

**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 S/O SHRI BEERAM RAWAT AGE 17 YEARS
MINOR THR. NATURAL GUARDIAN FATHER BEERAM RAWAT S/O
SHRI NANGAJI RAWAT, AGED ABOUT 44 YEARS, OCCUPATION:
AGRICULTURIST GRAM DEVRIYA, TEH. MINAY (RAJASTHAN)**

.....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)

Reserved on : 09.07.2022

Delivered on : 17.08.2022

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 in Special S.T. No. 42/2020, whereby the applicant's application filed u/S 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 [in short JJ Act, 2015] for transferring his case to Juvenile Justice Board for trial was

rejected.

2. Facts giving rise to this revision petition are that on 10.10.2020, the applicant alongwith other co-accused persons was found to have 60 kg of poppy straw in their illegal possession and is facing criminal trial in Special S.T. No. 42/2020 for the offences punishable u/S 8(c)/15(c) of NDPS Act. In the said case, a chargesheet was filed on 16.12.2020, and charges were framed on 18.03.2021, against the applicant and other co-accused persons, but till then applicant was not represented by any counsel, and on 17.05.2021, the first time his counsel appeared and filed his vakalatnama and found applicant's age below 18 years. Then, on 18.05.2021, he moved an application u/S 94 of the JJ Act, 2015 before the Trial Court for transferring the case to the Juvenile Justice Board for trial. Learned trial Court conducted an inquiry and after getting verified the documents filed by the applicant in support of his aforesaid application, vide order dated 28.05.2021 rejected applicant's application on the ground that application claiming juvenility was filed after framing of charges. Secondly, the school scholar register entry with regard to the date of birth of the applicant is doubtful and as per his Aadhar Card, his date of birth is 24.03.2000, according to which he was major at the time of the incident.

3. Learned counsel for the applicant submits that the learned trial Court has committed an error of law while not taking into consideration the documents filed by the applicant in support of his application filed u/S 94 of the JJ Act, 2015. He further submits that exclusive jurisdiction for determination of the age of the 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, the learned trial Court has committed jurisdictional error in dismissing the application for determination of the age of the applicant. The impugned order is patently illegal and thus, is liable to be set aside.

4. Learned counsel for the respondent/State has opposed the prayer and submits that as per the applicant's own document (Adhar Card) entry, he was major at the time of the incident. Hence, the learned trial Court has rightly dismissed the application filed by the applicant for referring the matter to Juvenile Justice Board.

5. Heard learned counsel for the parties at length and perused the record.

6. From the perusal of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and also from the observations made by the Hon'ble Apex Court in the case of ***Rishi Pal Singh Solanki Vs. State of U.P. & Others*** [2021 SCC Online SC 1079], it is apparent that a claim of juvenility can be raised at any stage of a criminal proceeding, even after the final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of the such claim and if an application is filed before the Court claiming juvenility, the provision of sub-section 2 of Sec 94 of the JJ Act, 2015 would have to be applied or read alongwith sub-section 2 of Section 9, so as to seek evidence for the purpose of recording of finding stating the age of the person as nearly as may be. Relevant para of the aforesaid judgment passed in the case of ***Rishi Pal Singh Solanki Vs. State of U.P. & Others*** (*Supra*) is as under:

"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 the final disposal of the case. A

delay in raising the claim of juvenility cannot be a ground for the rejection of such a 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."

7. As mentioned above, when an application claiming juvenility is made before the JJ Board, then the procedure contemplated u/S 94 of the JJ Act, 2015 would apply. Under the said provision, the Board shall undertake the process of age determination by seeking the 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 the person.

8. The degree of proof required in a proceeding before the JJ Board is higher than when an inquiry was made by a Court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015). In case of an inquiry, the Court records a *prima facie* conclusion, but when there is a determination of age as per sub-section 2 of Section 94 of the JJ Act, 2015, a declaration is made on the basis of evidence.

9. In the instant case, the application dated 18.05.2021 was moved before the trial Court. Therefore, the learned trial Court was required to make only an inquiry about the juvenility of the applicant. The applicant in support of his juvenility produced the Scholar Register of Keshav International School Bijaynagar, wherein at S.R. No. 60, the date of birth of the applicant is written as 05.12.2002. He also produced copies of mark sheets of Classes III, VII, and IX, alongwith the birth certificate, issued by the Principal, Keshav International School Bijaynagar, wherein the same date is mentioned as his date of birth and according to which on the date of the incident his age comes about 17 years 10 months and 5 days.

10. Learned Trial Court doubted the genuineness of the aforesaid

entries relating to the date of birth of the applicant on the ground that the registration form filled up at the time of the applicant's admission into the school is not filled up properly, applicant's photo is not pasted on the same and issuance dates have not been mentioned on the birth certificate and mark sheets. A perusal of the record reveals that entries relating to the applicant's date of birth on the birth certificate and mark sheets were made on the basis of school scholar register entry and *prima facie*, there is no reason to disbelieve the entry made therein about the date of birth of the applicant.

11. 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)***. Although the said presumption is not conclusive proof of the applicant's juvenility and the same may be rebutted. But nothing has been produced on record which negates the case of the applicant. The reliance upon the entry of the Adhar card, in preference to the school record, was erroneous in view of the provisions of section 94(2) of the JJ Act 2015. As observed by the Hon'ble Apex Court in the case of ***Rishi Pal Singh Solanki(Supra)***, 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 and 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.

12. In view of the aforesaid discussion and also in the absence of any rebuttal evidence, in the considered opinion of this Court, the applicant has discharged his initial burden about his juvenility as there was no reasonable ground to doubt the said documents produced by

him. The learned trial Court has committed an error in rejecting the application filed by the petitioner in this regard.

13. Consequently, the petition is allowed. The impugned order dated 28.05.2021 is hereby set aside, and *prima facie* it is held that the applicant had not attained the age of 18 years on the date of the incident; as such, he is a child in conflict with the law. Therefore, the trial court is directed to proceed further in the matter, accordingly.

14. With the aforesaid, revision stands disposed of.

(Satyendra Kumar Singh)

Judge

17.08.2022

sh/-

