe that during pendency of Miscellaneous Criminal Case No. 24675 of 2018 the High Court passed an order for causing an inquiry for assessing the age of the appellant and directed suspension of sentence awarded to him in Sessions Case No. 129 of 2005. In the inquiry before the JJ Board, the original marksheet of Class V issued by the Government Secondary School, Hetampur, original marksheet of Class VIII from the Hardikar Kisan Higher Secondary School, Sikrauda Saraichaula and the original Birth Certificate of the appellant issued by the Gram Panchayat Sikrauda were produced in evidence. Three witnesses including the

²⁶ (2023) 5 SCC 504

²⁷ (2019) 14 SCC 401

²⁸ (2019) 6 SCC 132

²⁹ (2020) 10 SCC 555

³⁰ (2021) 18 SCC 582

father of the appellant who examined himself as PW1 deposed before the JJ Board that the date of birth of the appellant was 1st July 1987. The Principal of the Government Secondary School where the appellant was first admitted in Class V stated before the JJ Board that the appellant's name is recorded at Roll No. 605 with his date of birth as 1st July 1987. The in-charge of the record room in the office of the District Education Officer confirmed that the Primary School Examination result for the year 1995-96 recorded the date of birth of the appellant as 1st July 1987. This witness produced the original copy of the admission register of the Hardikar Kisan Higher Secondary School, Sikrauda. The JJ Board considered the materials laid before it and concluded as under:

“It is noteworthy that Witness Ramjilal PW-1, the father of applicant Avnish, stated in his statement that his son Avnish's date of birth was 01.07.1987 and expressed his desire to have him admitted directly to Class 5. In support of this, he presented the applicant's Class 5 and 8 mark sheets and birth certificate. Ashok Sharma, PW-2, instructor at the *Aupchariksetar* Education Center, Hetampur, also confirmed that the applicant was first admitted to his school and that his date of birth was 01.07.1987. Similarly, Witness Vinod Kumar Singh also confirmed that the applicant's date of birth was 01.07.1987 in the archives of the office of the District Education, Officer, Morena, in the records related to applicant Avnish Kumar Sharma.

It is noteworthy that the First Information Report FIR submitted by the applicant and a copy of Sessions Case No. 129/05 of the Hon'ble Second Additional Sessions Judge, Morena, mention the incident as having occurred on 13.09.04. Therefore, in such a situation, the provisions of Rule 12(3) of Rules 2007 of the Juvenile Justice Act, 2000 are attracted for verification of the age of the juvenile, which provides that "In every case involving a child or a juvenile in conflict with law, the Court or the Board, as the case may be, shall obtain evidence for the purpose of age verification by:

(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.

In compliance with the provisions of Rule 12 (3) regarding his age, the applicant has submitted his Class 5 mark sheet issued by the school in which he was first admitted, in which the date of birth of applicant Mahavir alias Avnish Sharma is mentioned as 01.07.1987 and the above mentioned date of birth of the applicant has been confirmed by Ashok Sharma, instructor of his first school and *Aupchariketar* school, Hetampur. The applicant has also submitted his birth certificate issued by Gram Panchayat Sikroda under Rule 12 (3) (a) (iii), in which the date of birth of the applicant is also mentioned as 01.07.1987.

It is noteworthy that in the case for which the age of the applicant Avneesh Sharma is being determined in the above case, the incident is recorded to have taken place on 13.09.2004.

The oral and documentary evidence presented by the applicant confirms that the applicant's date of birth is 01.07.1987 and the Juvenile Justice Board does not find any basis to disbelieve the above documents and the incident date 13.09.2004 has been mentioned in the case on the basis of which the age of the juvenile on the date of the incident is shown to be 17 years 2 months 12 days. And after investigation on the basis of the above evidence, the applicant Mahavir alias Avnish Sharma is shown to be a minor juvenile on the date of incident 13.09.2004."

24. In face of the aforesaid findings by the JJ Board which were not challenged by the State, it was the bounden duty of the High Court to consider the case of the appellant in accordance with the applicable laws on juvenile. The laws relating to child rights and protection of children put the Court in the role of *parens patriae*. Keeping in mind the object avowed behind the JJAs, it becomes a duty of the Court to secure the best interest of children and ensure their ultimate rehabilitation. This object can be achieved only when the Courts do not feel

constrained to give a wider meaning to the provisions of the JJAs. This also needs to be kept in mind that a juvenile proceeding is fundamentally different from an adult criminal trial. The Courts should be guided by the purposive interpretation of the JJAs and should not feel handicapped by the temporal constraints. There is an added responsibility on the Courts to ensure that the benefits of the beneficial and remedial statutes such as the JJAs are not denied to the children who have committed any crime. However, the High Court failed to give effect to the plea of juvenility which was not considered by any Court before, in accordance with law and by following the procedure prescribed under the JJAs, and held as under:

“20. The core issue raised in the present petition is the claim of juvenility of the petitioner on the date of incident i.e., 13.09.2004. It is asserted that the petitioner's date of birth is 01.07.1987, and therefore he was juvenile on the date of the alleged occurrence.

21. It is trite law that juvenility is not merely a mitigating circumstances but a jurisdictional fact, which goes to the very root of the authority of the Court to conduct trial and impose sentence. If an accused is found to be a juvenile on the date of commission of offence, the regular criminal courts are divested of jurisdiction to try and sentence such person in the manner applicable to adults.

22. Section 7-A of the Juvenile Justice Act, 2000 casts a mandatory obligation upon every Court to conduct an enquiry whenever a claim of juvenility is raised or appears from the record. The proviso to Section 7-A unequivocally declares that such claim may be raised at any stage, even after final disposal of the case.

23. The legislative intent underlying this provision is to ensure that no person who was a juvenile on the date of the offence is denied the protective umbrella of juvenile justice jurisprudence on account of technicalities or delay

24. Pursuant to the order passed by a Coordinate Bench of this Court, the matter was referred to the Juvenile Justice Board, Morena, which conducted an enquiry and submitted its report dated 11.05.2019, declaring the petitioner to be a juvenile on the date of incident. Although such report carries persuasive value and is based on appreciation of statutory documents, this Court is of the considered opinion that this Court does not possess jurisdiction to interfere with the matter especially, when the matter

and travelled upto the Hon'ble Apex Court. This Court is conscious of the fact that the inherent powers under Section 482 Cr.P.C. are preventive and corrective and not substitutive or appellate in nature. Unlike the Hon'ble Supreme Court, which exercises plenary powers under Article 142 of the Constitution, this Court does not possess unfettered authority to mould relief beyond statutory confines. Therefore, while this Court can intervene to ensure that a jurisdictional illegality is cured, it cannot itself assume the role of the Trial Court and record primary findings of fact regarding juvenility or alter the sentence on equitable considerations alone.

25. At this juncture, it is necessary to note an additional and determinative circumstance, namely that the judgment of conviction dated 21.12.2005 passed by the Trial Court was affirmed by this Court in Criminal Appeal No. 05/2006 vide order dated 17.03.2017, and thereafter the petitioner carried the matter before the Hon'ble Apex Court by filing Special Leave Petition (Criminal) No. 8226/2017. The said Special Leave Petition came to be dismissed as withdrawn on 11.05.2018, and admittedly, no plea of juvenility was raised before the Hon'ble Apex Court, nor was any liberty sought or reserved to agitate such issue at a later stage. Thus, the criminal proceedings between the parties have attained finality up to the highest Court.

26. It is well settled that the inherent jurisdiction of this Court under Section 482 Cr.P.C. cannot be exercised to reopen, review or nullify a judgment which has attained finality particularly after affirmation by the Hon'ble Supreme Court.

27. While Section 7-A of the Juvenile Justice Act permits a claim of juvenility to be raised at any stage, the said provision cannot be read in isolation or in a manner that obliterates doctrine of finality of litigation, especially where the accused had full opportunity to raise all available pleas before the appellate and constitutional courts and consciously chose not to do so. The power under Section 482 Cr.P.C. is procedural and corrective, not substitutive of appellate or constitutional remedies. Once the matter has travelled up to the Hon'ble Supreme Court and has been disposed of, this Court cannot sit in appeal over the same by invoking inherent powers even on equitable considerations."

28. The judgments relied upon by the petitioner, including Pratap Singh, Abdul Razzaq, Satish @ Dhanna, and Dharambir (supra), were rendered in circumstances where:-

- (i) Either the issue of juvenility was raised before the Hon'ble Supreme Court itself; or
- (ii) The Apex Court exercised its constitutional powers to do complete justice; or
- (iii) The proceedings had not attained irrevocable finality.

29. In the present case, however, the petitioner invoked the jurisdiction of the Hon'ble Apex Court without raising the plea of juvenility, thereby allowing the conviction to attain finality on merits. Having failed to urge such

a plea at the highest forum, the petitioner cannot be permitted to reagitate the issue collaterally by invoking Section 482 of the Cr.P.C.

30. Judicial discipline demands that once a matter has been adjudicated up to the Hon'ble Apex Court, subordinate courts, including this Court, must refrain from entertaining proceedings which have the effect of unsettling concluded issues. Permitting such a course would not only run contrary to the settled principles governing inherent jurisdiction but would also open floodgates for endless litigations, defeating the very object of criminal jurisprudence.

31. In view of the aforesaid discussion, this Court holds that although the claim of juvenility is statutorily recognizable, the present case stands on a different footing as the matter has attained finality up to the Hon'ble apex Court. The plea of juvenility was never raised before the Apex Court and this Court, in exercise of its limited jurisdiction vested under Section 482 of the Cr.P.C., cannot interfere with or reopen a concluded judgment.

32. Accordingly, finding no ground for interference, the present petition is dismissed. It is clarified that this Court has not examined the merits of the conviction afresh and the dismissal is based on the bar of finality and limitation of inherent jurisdiction. The petition stands dismissed accordingly."

25. Quite clearly, the High Court acted over cautiously. It felt that it is bound by judicial discipline and propriety, though it was not so, having regard to the admitted facts in the present case. The High Court missed out on an important fact and committed an error of record inasmuch as it held that the judgment of conviction rendered against the appellant attained finality up to the Supreme Court. Whereas the Special Leave Petition filed by the appellant was dismissed as withdrawn on 11th May 2018. The common order dated 11th May 2018 passed in SLP(Crl.) No. 4286 of 2018 (@ Crl. M.P. No. 8226/2017) with SLP(Crl.) No. 7662/2017 & SLP(Crl.) No. 5232/2017 reads as under:

"The special leave petition is dismissed as withdrawn.

SLP(Crl.)No.7662/2017 & SLP(Crl.)No.5232/2017 :

We do not find any ground to interfere with the conviction of the petitioners. However, having regard to the advanced age of the petitioners, Ramji Lal and Munni Devi, the sentence awarded to them is reduced to the period already undergone by them.

The special leave petitions are accordingly disposed of. Pending applications, if any, shall also stand disposed of.”

26. On a glance at the order dated 11th May 2018, it is easily gathered that the Special Leave Petitions filed by Ramji Lal and Munni Devi were taken up for hearing simultaneously and disposed of with a benefit to them to the effect that the sentence awarded to them was reduced to the period already undergone by them. Being on the same footing and all having been convicted and sentenced under section 201 Part II of the Indian Penal Code, it does not appeal to common sense that the appellant would have withdrawn the Special Leave Petition without any reason while a benefit on the point of sentence was granted to Ramji Lal and Munni Devi, his parents. Before the High Court, the appellant made a statement on oath that he had withdrawn the Special Leave Petition with a view to raise the plea of juvenility before the High Court. However, the High Court confined itself to too many technical shackles while observing that no plea of juvenility was raised before the Supreme Court nor was any liberty sought or reserved to agitate such an issue at a later stage.

27. Section 362 of the Code of Criminal Procedure declares that: “Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error”. On a plain reading of section 362 it is easily gathered that inherent power of the High Court under section 561-A of the old Code or section 482 of the new Code is not covered under the saving provision thereunder. The expression “otherwise provided by this Code or by any other law for the time being

in force” refers to those provisions only which expressly authorizes the Court to alter or review its judgment. In *“Sankatha Singh & Ors. v. State of U.P.”*³¹ this Court held that the inherent power of the Court cannot be exercised for doing what is specifically prohibited by the Code. *“Hari Singh Mann v. Harbhajan Singh Bajwa & Ors.”*³² further restricted the exercise of inherent power by the High Court and held that the High Court is not authorized to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction in the aid or under the cloak of section 482 of the Code of Criminal Procedure.

28. However, the inherent power of the High Court which it possessed even before a formal expression of such power is reflected in the incorporation of section 561-A of the old Code cannot be obliterated or rendered nugatory by operation of section 362 of the Code of Criminal Procedure. Pertinently, section 561-A of the Code of Criminal Procedure, 1898 was incorporated in 1923 to remove any doubt about the existence of inherent power in the High Courts. In *“State of Karnataka v. M. Devendrappa & Anr.”*³³ this Court held that section 482 does not confer any new powers on the High Court and it only saves the inherent power which the Court possessed before the enactment of the Code. This Court further held that all Courts, whether civil or criminal, possess in the absence of any express provision as inherent in their constitution all such powers as are necessary to do the right and to undo a wrong on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest*.

³¹ AIR 1962 SC 1208

³² (2001) 1 SCC 169

³³ (2002) 3 SCC 89

Besides the frequently used expression “to prevent abuse of the process of the Court” which is generally reflected in the orders quashing the criminal proceedings in the exercise of inherent power under section 482 of the Code of Criminal Procedure, this Court has approved the exercise of powers by the High Court to interfere with its own decision, order or judgment by carving out exceptions to the general prohibition on the power to the criminal Court to alter its decision, order or judgment.

29. The scope and ambit of the expression “to secure the ends of justice” have been expanded in myriad situations, and this Court approved the exercise of inherent power by the High Court to interfere with its own decision in certain circumstances. The power under section 482 is wide enough and exercise of this power cannot be confined in cast iron. “*P. Ramachandra Rao v. State of Karnataka*”³⁴ expressly held that the High Court can exercise its inherent power in cases where there is a breach of fundamental right under Article 21 of the Constitution of India. In “*Talab Haji Hussain v. Madhukar Purshottam Mondkar & Other*”³⁵ this Court took a view that the High Court has inherent power under section 561-A of the Code of Criminal Procedure, 1898 to cancel the bail where the Court comes to a conclusion that it would not be safe to permit the accused to be enlarged on bail. In “*Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh & Ors.*”³⁶ this Court entertained a second quash petition on the ground that the order passed in a subsequent

³⁴ (2002) 4 SCC 578

³⁵ AIR 1958 SC 376

³⁶ (1975) 3 SCC 706

quash petition would not amount to reviewing or revising the earlier order made by the High Court.

30. The provisions under section 362 cannot be considered in a rigid or overtechnical manner to defeat the ends of justice. The bar of section 362 of the Code of Criminal Procedure shall not operate in cases where the order or judgment under consideration was without jurisdiction and inherent power of the High Court can be exercised to recall such orders. This Court made a distinction between a review petition and a recall petition in *“Asit Kumar Kar v. State of West Bengal & Ors.”*³⁷ and held that the Court does not go into the merits of the matter in a recall petition and simply recalls an order which was passed without giving an opportunity of hearing to the affected party. In *“State of Punjab v. Davinder Pal Singh Bhullar & Ors.”*³⁸ this Court held that if an order or judgment is pronounced in violation of the principles of natural justice or without giving an opportunity of hearing to the affected party the inherent power of the High Court can be exercised to recall such an order which in effect was a nullity. In *“Ganesh Patel v. Umakant Rajoria”*³⁹ this Court held that the High Court was right in recalling the order which was passed in absence of the opposite party and the order was based on false statement made by the other party. This Court further held that such application for recall of the order is maintainable as it is an application seeking a procedural review and not a substantive review to which section 362 of the Code of Criminal Procedure shall apply. The power of procedural review which is

³⁷ (2009) 2 SCC 703

³⁸ (2011) 14 SCC 770

³⁹ 2022 SCC OnLine SC 2050

inherent in the High Court is not affected by section 362 of the Code of Criminal Procedure, and the High Court can set aside a palpably erroneous order which was passed under some misconception of law. The Court can review or recall its judgment or order if the proceedings before it suffered from an inherent lack of jurisdiction or a fraud was played upon the Court to obtain the order or a mistake was committed by the Court which caused prejudice to the party. In “*Madhu Limaye v. The State of Maharashtra*”⁴⁰ this Court held that the inherent power of the High Court can be exercised to correct an order and that the exercise of this inherent power by the High Court is not affected by section 397 (2) of the Code of Criminal Procedure if interference by the High Court is necessary for securing the ends of justice.

31. This needs no reiteration that mistakes committed by the Court should not cause prejudice to any party. A Court can always recall its order or judgment and correct the mistake in certain situations within the statutory parameters. In “*A.R. Antulay v. R.S. Nayak & Anr.*”⁴¹ this Court declared that no man should suffer because of the mistake of the Court. It further held that no man should suffer a wrong by technical procedure of irregularities. This Court held as under:

“83...The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. *Ex debito justitiac*, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis.”

⁴⁰ (1977) 4 SCC 551

⁴¹ (1988) 2 SCC 602

32. For years, the appellant suffered due to the mistakes committed by the Courts. The acquittal of the appellant recorded in the trial Court for the charge under sections 302 and 304B of the Indian Penal Code was not challenged before the High Court. The crime of murder and dowry death having not been proved by the prosecution, the appellant could not have been convicted under section 201 Part II of the Indian Penal Code. His conviction under section 201 Part II can be recorded only upon a finding that a crime was committed and he was knowing or having reason to believe that such an offence was committed, and with the intent to screen the offender from legal punishment, caused the evidence thereof to disappear (refer "*Suleman Rehiman Mulani & Anr. v. State of Maharashtra*"⁴² and "*Kedar Nath & Ors. v. State of M.P.*"⁴³). Therefore, the conviction of the appellant under section 201 Part II of the Indian Penal Code must be held illegal.

33. The High Court has undoubted jurisdiction to recall its own order or judgment which results in miscarriage of justice. Subject to a decision in any case on the merits by this Court, a fundamental issue which will change the course of the decision remains open in the case so long as the High Court is seized with the matter. The High Court shall have inherent jurisdiction to correct its order or judgment and do complete justice. The limitation on inherent power of the High Court is a kind of self-restraint originating from the philosophy of judicial propriety. This shall, however, not be an issue falling in the realm of inherent limitations under section 482 of the Code of Criminal Procedure, if the High Court decides to recall its previous order or

⁴² (1967) SCC OnLine SC 337

⁴³ (1993) Supp 1 SCC 7

judgment because a mistake was committed by the Court. If the juvenile was denied a statutory benefit and thereby a grave prejudice was caused to him, the High Court has all powers to remedy the situation and secure the ends of justice.

34. The conviction of the appellant under section 201 Part II of the Indian Penal Code having been found illegal, cannot be sustained and is, accordingly, set aside. Consequently, the judgment of conviction and of sentence both dated 21st December 2005 in Sessions Case No. 129 of 2005 passed against the appellant by 2nd Additional Sessions Judge, Morena are set aside. The appellant, who is on bail, stands discharged from the liability of bail bonds furnished by him.

35. The appeal is allowed in the aforesaid terms.

36. This case brings to the limelight a serious issue which has hindered the implementation of the JJAs. We must remember that the impact of industrialisation, urbanisation and migration changed the people's daily lives. They started migrating from rural areas to the cities as a result of which there was an explosion in population. The cohesiveness of communities started weakening and the family gradually lost effective control over the children. Poverty, inequality, illiteracy and the discriminatory environment in which a child grows trigger delinquent behavior in the child, and he becomes a victim of the crime. The rise in the number of cases coming to this Court raising the plea of juvenility for the first time in this Court indicates in ample measures that there is a huge gap in the understanding of law by the stakeholders. *"Gopinath Ghosh"*¹⁸ took notice of this fact and made certain suggestions. The investigating officers are generally obsessed

with the motto to bring the culprit to book and the Courts before whom a juvenile is produced do not focus attention on the assessment of age of the juvenile. But in the process, the mandate of law is overlooked and the rights of a juvenile in conflict with law get violated; the child becomes a casualty. A child should not be treated as a criminal. He is a victim of the circumstances. Sometimes he is drawn to the crime world due to socio-economic or emotional and psychological reasons. The State owes a responsibility to reintegrate the juveniles in society, rather than permanently stigmatizing them. It is well remembered that children are the greatest assets of any nation and they should be nurtured and grown as responsible citizens, mentally alert, physically fit and morally healthy to contribute to the betterment of society. The greatest recompense that the State can gain from expenditure on children is in the form of a powerful human resource which would be ready to take its place in the forward march of the nation. In conclusion, the existing system needs further strengthening, effective monitoring of investigative processes and implementation of the statutory provisions.

37. With these words, we close the proceedings of this case.

38. Pending application(s), if any, shall stand disposed of.

....., J.
(PRASHANT KUMAR MISHRA)

....., J.
(SHREE CHANDRASHEKHAR)

**NEW DELHI;
SEPTEMBER 02, 2026.**