

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH
ON THE 17th OF AUGUST, 2022**

CRIMINAL REVISION No. 1439 of 2021

Between:-

SHRIRAM RAWAT

.....PETITIONER

(BY SHRI R.R. TRIVEDI, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER
THR. P.S. SITAMAU (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SHASHWAT SETH, GOVT. ADVOCATE)

This revision coming on for orders this day, the court passed the following:

ORDER

This criminal revision u/S 397 r/W 401 of Cr.P.C. has been preferred against the order dated 28.05.2021 passed by the Court of 2nd Additional Special Judge, Mandsaur S.S.T. No. 42/2020, whereby applicant's application filed u/S 94 of Juvenile Justice (Care and Protection of Children) Act, 2015[referred to as the Act of 2015 hereinafter] requesting to refer the matter to Juvenile Justice Board

for determination of applicant's age was rejected.

Facts giving rise to this revision petition are that applicant alongwith other co-accused persons is facing criminal trial in S.S.T. No. 42/2020 for the offences punishable u/S 8C/15 of NDPS Act. After filing of chargesheet till framing of charges, applicant was not represented by any one and on 17.05.2020, his counsel filed vakalatnama and found applicant's age below 18 years. Hence, on 18.05.2020, counsel for the applicant moved an application u/S 94 of the Act of 2015 by which prayer is made for referring the matter to Juvenile Justice Board for determination of his age as well as for his trial.

Learned trial Court vide order dated directed the respondent to verify the documents filed by the applicant in support of his aforesaid application and after receiving the verification report, vide order dated 28.05.2021 rejected applicant's application on the ground that school scholar register entry with regard to date of birth of the applicant is doubtful and secondly, as per date of birth entry of his Aadhar Card, his date of birth is 24.03.2000 and as per the said date of birth, applicant was major at the time of incident.

Learned counsel for the applicant submits that learned trial Court has committed an error of law while not taking into

consideration the application filed by the applicant u/S 94 of the Act of 2015. He further submits that exclusive jurisdiction for determination of the age of applicant lies with the Juvenile Justice Board constituted under the Act of 2015 as held in the case of *Indra Singh Vs. State of M.P. [2017(1) MPWN 105]*. Hence, learned trial Court has committed jurisdictional error in dismissing the application for determination of the age of applicant. Impugned order is patently illegal and thus, is liable to be set aside.

Learned counsel for the respondent/State has opposed the prayer and submits that it is apparent from the record that applicant was major at the time of incident. Hence, learned trial Court has rightly dismissed the application filed by the applicant for referring the matter to Juvenile Justice Board.

As in the instant case, incident occurred on 10.10.2020 i.e. after enforcement of the Act of 2015, therefore the claim of juvenility is raised before in the Court, the procedure to be adopted is stipulated u/S 9(2) and (3) of the Act of 2015 which reads as under:

- (1) ...
- (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

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(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.

U/s 94 of the Act of 2015, the presumption is raised that when a person is brought before the Juvenile Justice Board(JJ Board for short) or the Child Welfare Committee(Committee for short) and the said person is a child as nearly as may be, and proceed to inquiry u/S 14 or Section 36 as the case may be, without waiting for further confirmation of the age. But where the said Board or the Committee has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the JJ Board or the Committee, 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 the 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.

The relevant decisions on the provisions under consideration can be referred to at this stage :

(a) In the case of *Sanjay Kumar Gupta Vs. State of U.P. [2019(12) SCC 370*, Hon'ble the Apex Court considering the judgment passed in the case of *Ashwani Kumar Saxena[(2012) 9 SCC 750* and *Abuzar Hossain alias Gulam Hossain Vs. State of West Bengal [(2012) 10 SCC 489* noted that the decision in the case of Abuzar Hossain(supra) was rendered three days after the decision in the case of Ashwin Kumar (supra) which was a three Judge Bench decision wherein it was observed that the credibility and acceptability of the documents including the school leaving certificate would depend on the facts and circumstances of each case and no hard and fast rule as such could be laid down in that regard.

It was also observed that directing an inquiry is not the same

thing as declaring the accused to be a juvenile. In the former, the Court simply records a prima facie conclusion, while a declaration is made on the basis of evidence. Hence, the approach at the stage of directing an inquiry has to be more liberal lest, there is miscarriage of justice. The standard of proof required is different for both. In the former, the Court simply records the prima facie conclusion. It would eventually depend on how the Court evaluates such material for a prima-facie conclusion and the Court makes a declaration on evidence that it scrutinizes and accepts such evidence only if it is worthy of acceptance. In the case of ***Rishipal Singh Solanki Vs. State of Uttar Pradesh***[2021 SCC Oline SC 1079], Hon'ble Apex Court referring the aforesaid judgments as well as other judgments has observed as follows:

"32. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

(i) A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

(ii) An application claiming juvenility could be made either before the Court or the JJ Board.

(iia) When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.

(iib) If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-

section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

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

(iii) That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i),

(ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

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

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

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

(vii) *This Court has observed that a hyper-technical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.*

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

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

(x) *Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the [Indian Evidence Act](#) viz., [section 35](#) and other provisions.*

(xi) *Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in [Section 94\(2\)](#) of the JJ Act, 2015."*

In the instant case, application claiming juvenility was filed before the Court, therefore, this matter falls under the category of 32(iia) and (iib) i.e. sub clause 2 and 3 of Section 94 of the Act of 2015 in the case of ***Rishipal Singh Solanki(supra)*** would be applied. Applicant in support of his juvenility produced school scholar register

entry. Therefore, it can be said that he has discharged the initial burden, although the said presumption is however not conclusive proof of age of his juvenility and the same may be rebutted. But on the basis of documents produced by the applicant, presumption of juvenility may be applied in the matter as rightly held in the case of ***Indra Singh(supra)*** cited by learned counsel for the applicant.

Trial Court was not having power to determine the age of the applicant and this power is vested only with the JJ Board constituted under the Act of 2015. Therefore, it is apparent that the impugned order was not passed following the provisions of the Act, of 2015. Hence, the same is liable to be set aside.

In view of the above, petition is allowed. The impugned order dated 28.05.2021 is hereby set aside. The matter is remanded back to the trial Court for consideration of application filed by the applicant u/S 94 of the Act of 2015 afresh and pass appropriate order as per the provision of Section 94 of the Act of 2015 in accordance with law.

(Satyendra Kumar Singh)
Judge
17.08.2022