



**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**SINGLE BENCH:HON'BLE SHRI JUSTICE ALOK VERMA**  
**CRIMINAL REVISION NO.793 / 2016**

Indrasingh s/o Jaysingh Ji Rajput

Vs.

State of Madhya Pradesh

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Shri Anil Ojha, learned counsel for the applicant.

Shri Prasanna Bhatnagar, learned counsel for respondent/State.

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**ORDER**  
**(Passed on 15/03/2017)**

This criminal revision is filed under Section 53 of Juvenile Justice (Care and Protection of Children) Act, 2008 (now repealed herein after as the 'Act') and is directed against the order passed by learned Special Judge under NDPS Act, Neemuch in Special Sessions Trial No.28/2015 dated 08/03/2016, whereby, learned Special Judge held that on the date of offence i.e. 28/06/2015, age of the applicant was above 18 years and therefore, it was held by the Special Judge that his trial would be held under the provisions of Cr.P.C.

**2)** The relevant facts for disposal of this revision are that an

order under Section 7-A of repealed Act was filed by the present applicant before the learned Special Judge, which was decided by the Special Judge by the impugned order.

3) Learned counsel for the applicant submits that as per provisions of Section 7-A of repealed 'Act' and Rule 12 of Juvenile of Justice (Care and Protection of Children) Rules, 2007, only the age, as mentioned in the record of school should

be taken into consideration. When such record is available, the assessment of age by medical examination should not have been carried out, however, according to him in this case ossification test was conducted, in which, age of the present applicant was found to be 19 to 21 years and on the basis of this report, learned Special Judge held that on 28/06/2015 - on the date of occurrence, she was above 18 years of age.

4) Learned counsel for the applicant placed reliance on the judgment of Hon'ble Apex Court in the case of ***Ashwani Kumar Saxena vs. State of M.P. [2012 (9) SCC 750]*** and in case of ***Rakesh and others vs. State of M.P. [2015 (I) MPWN 42]***.

5) In case of ***Ashwani Kumar Saxena (Supra)***, Hon'ble Apex Court observed in para 4 of the judgment that :-

***¶34. Age determination inquiry contemplated under the J.J. Act and Rules has nothing to do with an enquiry under other legislations like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates. date of birth certificate from the school first***

*attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents. kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated. the Court, the J.J. Board or the Committee need to go for medical report for age determination.*

6) Learned counsel for the applicant also placed reliance on order passed in Criminal **Revision No.322/2015** dated **16/07/2015**, reported in **2015 (4) CDFC 1859 (M.P.) Aasendra vs. State of M.P.** This Court observed that, if the documents pertaining to school record were not doubtful or found forged, ossification test was not called for as held by **Ashwini Kumar Saxena (Supra)**.

7) After repeal of the Juvenile Justice (Care and Protection of Children) Act, 2000 by the new Act - Juvenile Justice (Care and Protection of Children) Act, 2015 the situation is entirely different. The provisions of Rule 12 of Rule 2007 were incorporated in Section 94 of the new Act, which may be reproduced as under :-

*94. (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.*

**8) The old Act was repeal and Section 111 by the new Act, which provides as under :-**

***111. (1) the Juvenile Justice (Care and Protection of Children) Act, 2000 is hereby repealed.***

***(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.***

9) In light of provisions of Section 111 of new Act, it is apparent that all the actions taken and acts done under the repealed Act, shall be deemed to have been done and taken under the corresponding provisions of this Act. Corresponding provision in the present case is Section 94 of new Act. The new Act came into force in January, 2016 while the impugned order was passed in March, 2016 and therefore, it was incumbent on the learned Special Judge that Judge should follow the provisions of Section 94, according to which, the Court of Session had no power to determine the age of accused and this power is granted only to the Juvenile Justice Board, constituted under the Act. How the age would be determined, as provided in Sub-Section 2 of Section 94 of new Act and therefore, it is apparent that the impugned order was not passed in accordance with the provisions of the new Act and therefore, the impugned order is liable to be set-aside. Accordingly, this application is **allowed**. The impugned order is set-aside the matter is reverted back to learned Special Judge for determining the age of the accused in accordance with Section 94 of new Act.  
Certified copy as per rules.

**(Alok Verma)**  
**Judge**

Adarsh/-\*\*