

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT: HYDERABAD**

**CORAM:**

**\* HON'BLE SRI JUSTICE K. LAKSHMAN**

**AND**

**HON'BLE SMT. JUSTICE P. SREE SUDHA**

**+ CRIMINAL REVISION CASE No.273 OF 2019**

**% Delivered on: 18.07.2023**

**Between:**

# Abdul Asif

.. Petitioner

And

\$ State of Telangana,

Rep.by its Public Prosecutor

.....Respondent

! For Petitioner

: Sri M.A.Shakeel,  
Ld. Counsel,

^ For Respondent

: Sri T.V.Ramana Rao,  
Addl.Public Prosecutor

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> Head Note

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? Cases Referred

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1. (2009) 13 SCC 211
2. 2013 SCC Online Madras 1355
3. (2012) 9 SCC 768
4. (2011) 13 SCC 744
5. (2012) 9 SCC 750
6. 2017 CrI.L.J.233 =(2016) SCC Online All 797
7. 2012 CrI.L.J.4398
8. SLP (CrI) No.643 of 2020,
9. (2014) 8 SCC 390

**HON'BLE SRI JUSTICE K. LAKSHMAN**  
**AND**  
**HON'BLE SMT. JUSTICE P. SREE SUDHA**  
**CRIMINAL REVISION CASE No.273 OF 2019**

**ORDER:** (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. M.A.Shakeel, learned counsel for the petitioner and Sri T.V.Ramana Rao, learned Addl.Public Prosecutor.

2. This revision is filed challenging the order dated 19.11.2018 passed in CrI.M.P.No.36 of 2018 in S.C.No.297 of 2005 by III Additional District and Sessions Judge, Asifabad.

3. A case in Cr.No.155 of 2004 was registered against the petitioner herein by P.S.Kagaznagar for the offences punishable under Sections 376 and 304 of IPC. On completion of investigation, the Investigating Officer laid charge sheet and the same was taken on file vide S.C.No.297 of 2005. The allegations leveled against the petitioner herein are that he raped and killed a minor girl namely



Vide judgment dated 25.09.2006, the Court below convicted the petitioner/accused on both counts and sentenced with imprisonment for life. Feeling aggrieved by the said judgment, the petitioner herein preferred an appeal vide CrI.A.No.1623 of 2006. A Division Bench of

this Court vide judgment dated 15.04.2009 dismissed the said appeal. The SLP filed by the petitioner/accused was also dismissed by the Apex Court on 22.02.2010.

4. Thereafter, the petitioner herein filed an application vide CrI.M.P.No.36 of 2018 under Section 9(2) of the Juvenile Justice (care and protection of children) Act, 2015 (for short, 'the Act') before the learned III Additional Sessions Judge (FTC) with a prayer to enquire by ascertaining the age of the petitioner by examining the documents produced and send the petitioner to juvenile justice Board. The same was dismissed vide order dated 19.09.2018. Challenging the said order, the petitioner filed the present revision.

5. This revision was listed before the learned Single Judge of this Court, initially, who in turn opined that the matter shall be heard by a Division Bench. The Hon'ble the Chief Justice, vide note dated 10.08.2022 directed the Registry to list this matter before us.

6. The petitioner filed the aforesaid application vide CrI.M.P.No.36 of 2008 on the following grounds:-

- i. He was provided with legal aid and the counsel appearing on his behalf failed to request the trial Court to determine the age of the petitioner.

- ii. Even in the Appeal and SLP, the said plea was not taken due to lack of proper advice. However, the issue of juvenility may be raised at any point of time, even after final disposal of the case. He was 15 years old at the time of the alleged incident and he is a juvenile, a child in conflict with the law and therefore, he is entitled to benefit under the provisions of the Act.
- iii. He has filed date of birth certificate issued by Chandrapur City Municipal Corporation, Health Department, Government of Maharashtra. He has studied upto VI Standard, City Higher Secondary School, Chandrapur (M.S.) According to which his date of birth is 09.01.1989. He has also filed leaving certificate dated 05.04.2003.
- iv. According to the said certificate, he was only 15 years as on the date of incident i.e. 02.12.2004. Therefore, he is entitled for the benefit of juvenile though it was not raised earlier.

7. The same was opposed by the learned Addl. Public Prosecutor on the following grounds:-

- i. The petitioner herein failed to raise the said ground either before the trial Court or before the appellate Court and even before the Apex Court.

- ii. Section 7-A of the Act, 2000 came into force w.e.f. 22.08.2006. Whereas, the alleged incident took place only on 02.12.2004. Therefore, the said amendment is only prospective and it has no retrospective effect.
- iii. There is delay in filing the aforesaid application and the petitioner herein filed the said application by creating documentary evidence. Therefore, considering the said aspects, the court below rightly dismissed the application filed by the petitioner.
- iv. There is no error in it.

8. The Court below vide order dated 19.11.2018, dismissed the said application on the ground that Section 7-A of the Act was introduced with effect from 22.08.2006 that it has only prospective application, so the accused cannot claim benefit of the amendment made subsequent to the offence committed by him.

9. Sri M.A.Shakeel, learned counsel for the petitioner would submit that the benefit of juvenility can be claimed at any stage before any court even after passing of judgment by the trial court, dismissed by the appellate Court and by the Apex Court. He has also placed

reliance on several judgments which will be dealt in the following paragraphs.

10. Whereas, learned Additional Public prosecutor, referring to the principal laid down in the very same judgments cited by the learned counsel for the petitioner would submit that as per the principle laid down, the amendment will have only prospective effect and it will not have retrospective effect and on consideration of the said aspects only, the Court below dismissed the application filed by the petitioner. There is no error in it. The petitioner created the aforesaid documents and filed before the court after seven years of dismissal of the SLP filed by him before the Apex Court.

11. The issue of raising of juvenility at any stage before any Court even after disposal of the case is no longer *res integra*.

12. In **Hariram Vs. State of Rajasthan**<sup>1</sup>, the Apex Court held that in light of the amendment (Act No.33 of 2006), the applicability of the new Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, Act, 2000') is for those who committed the offence when they were below 16 years, subsequently crosses their 18 years of age on or before 01.04.2001. It was further held that it is the juvenile

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<sup>1</sup> (2009) 13 SCC 211

in conflict with law was below 18 years when the offence was committed and subsequently he was committed offence before 01.04.2001 and even after that the juvenility can be claimed under the Act, 2000 which has retrospective operation to the offence committed before 01.04.2001.

13. Relying on the principle laid down by the Apex Court in **Hariram** (supra), a Division Bench of Madras High Court in **Jayavel Vs. State**<sup>2</sup> held that the new Act, 2000 covers the cases in old Act. Juvenility can be claimed even if juvenile in conflict of law crossed age of 18 years. A juvenile in conflict with law, who was below 18 years, when offence committed, can claim juvenility even after crossing 18 years of age at any stage of case. Even if case is over in trial court or appellate court or revisional court or Apex court, juvenility can be claimed subsequently for first time in an independent proceedings. Even after final disposal of case before Apex Court, juvenility can be claimed in proceedings under Article 226 of the Constitution of India.

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<sup>2</sup> 2013 SCC Online Madras 1355

14. In **Anil Agarwal Vs. State of West Bengal**<sup>3</sup>, the Calcutta High Court rejected the juvenility claimed by the Accused therein as belated, the Apex Court, referring to Section 7-A of the new Juvenile Justice Act, set aside the judgment of the Calcutta High Court and held that juvenility can be raised at any time even after final disposal of the case.

15. In **Amit Singh Vs. State of Maharashtra**<sup>4</sup>, the conviction and sentence recorded as against the appellant, confirmed by Bombay High Court, was through SLP (Crl) was dismissed by the Apex Court and thereafter accused filed a Writ Petition under Article 32 of Constitution of India and for the first time claimed juvenility. The Apex Court referring to the principle laid down by the Apex Court in **Hariram** (supra) accepted the claim of the accused and directed his release from custody.

16. In **Aswin Kumar Saxena Vs.State of Madhya Pradesh**<sup>5</sup>, the Apex Court considered the enquiry under Section 7-A of the Act, and also procedure to be followed under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2000 (for short, ‘the

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<sup>3</sup> (2012) 9 SCC 768

<sup>4</sup> (2011) 13 SCC 744

<sup>5</sup> (2012) 9 SCC 750



Rules') and held that juvenility can be considered at any stage, even after final disposal of the case and the same has to be considered by following the procedure laid down under Section 7-A of the Act, 2000 and Rule 12 of the Rules.

17. Similar view was taken by Full Bench of Allahabad High Court in **Sher Singh Vs. State of UP**<sup>6</sup> and a Division Bench of Madras High Court in **S.Madheshwaran Vs. State of Tamil Nadu**<sup>7</sup>.

18. It is relevant to note that in **Hariram** (supra), the Apex Court was hearing SLP filed by the accused challenging the judgment of the trial Court convicting him confirmed by the High Court. In **Anil Agarwal** (supra), the accused filed SLP against the order passed by Calcutta High Court dismissing his plea not to try him along with adult co-accused.

19. In **Ashok Vs. State of Madhya Pradesh**<sup>8</sup>, the Apex Court held that the claim of juvenility can be raised before any court, at any stage, even after final disposal of the case and if the court finds a person to be a juvenile on the date of commission of the offence, it is to forward the juvenile to the Board for passing appropriate orders,

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<sup>6</sup> 2017 CrL.L.J.233 =(2016) SCC Online All 797

<sup>7</sup> 2012 CrL.L.J.4398

<sup>8</sup> SLP (CrL) No.643 of 2020,

and the sentence, if any, passed by a Court, shall be deemed to have no effect.

**20.** The Apex Court considering the finding of the trial Court that the juvenile was 16 years as on the date of commission of the offence, directed the trial court to conduct an inquiry and submit a report. Based on the report, considering the age of the accused 17 years, the Court allowed the SLP and set aside the judgment and also the conviction recorded by the Sessions Court.

21. The sum and substance of the aforesaid judgments is that the juvenility can be raised at any point of time at any stage even after final disposal of the case including SLP by the Apex Court. In the present case also, the Apex Court dismissed the SLP filed by the petitioner on 22.02.2010 itself. There is no dispute that the petitioner herein did not claim juvenility either before the trial Court or before the High Court or Apex Court. He has filed the present application vide CrI.M.P.No.38 of 2018 only on 18.11.2017 i.e. after 7½ years of dismissal of SLP. Thus, there is a delay on the part of the petitioner. However, in the light of the aforesaid principle laid down by the Apex Court and other Courts, juvenility can be raised at any stage.

22. It is relevant to extract Section 7-A of the Act and Rule 12

of the Rules:-

"7-A. Procedure to be followed when claim of juvenility is raised before any court:-

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided 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, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."

Rule 12 in The Rules:-

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 7A, 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.

23. The Act 2000, is an Act to consolidate and amend the law relating to juveniles in conflict with the law and children in need of care and protection, by providing them with proper care, protection and treatment by catering to their developmental needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment. The said Act was brought in by Government of India owing to the agreement in the international convention. Thereafter, Parliament on reviewing the working of the existing Juvenile Act, 1986 found that much greater attention is required to be given to children in conflict with law and for those who are in need of care and protection. The judicial system should be more child-friendly and accessible to a juvenile or child or anyone on their behalf including the Police, voluntary organisations, social workers, parents and guardians throughout the country. With the said object, the said Act was brought in. It includes recognition of rights of juvenile under international convention.

24. The Apex Court while upholding the constitutionality of the Act in **Subramanyaswamy Vs. Raju**<sup>9</sup>, considered the nature of juvenile enquiry by determining the guilt/innocence of the juvenile and determination of the age of the juvenile.

25. The said aspects were not considered by the Court below in the impugned judgment. Therefore, the impugned judgment is liable to be set aside.

26. In the light of the above discussion, the Criminal Revision Case is allowed. The order dated 19.11.2018 passed in CrI.M.P.No.36 of 2018 in S.C.No.297 of 2005 by III Additional District and Sessions Judge, Asifabad, is set aside. The learned Judge shall conduct enquiry in CrI.M.P.No.36 of 2018 in S.C.No.297 of 2005 afresh. Learned Judge shall also consider the delay of 7½ years in filing the application by the petitioner herein. Learned Judge shall also consider the contention of the learned Addl. Public Prosecutor that the petitioner herein has filed the present application with a delay of 7½ years without explaining the said delay properly and that he has filed the said application by creating the aforesaid documents. Thus, learned Judge shall consider the aforesaid aspects and pass order

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<sup>9</sup> (2014) 8 SCC 390

afresh strictly in accordance with law as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

As a sequel, the miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

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**JUSTICE K. LAKSHMAN**

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**JUSTICE P. SREE SUDHA**

**Date:18<sup>th</sup> July, 2023**

**Note: L.R.Copy to be marked.**

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