JABAR SINGH

v.

DINESH & ANR.

(Criminal Appeal No. 487 of 2010)

MARCH 12, 2010

[HARJIT SINGH BEDI AND A.K. PATNAIK, JJ.]

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000:

s. 49 – Juvenile – Determination of age – Jurisdiction of competent authority and trial court – Application rejected by trial court – High Court allowing the application and remitting the matter to trial court for trial of applicant in accordance with the provisions of the Act, treating him to be a juvenile on the date of commission of offence – HELD: Section 49 is attracted when a person is brought before the competent authority, namely, the Juvenile Justice Board and not otherwise – In the instant case, applicant was not brought before the competent authority and, therefore, it had no jurisdiction to make inquiry as to the age of the applicant as provided u/s 49(1) – The applicant was facing trial before the Court of Session when he filed the application claiming juvenility and it was, therefore, for the trial court to decide upon his claim – Section 49 contains no provision prohibiting the court before which a claim of juvenility is raised to determine the age of the claimant – Trial court, therefore, had jurisdiction to inquire into the age of the applicant – Trial court after taking into the material produced and the evidence adduced rightly rejected the claim of the applicant that he was juvenile at the time of commission of the offence – Section 7-A and r.12 laying down the procedure to be followed in the case of claim for juvenility had not come into force on 14.2.2006, the date of the order of the trial court and, therefore, the trial court was not required to follow the procedure laid down in s.7-A of the Act or r.12 of the

A *Rules – In the absence of any statutory provision laying down the procedure to be followed in determining a claim of juvenility raised before it, the court had to decide the claim of juvenility of the appellant on the materials or evidence brought on record by the parties and s.35 of the Evidence Act*
B *– Juvenile Justice (Care and Protection of Children) Rules 2007 – r.12 – Evidence Act, 1872 – s.35.*
[para 7-9]

s. 53 – Revisional jurisdiction of High Court – Order of trial court rejecting the claim of applicant that he was a
C *juvenile on the date of commission of the offence – Set aside by High Court – HELD: The age of applicant was a question of fact, which was to be decided on the evidence brought on record before the court – Trial court arrived at the finding that the claim of the applicant that he was less than 18 years at*
D *the time of commission of the alleged offence, was not believable – While arriving at this finding of fact, the trial court had not only considered the evidence produced by the applicant but also considered the fact that either in the earlier cases or during the investigation of the instant case, the*
E *applicant had not raised this plea – Trial court had also considered the physical appearance of the applicant – Such determination on a question of fact could not be disturbed by the High Court in exercise of its revisional powers – While exercising revisional powers, High Court cannot convert itself*
F *to an appellate court and reverse the findings of fact arrived at by the trial court on the basis of evidence or material on record, except where the High Court is not satisfied as to the legality or propriety of the order passed by the trial court – The trial court, in the instant case, has given good reasons for*
G *discarding the evidence adduced by the applicant in support of his claim that he was a juvenile at the time of commission of the alleged offence and there was no scope to hold that the order of the trial court was either illegal or improper, and the High Court should not have substituted its own finding for that of the trial court by re-appreciating the evidence – The order*
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the trial court for trial of applicant in accordance with law treating him not to be a juvenile at the time of the commission of the alleged offence – Evidence Act, 1872 – s. 35. [para 12-14]

EVIDENCE ACT, 1872:

s. 35 – Relevancy of entry in public record – Applicant claiming before trial court to be a juvenile – Evidence regarding date of birth – HELD: The entry of date of birth of the applicant in the admission form, the school records and transfer certificate did not satisfy the conditions laid down in s.35 inasmuch as the entry was not in any public or official register and was not made either by a public servant in the discharge of his official duty or by any person in performance of a duty specially enjoined by law and, therefore, the entry was not relevant u/s 35 for the purpose of determining the age of the applicant at the time of commission of the alleged offence – Juvenile Justice (Care and Protection of Children) Act, 2000 – ss. 49 and 53. [para 12]

Jyoti Prakash Rai @ Jyoti Prakash v. State of Bihar **2008 (3) SCR 818 = (2008) 15 SCC 223;** *Ravinder Singh Gorkhi v. State of U.P.* **2006 (2) Suppl. SCR 615 = (2006) 5 SCC 584, relied on**

Chandavarkar Sita Ratna Rao v. Ashalata S. Guram **1986 (3) SCR 866 = (1986) 4 SCC 447, referred to**

Birad Mal Singhvi v. Anand Purohit **1988 Suppl. SCR 1 = 1988 (Supp) SCC 604 = AIR 1988 SC 1796, cited.**

Case Law Reference:

2008 (3) SCR 818	**relied on**	**para 4**
2006 (2) Suppl. SCR 615	**relied on**	**para 4**
1986 (3) SCR 866	**referred to**	**para 4**

A **1988 Suppl. SCR 1 cited para 5**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 487 of 2010.

From the Judgment & Order dated 18.8.2006 of the High
B Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Revision Petition No. 166 of 2006.

M.R. Calla, Pratiksha Sharma, Rishi Matoliya, Mukul Kumar, P.D. Sharma for the Appellant.

C Dr. Manish Singhvi, AAG, Devnashu Kr. Devesh, R. Gopalakrishnan (for Aruneshwar Gupta), Kumar Katikay, Ranvijay, Sukpal Singh, Amarjit Singh Bedi for the Respondent.

The Order of the Court was delivered by

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ORDER

A.K. PATNAIK, J. 1. Leave granted.

2. The appellant is the father of Prahalad Singh, who is
E alleged to have been murdered by the Respondent No.1, and he has filed this appeal against the order dated 18.08.2006 of the High Court of Rajasthan in S.B. Criminal Revision Petition No. 166 of 2006 in which the High Court has held that the Respondent No.1 was a juvenile on the date of commission of
F the offence and has directed that the matter will be remitted for trial under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, "the Act").

3. The relevant facts very briefly are that on 11.07.2004 one Bhomaram lodged a complaint in Pratap Nagar Police Station,
G Jodhpur, against the Respondent No.1 and others alleging the offence under Section 302 of the Indian Penal Code (for short, "the IPC") along with other offences under the IPC. A criminal case was registered and after investigation, the police filed chargesheet against inter alia the Respondent No.1 and the

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case was transferred by the Sessions Judge to the Special Judge, SC/ST (Prevention of Atrocities) Cases, Jodhpur, for trial. Before the charges could be framed in the case, an application was filed on behalf of Respondent No.1 under Section 49 of the Act, stating therein that the date of birth of Respondent No.1 was 05.10.1988 and, therefore, on 11.07.2004, when the offence is alleged to have been committed, the Respondent No.1 was less than 18 years of age and he was, thus, a juvenile and has to be tried separately from the other accused under the Act. The State of Rajasthan, in its reply, stated inter alia that the Respondent No. 1 did not disclose that he was a juvenile at any time during the investigation of the case or during the trial of other criminal cases for which he was being tried and that he has taken this plea for the first time to avoid the trial for the heinous crime and that the application of Respondent No.1 should be rejected. The Respondent No.1 examined witnesses and produced documents in support of his claim that he was a juvenile. The State of Rajasthan did not produce any evidence. The trial court; after hearing the parties and considering the evidence, rejected the application of the Respondent No.1 by order dated 14.02.2006. Aggrieved, the Respondent No.1 filed S.B. Criminal Revision Petition No. 166 of 2006 before the High Court and by the impugned order dated 18.08.2006, the High Court allowed the Revision Petition, set aside the order dated 14.02.2006 passed by the trial court and remitted the matter to the trial court for trial of the Respondent No.1 treating him to be a juvenile on the date of commission of the alleged offence in accordance with the provisions of the Act.

4. Mr. M.R. Calla, Senior Counsel appearing for the appellant, submitted that this Court has held in *Jyoti Prakash Rai @ Jyoti Prakash v. State of Bihar* [(2008) 15 SCC 223] that the beneficial provisions of the Act are to be applied only for the purpose of the interpretation of the Act and not for arriving at a conclusion whether a person is juvenile or not and

A the question whether an offender was juvenile on the date of commission of the offence or not is essentially a question of fact which is required to be determined on the basis of the materials brought on record by the parties. He submitted that in *Ravinder Singh Gorkhi v. State of U.P.* [(2006) 5 SCC 584] B this Court has further held that Section 35 of the Evidence Act, which provides that an entry in a register maintained in the ordinary course of business by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such C register is kept, would be a relevant fact, will only apply if the conditions mentioned in Section 35 are fulfilled. He submitted relying on the aforesaid decisions of this Court that Section 35 of the Evidence Act could not be applied to the entry of date of birth of Respondent No.1 in the school records produced on D behalf of Respondent No.1 before the trial court and on the evidence as produced, the trial court rightly held that the date of birth of the Respondent No.1 cannot be believed to be 05.10.1988. He submitted that the trial court after scrutinizing the evidence, oral and documentary, produced by the E Respondent No.1 has held that the evidence produced by Respondent No.1 have been created by the Respondent No. 1 for escaping conviction for a grave offence such as murder and was not believable and by physical appearance, Respondent No.1 looks to be over 18 years of age and on 11.07.2004 he was an adult and not a juvenile. He submitted F that this finding of the trial court on a question of fact with regard to the age of Respondent No.1 could not be disturbed by the High Court in a Revision because it is well-settled that the High Court cannot re-appreciate evidence produced before the trial court and arrive at a conclusion different from that of the trial G court. In support of this proposition, he relied on *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram* [(1986) 4 SCC 447] in which this Court has held that the High Court, while exercising its jurisdiction under Articles 226/227 of the Constitution, should not interfere with a finding of fact of the inferior court or tribunal, H except where the finding was perverse and not based on any

material evidence or has resulted in manifest injustice. He submitted that in this decision, this Court has further taken the view that if the trial court came to a conclusion which was possible on the evidence, the High Court will not disturb the conclusion arrived at by the trial court merely because the High Court is of the view that a different conclusion is also possible on the same evidence. He vehemently argued that the High Court has lost sight of these limitations of its jurisdiction and on the basis of its own appraisal of the evidence taken a view that the Respondent No.1 was a juvenile on the date of the commission of the offence and has set aside the order of the trial court.

5. Dr. Manish Singhvi, learned counsel appearing for the State of Rajasthan, submitted that the Juvenile Justice (Care and Protection of Children) Rules 2007 (for short, "the Rules"), which have come into force on 26.10.2007, provide in Rule 12 the procedure to be followed in determination of age and Sub-Rule (3) of Rule 12 provides that the age determination inquiry shall be conducted by the Court or the Juvenile Justice Board or, as the case may be, the Child Welfare Committee by seeking evidence by obtaining the matriculation or equivalent certificate, if available, and in the absence of such certificate, the date of birth certificate from the school first attended, and in the absence of such certificate, the birth certificate given by a corporation or a municipal authority or a panchayat, and only in the absence of these three kinds of certificates the medical opinion could be sought from a duly constituted Medical Board which will declare the age of the juvenile or child. He, however, submitted that these rules had not come into force when the trial court considered and rejected the application of Respondent No.1 claiming juvenility by its order dated 18.08.2006. He submitted that the reasons given by the trial court in the order dated 18.08.2006 were very sound and the High Court ought not to have set aside the findings of the trial court merely on the basis of entries in the school records relating to the date of birth of Respondent No. 1, particularly when there

A was over-writing on these entries. He cited *Birad Mal Singhvi v. Anand Purohit* [1988 (Supp) SCC 604 = AIR 1988 SC 1796] in which this Court, referring to its earlier decisions, has held that the date of birth mentioned in a school register or a school certificate has no probative value unless either the B parents are examined or the persons who have special knowledge of the date of birth of the person and on whose information the entry has been made have been examined.

6. Mr. Kumar Karthikey, learned counsel appearing for Respondent No.1, on the other hand, supported the impugned C order passed by the High Court and submitted that the High Court has considered the evidence adduced by Respondent No. 1, both oral and documentary, and has rightly come to a finding that the date of birth of Respondent No.1 was 05.10.1988. He submitted that the proviso to sub-section (1) D of Section 7A of the Act is clear that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions of the Act and the Rules even if the juvenile has ceased to be so on or before the E date of commencement of the Act and, therefore, the argument on behalf of the State of Rajasthan that at the stage of investigation Respondent No.1 did not take a plea that he was a juvenile at the time of commission of the alleged offence has no merit. He further submitted that under Section 49 of the Act F it is only the competent authority which has the jurisdiction to make due enquiry as to the age of a person brought before it and the competent authority in the present case is the Juvenile Justice Board and it is for the Juvenile Justice Board and not the court to determine the age of Respondent No.1.

G 7. Section 49(1) of the Act is quoted herein below:

"*Presumption and determination of age.*—(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise H than for the purpose of giving evidence) is a juvenile or the

child, the competent authority shall make due Inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be."

The opening words of sub-section (1) of Section 49, quoted above, shows that only when a person is "brought before the competent authority" under any of the provisions of the Act, the competent authority is required to make due enquiry as to the age of that person and for that purpose take such evidence as may be necessary and record a finding whether the person is a juvenile or not. Section 49 is, therefore, attracted when a person is brought before the competent authority and not otherwise. In the present case, the Respondent No. 1 was not brought before the competent authority, namely, the Juvenile Justice Board. Hence, Section 49 was not attracted and the competent authority had no jurisdiction to make enquiry as to the age of Respondent No. 1 as provided under sub-section (1) of Section 49.

8. In fact, Respondent No.1 was before the trial court when he filed an application claiming juvenility and it was, therefore, for the trial court to make an enquiry and take such evidence as may be necessary to determine the age of Respondent No.1 and decide upon his claim of juvenility. Section 49 of the Act contains no provision prohibiting the court before which a claim of juvenility is raised, to determine the age of the person before the court. The trial court, therefore, had the jurisdiction to inquire into the age of Respondent No.1 and for that purpose take such evidence as may be necessary and record a finding whether Respondent No.1 was a juvenile or not at the time of commission of the offence. As a matter of fact, after the trial court in the present case determined the age of Respondent No.1 and rejected his claim to juvenility by the order dated 14.02.2006, Section 7A has been introduced in the Act with effect from 22.08.2006 laying down the procedure to be followed when claim of juvenility is raised before any court. This

A insertion of Section 7A in the Act indicates that Parliament never intended to oust the jurisdiction of the court to decide a claim of juvenility raised before it, and that the court always had the power to decide a claim of juvenility raised before it. Hence, the contention raised on behalf of Respondent No.1 that it was B only the competent authority which had the jurisdiction to decide whether Respondent No.1 was a juvenile at the time of commission of the alleged offence or not, has no merit.

9. The trial court passed the order on 14.02.2006 rejecting the claim of Respondent No.1 that he was a juvenile at the time C of commission of the offence and Section 7A of the Act laying down the procedure to be followed when claim of juvenility is raised before any court had not come into force by 14.02.2006. When the trial court passed the order rejecting the claim of Respondent No.1 of juvenility on 14.02.2006, the Rules, D including Rule 12 laying down the procedure to be followed in determination of age of a juvenile in conflict with law, had also not come into force. The trial court, thus, was not required to follow the procedure laid down in Section 7A of the Act or Rule 12 of the Rules. In the absence of any statutory provision laying E down the procedure to be followed in determining a claim of juvenility raised before it, the court had to decide the claim of juvenility of Respondent No.1 on the materials or evidence brought on record by the parties and Section 35 of the Evidence Act. This Court has held in *Ravinder Singh Gorkhi* F (supra) that in case of a dispute with regard to the age of the person who is alleged to have committed the offence, the Court has to appreciate the evidence having regard to the facts and circumstances of the case and it will be the duty of the court to accord the benefit to a juvenile, provided he is found to be a G juvenile and not to give the same benefit to a person who, in fact, is not a juvenile and cause injustice to the victim. Again in *Jyoti Prakash* (supra) this Court has held that in the absence of any evidence which is relevant under Section 35 of the Indian Evidence Act, the age of a person who has committed the H offence must be determined keeping in view the factual matrix involved in each case.

10. On a reading of the order dated 14.02.2006 of the trial court, we find that the trial court has found that AW1 Shivraj examined on behalf of Respondent No.1 stated before the court that he looks after the administrative work of Jesus Mary Public School and this work was being previously looked after by his son Anand, who had expired. AW1 has further stated that Exhibit-1 was the admission form in relation to Respondent No.1 in which the date of birth of Respondent No.1 was mentioned as 05.10.1988 and in this admission form the uncle of Respondent No.1 had put his signatures marked by the court as Exhibit-1E to 1F and on the basis of this information in the admission form an entry was made in the scholar's register (Exhibit-2) that the date of birth of Respondent No.1 was 05.10.1988. The trial court, however, has taken note of the fact that AW1 in his cross-examination could not say who had filled up the admission form and on what basis the date of birth of Respondent No.1 was written as 05.10.1988. The trial court has further observed that AW1 has admitted that the scholar's register (Exhibit-2) was not in his handwriting and that he had never seen the boy whose name was mentioned in Exhibit-2. The trial court has held that there was over-writing in the date of birth of Respondent No.1 in Exhibit-1 and from a perusal of the document it was not clear on what basis the date of birth of the Respondent No.1 was written and for this reason the date of birth of the Respondent No.1 cannot be believed to be 05.10.1988. The trial court has also held that the father of Respondent No.1 Sukhram was also examined before the court as AW4 and that he had stated that he got prepared the horoscope of his son (Exhibit-12) from Pandit Jagdish Prasad Sharma who had expired and that Respondent No.1 was born on 05.10.1988 in village Surpura, District Jodhpur. The trial court has, however, held that according to the evidence of AW4 the horoscope (Exhibit-12) was approximately 17-18 years old but by merely looking at the document it was clear that the document was not so old and on the basis of Exhibit-12, therefore, the date of birth of Respondent No. 1 cannot be said to be proved as 05.10.1988. The trial court has further held in

its order that the uncle of Respondent No. 1 Pancharam was examined as AW5 who is said to have furnished the date of birth of Respondent No.1 in the admission form (Exhibit-1) as 05.10.1988, but in his examination-in-chief AW5 has clarified that he had mentioned the date of birth on the saying of his brother Sukhram. The trial court has further held that since the basis of the date of birth was not written in the admission form (Exhibit-1), and no independent witness had been produced before the court such as the mid-wife or nurse who had participated in the birth of Respondent No.1 which is said to have taken place on 05.10.1988 in village Surpura, the court cannot believe that the date of birth of Respondent No.1 was 05.10.1988 particularly when in eight other criminal cases pending in various courts relating to incidents of the years 2002, 2003 and 2004, Respondent No.1 had not taken the plea that on the date of the incident he was a juvenile and cannot be tried by the ordinary courts but by the juvenile courts in accordance with the Act. The trial court has also held that the evidence, documentary and oral, produced on behalf of Respondent No.1 in connection with his age, appeared to have been created for escaping the punishment for the alleged offence of murder and that from the appearance of Respondent No.1, it looked that the Respondent No. 1 was above 18 years of age on 11.07.2004 when the alleged offence under Section 302 of the IPC was committed.

11. In the impugned order passed in revision, the High Court reversed the findings of the trial court and held that even if Respondent No.1 had not raised a plea that he was a juvenile in other criminal cases or during the course of investigation of the present criminal case, such a plea could be raised by him at any stage during the course of trial and even at the appellate stage. The High Court further held that the date of birth of Respondent No.1 in the admission forms, school records, and transfer certificates were good proof in relation to the age of Respondent No.1 and simply because by physical appearance the Respondent No.1 did not look like a juvenile, the court

cannot hold that Respondent No.1 was not juvenile at the time of commission of the alleged offence. The High Court concluded that the trial court has miserably failed to appreciate the evidence in its correct perspective and the findings recorded by the trial court in relation to the age of Respondent No.1 were contrary to the established principles of law in relation to appreciation of evidence and deserved to be set aside.

12. We are of the considered opinion that the High Court was not at all right in reversing the findings of the trial court in exercise of its revisional jurisdiction. The entry of date of birth of Respondent No.1 in the admission form, the school records and transfer certificates did not satisfy the conditions laid down in Section 35 of the Evidence Act inasmuch as the entry was not in any public or official register and was not made either by a public servant in the discharge of his official duty or by any person in performance of a duty specially enjoined by the law of the country and, therefore, the entry was not relevant under Section 35 of the Evidence Act for the purpose of determining the age of Respondent No.1 at the time of commission of the alleged offence. As has been held by this Court in *Ravinder Singh Gorkhi and Jyoti Prakash* (supra) the age of Respondent No.1 was a question of fact, which was to be decided on the evidence brought on record before the court and it was for the trial court to appreciate the evidence and determine the age of Respondent No.1 at the time of commission of the alleged offence and in this case, the trial court has arrived at the finding that the claim of Respondent No.1 that he was less than 18 years at the time of commission of the alleged offence, was not believable. While arriving at this finding of fact, the trial court had not only considered the evidence produced by Respondent No.1 but also considered the fact that either in the earlier cases or during the investigation of the present case, the Respondent No. 1 had not raised this plea. While arriving at this finding of fact, the trial court had also considered the physical appearance of Respondent No.1. Such determination on a question of fact made by the trial court on

A the basis of the evidence or material before it and other relevant factors could not be disturbed by the High Court in exercise of its revisional powers.

13. A plain reading of Section 52 of the Act shows that no statutory appeal is available against any finding of the court that B a person was not a juvenile at the time of commission of the offence. Section 53 of the Act which is titled "Revision", however, provides that the High Court may at any time, either of its own motion or on an application received on that behalf, call for the record of any proceeding in which any competent C authority or court of session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order, and may pass such order in relation thereto as it thinks fit. While exercising such revisional powers, the High Court cannot convert itself to an appellate court and reverse the D findings of fact arrived at by the trial court on the basis of evidence or material on record, except where the High Court is not satisfied as to the legality or propriety of the order passed by the trial court. The trial court, as we have discussed, has given good reasons for discarding the evidence adduced by E the Respondent No.1 in support of his claim that he was a juvenile at the time of commission of the alleged offence and there was no scope to hold that the order of the trial court was either illegal or improper and the High Court should not have substituted its own finding for that of the trial court on the age F of Respondent No.1 at the time of commission of the alleged offence by re-appreciating the evidence.

14. In the result, we allow this appeal and set aside the impugned order dated 18.08.2006 of the High Court in S.B. Criminal Revision Petition No. 166 of 2006 and remit the G matter to the trial court for trial of Respondent No.1 in accordance with law treating him not to be a juvenile at the time of the commission of the alleged offence.

R.P. Appeal allowed.