* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 11th November, 2021**
Pronounced on: 24th November, 2021

\+ **CRL.REV. P. 358/2021 & CRL.M.B. No. 17734/2021**

VISHAL @ JOHNY ….. Petitioner
Through: Mr. Joginder Tuli and Ms. Joshina Tuli, Advocates.

versus

STATE (NCT OF DELHI) ..…Respondent
Through: Ms. Kusum Dhalla, APP**.**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant Criminal Revision Petition under Section 102 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter "JJ Act, 2015"), read with Section 482 of Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C"), has been filed by the Petitioner/Revisionist assailing the impugned order dated 26th October 2021 passed by learned Additional Sessions Judge/Special Judge (NDPS), North District, Rohini Courts, New Delhi, dismissing the application under Section 7A of the Juvenile Justice (Care & Protection of Children) Act, 2000 (hereinafter "JJ Act, 2000") read with Section 94(ii) of JJ Act, 2015.

FACTUAL MATRIX

2. The brief facts of the matter leading to present case are summarized as under: -

(i) The Petitioner/Revisionist was arrested on 20th November 2018 in case bearing FIR No. 430/2018, registered at Police Station Bawana, Rohini, Delhi, under Section 302 of the Indian Penal Code, 1860 (hereinafter "IPC"), and Sections 25 and 27 of the Arms Act, 1959. Since then, he is in Judicial Custody.

(ii) At the time of arrest by Investigating Officer Inspector Rakesh Kumar, the Petitioner/Revisionist was already in Judicial Custody in another FIR bearing No. 1050/2017 registered at Police Station Kankar Khera, Uttar Pradesh. Upon his arrest, the Petitioner/Revisionist claimed that he was 19 years of age and, thereby, during the judicial remand proceedings the learned Metropolitan Magistrate directed the Investigating Officer to produce age and birth records. At the time of remand, no record related to birth of the Petitioner/Revisionist was produced before the learned Metropolitan Magistrate. In the absence of any record, certificate or document affirming the age of the Petitioner/Revisionist, the Investigating Officer, in furtherance of his investigation, filed an application for an ossification test. During the proceedings of the application, upon enquiry by the Court concerned, the Petitioner/Revisionist categorically stated that he had never studied in a school and he did not remember his age.

He further stated that there is no document available pertaining to his age. Accordingly, the learned Metropolitan Magistrate noted the contentions of the Petitioner/Revisionist and the application for carrying out an ossification test was allowed vide order dated 28th November 2018.

(iii) Consequently, in terms of order dated 28th November 2018, an ossification test was carried out on 30th November 2018 and as per the Medical Examination, the Petitioner/Revisionist was found to be aged about 20 years at the time of his arrest. The said medical examination and ossification test report was not challenged by the Petitioner/Revisionist at any stage.

(iv) After completion of investigation chargesheet against the Petitioner/Revisionist was filed by the Investigating Officer before the Court concerned. The Court concerned took cognizance and charges were framed against him under Sections 302/120B/34 of IPC and Sections 25 and 27 of Arms Act, 1959.

(v) On 8th January 2021, the Petitioner/Revisionist moved an application before the learned Trial Court for declaration as a juvenile under Section 7A of the JJ Act, 2000, read with Section 94(ii) of JJ Act, 2015. The said application was filed by the Petitioner/Revisionist relying on a birth certificate issued by the Gram Panchayat, Uttar Pradesh, on the basis of self-declaration given by the father of the Petitioner/Revisionist, according to which date of birth of the Petitioner/Revisionist was indicated as 4th

May 2001, suggesting that he was aged about 17 years, 5 months and 24 days on the date of the commission of offence i.e. on 29th October 2018. The birth certificate issued on 23rd November 2020 was verified by the Investigating Officer. Since, the Petitioner/Revisionist also placed reliance upon school admission record in support of his plea for declaring him as Juvenile, the learned Trial Court, vide order dated 8th September 2021 summoned the school records of the Petitioner/Revisionist and issued notice to the Principal of Bal Niketan Public School, Meerpur, Meerut, UP, where the Petitioner/Revisionist claimed to be a student.

(vi) The principal of the said school, examined as CW-1, produced the admission register, however, he was unable to depose as to the year in which the same was prepared, the concerned teachers by whom it was prepared or who was the Principal or Administrator at that time, which questioned the veracity of the statements made by him. He also produced one torn paper found in the admission register which had the complete details of the Petitioner/Revisionist but no explanation was provided with regard to the aforesaid document, i.e. the torn paper.

(vii) Taking into consideration the contentions of the parties and the documents and evidence on record, learned Additional Sessions Judge/Special Judge (NDPS) North District, Rohini, Delhi dismissed the said application of the Petitioner/Revisionist filed under Section 7A of JJ Act, 2000 read with Section 94(ii) of JJ Act,

2015, and rejected his plea for juvenility by making the following observations: -

(a) *"The ossification test was conducted only after a categorical statement was made by the Applicant that he had never studied in any school, was having no document in this regard and was unable to give his date of birth and the report of the ossification test was never challenged.*

(b) *Both the documents, that is, the self-declaration of the father of the Applicant and the Gram Panchayat which became the basis for the birth certificate issued by the Gram Panchayat Samoli, Department of Medical and Health, Government of Uttar Pradesh, came into existence after more than two years of arrest of the Applicant. The birth certificate is not a contemporaneous record and has been issued after more than 19 years of the birth of the Applicant. Moreover, the Village Pradhan gave the certificate of date of birth on the basis of identity card issued by the National Institute of Open Schooling (NIOS) and on inquiry from the NIOS it was revealed that the Applicant had filled in the form for admission in the year 2018 after his arrest from Tihar Jail itself and gave his date of birth on the basis of self-declaration. The said document too cannot be relied upon having come into existence after the arrest of the Applicant and that too on his own declaration.*

(c) *By the torn paper produced by CW-1 having complete details of the Applicant, for which CW-1 had no explanation, it is apparent that the register of admission had been created later on and is manipulated one, having come into existence after the arrest of the Applicant.*

(d) It is apparent that the court while holding the inquiry is not supposed to go behind the manner in which the school certificate, date of birth certificate came into existence. But, if the said documents are found fabricated and manipulated, the Court can certainly declare them so as well discard them. In that scenario the last option of obtain in (sic) medical report has to be done.

(e) The Court is left with no other option except using medical evidence for determining the exact age of the applicant. As per the conclusion of the Medical Board Report already on record with the chargesheet, the age of the applicant has been found to be more than 20 years as on the date of examination conducted on 30.11.2018. Therefore, the applicant was major at the time of commission of offence, i.e., on 29.10.2018."

3. Aggrieved by the said order, the present revision is being preferred.

SUBMISSIONS

4. Mr. Joginder Tuli, learned counsel for the Petitioner/Revisionist submitted that the birth certificate issued by the Registrar, (birth-death) Gram Panchayat Samoli-Salempur, Uttar Pradesh, should have been appreciated in accordance with the provision under Section 94 (ii) of the Juvenile Justice Act, 2015, and that the learned Trial Court erred in considering the medical examination report to be the final and conclusive proof for the determination of the age of the Petitioner/Revisionist despite the birth certificate being verified by the Investigating Officer, which is contrary to the provisions of Section 94(ii) of JJ Act, 2015.

5. Learned counsel for the Petitioner/Revisionist, relying upon observations of the Hon'ble Supreme Court in ***Ashwini Kumar Saxena vs***

***State of Madhya Pradesh*, (2012) 9 SCC 750,** submitted that the learned Trial Court erred in holding a roving enquiry of the documents, including the birth certificate and the school records, while considering the question of determination of age of the Petitioner/Revisionist. He further, submitted that the Hon'ble Supreme Court, in ***Ravinder Singh Gorkhi vs State of Uttar Pradesh*, 2006 (5) SCC 584**, held that the original school register maintained by the school authority is admissible as evidence to determine the age of the juvenile before it.

6. Learned counsel for the Petitioner/Revisionist placed reliance upon ***Sanat Yadav vs State of Madhya Pradesh*, 2017 SCC Online MP 252**, to emphasize on the finding of the Hon'ble High Court of Madhya Pradesh which reads as under: -

> *"14. .... Supreme Court cautioned that courts are not to conduct a roving inquiry into the correctness of school certificates or the date of birth certificate. It has been held that there may be situation 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, Juvenile Justice Board or a committee functioning under the Juvenile Justice 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..."*

7. Learned counsel for the Petitioner/Revisionist submitted that in ***Ruby vs. State*, 2014 SCC Online Del 2073** held as under-

> *"10. It is trite law that while conducting an inquiry into the age a full-fledged trial is not required to be conducted, however, in the absence of complete record there can be an error in the prima facie finding on the plea of juvenility and thus this court is required to relook into the matter specially when this is a beneficial provision and is required to be followed strictly in favour of the juveniles…."*

It is submitted that in view of the aforesaid facts and the law laid down by the Hon'ble Supreme Court, the impugned order dated 26th October 2021 is bad in law and deserves to be set-aside.

8. *Per contra*, Ms. Kusum Dhalla, learned APP for the State vehemently opposed the Revision Petition and submitted that the findings of the Trial Court were in view of the correct state of facts and circumstances and in accordance with the law and as such there is no illegality, impropriety or error in the same. It is further submitted that there is no gross illegality in the impugned order. Further, there is nothing on record to show that the Trial Court has ignored any document or material while passing the impugned order. The Revisional jurisdiction of the Revisional Court is only to see whether there is any error apparent on the record or any gross illegality in the order. It is accordingly submitted that the instant revision petition is devoid of any merit and is liable to be dismissed.

9. Heard learned counsel for both the parties and perused the record as well as contentions and submissions made in the petition.

ANALYSIS AND FINDINGS

10. In view of the aforesaid facts, it is useful to refer certain relevant provisions of the JJ Act, 2000 which read as under:

> *"**2. Definitions**.****
> *(k) "**juvenile**" or "**child**" means a person who has not completed eighteenth year of age;*
>
> *(l) "**juvenile in conflict with law**" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence;*
>
> ***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 recognised 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."

11. The relevant provision of JJ Act, 2015, reads as under:-

"***94 Presumption and determination of 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."

12. The issue of determination of age is one that requires to be given due significance and forethought, especially in cases where the Accused is close to the borderline age to be declared as a juvenile. The law provides a degree of immunity to those who meet the age eligibility requirements under the JJ Act, 2015. This immunity becomes even more imperative when the protection and safety of a child, who may be under

eighteen years of age, is in question. The JJ Act, 2015, aims at rehabilitation and reformation of the children subjected to the provisions of the Act and sets out to provide proper care, protection, development, treatment, social re-integration of the children who may be tried in accordance with the Act and hence, it reflects the intention of the Legislature that protection of children is a significant concern to be accommodated while proceeding under the Act and hence, an enhanced degree of caution and attention needs to be given. Caution is all the more imperative when there have been instances where the Accused claiming to be a juvenile was found out to be of more than 30 years of age according to the medical examination. Hence, scrutiny, inspection, examination and analysis become a must while examining the question of determination of age of the accused.

13. Section 94 (ii) of the JJ Act, 2015, lays down a definite provision for the process of determination of age of the Applicant pleading juvenility, whereby, it mandates that a Committee or Board considering the issue of determination of age shall seek evidence by obtaining, firstly, date of birth certificate from school, matriculation or equivalent certificate from concerned examination Board, and secondly, in absence of the aforesaid, birth certificate given by corporation, municipal authority or Panchayat, and finally, in absence of both the aforementioned, by an ossification test or any other medical age determination test. Therefore, it is clear from the bare reading of the provision that only after the first clause is exhausted the Committee/Board shall examine the documents under second clause and

when none of the documents are able to be traced, the Committee/Board shall resort to ossification and medical examination. In the present matter, the ossification of the Petitioner/Revisionist was carried out only after the Investigating Officer conducted a preliminary enquiry and there was a categorical statement by the Petitioner/Revisionist that he had never attended a school and further, that there were no documents available pertaining to his age. In the instant Petition, it is apparent that the concerned Investigating Officer had exhausted his options under Clauses (i) and (ii) of sub-section 2 of Section 94 of JJ Act, 2015, before he filed the application for the ossification test of the Petitioner/Revisionist to determine his age at the time of his arrest. It is a different fact that the birth certificate issued by the Gram Panchayat and the school admission records came into existence after two years of the said medical examination, nevertheless, the situation at the time of the arrest of the Petitioner/Revisionist was where the Investigating Officer did not have any other option that to have the medical examination and ossification test conducted.

14. In ***Parag Bhati vs State of Uttar Pradesh &Ors*, (2016) 12 SCC 744,** the Hon'ble Supreme Court has held as under: -

> *"24. ... the Board is enjoined to take evidence by obtaining the matriculation certificate if available, and in its absence, the date of birth certificate from the school first attended and if it is also not available then the birth certificate given by the local body. In case any of the above certificates are not available then medical opinion can be resorted to. However, if the Board comes to the conclusion that the date of birth mentioned in the*

matriculation certificate raises some doubt on the basis of material or evidence on record, it can seek medical opinion from a duly constituted Medical Board to determine the age of the accused person claiming juvenility."

"36. It is settled position of law that if matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the Accused. However, if there is any doubt or a contradictory stand being taken by the Accused which raises a doubt on correctness of the date of birth then as laid down by this Court in Abuzar Hossain, an enquiry for determination of age of accused is permissible…"

15. In ***Juhi Devi vs State of Bihar &Ors,*** **(2005) 13 SCC 376,** the Hon'ble Supreme Court held as under: -

"2… The petitioner claims that she was a major and voluntarily left with her husband. The father of the petitioner alleged that the petitioner was a minor and the question of age was referred to a Medical Board. The Medical Board opined that as on 17.05.2003, the petitioner must have been aged between 16 and 17 years. However, the father of the petitioner produced two certificates before the Revisional Court and contended that her date of birth is 20.10.1985 and she has not attained majority. However, the medical report shows that she must have been aged more than 16 years, even on 17.05.2003. Having regard to these facts, we are of the view that she must have attained majority and her stay at the remand home would not be in the interest of justice and we think that her continued stay at the remand home would be detrimental and she would be in a better environment by living with the person whom she had allegedly married."

16. In the present case, the issue of age was brought before the learned Trial Court after about two years of the arrest of the Petitioner/Revisionist. By that time, ossification test of the accused had already been conducted and his age was found to be around 20 years at the time of commission of offence. Nevertheless, learned Trial Court considered the plea for juvenility and heard the arguments advanced by the parties and perused the various documents placed on record by the Petitioner/Revisionist. The birth certificate issued by the Gram Panchayat was on the basis of self-declaration of father of the accused and of an identity card issued by the National Institute of Open Schooling (hereinafter as "NIOS"). It is pertinent to note that Section 9 of the JJ Act, 2015, which provides for the process to be followed by the Magistrate, reads as under: -

> "***9. Procedure to be followed by a Magistrate who has not been empowered under this Act***
>
> *(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be".*

As such, the self-declaration of father of the accused, was in fact an affidavit, which in terms of the above mentioned provisions of statute, may not be considered a valid document. Further, the second document,

being the identity card for NIOS, also came into existence much after the arrest of the Petitioner/Revisionist because he had applied for admission in the school post his arrest from Tihar Jail.

17. Moreover, the Hon'ble Supreme Court has observed, in ***Umesh Chandra vs Rajasthan,*** **(1982) 2 SCC 202,** that it is not uncommon that parents, at the time of the admission of their children, change the date of birth and age of the child to avail some benefit for either appearing in examinations or for entering into service. Thus, an enquiry into the validity of the documents was not in violation of the provisions of the Act or the findings of the Hon'ble Supreme Court. Therefore, the documents produced before the Trial Court in order to determine the age of the Petitioner/Revisionist might have been manipulated.

18. The Petitioner/Revisionist relied upon ***Ravinder Singh Gorkhi (Supra),*** to put forth the argument that school registered maintained by the school was admissible as evidence under Section 35 of the Indian Evidence Act, 1972. The Learned Counsel for the Petitioner/Revisionist has, however, failed to appreciate that in the very case of ***Ravinder Singh Gorkhi (Supra),*** the Hon'ble Supreme Court, noted that it was apparent that the entry into the school register had been made irregularly and even the Head Master of the concerned school was, upon enquiry, not able to answer queries regarding these irregularities and consequently, was not in favour of admission of the school record. In the present matter, too, the school admission register summoned by the learned Trial Court was filled with irregularities and shortcomings which were corroborated with the inability of the principal of the school to make a statement regarding the

same. Such a document which could not have been substantiated by either the parties or the witnesses summoned was rightly not admitted and relied upon the learned Trial Court to determine the age of the Petitioner/Revisionist.

SCOPE OF REVISIONAL JURISDICTION

19. The Cr.P.C makes provision for the High Court to exercise its Revisional Jurisdiction in furtherance of any proceeding before any inferior Criminal Court.

The provision reads as under:-

> ***"397. Calling for records to exercise powers of revision.-*** *(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.*
>
> *Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.*
>
> *(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any*

interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

The provision unequivocally states that the High Court or the Sessions Court which is exercising its revisional jurisdiction shall apprise itself solely of the question of correctness, legality and propriety of order of the subordinate Court. A bare reading of the provision of the Cr.P.C suggests that the Court shall limit itself to the findings, sentence or order passed by the subordinate Court, against which the Revisionist is seeking relief before the Courts concerned, and shall not go beyond the analysis and observations made by the subordinate court. By extension, a limitation and bar is, hence, set out on the scope of the powers that may be exercised by the concerned Court under the provision which precludes the Revisional Court to go into the enquiry of evidence and submissions made before the subordinate Court at the time of passing of the impugned Order, against which the revision is sought.

20. Presently, the aforesaid order of the learned Trial Court is under challenge before this Court in its Revisional jurisdiction. The Hon'ble Supreme Court has given its findings with regard to the scope of powers of the Revisional jurisdiction and has observed in ***Ashish Chadha vs. Smt. Asha Kumari &Ors,*** **(2012) 1 SCC 680,** that the Hon'ble High Court of Himachal Pradesh overstepped its revisional jurisdiction when it considered the matter on the basis of merits of the evidence before the

learned Trial Court, and as such it could not have appraised the evidence as a Revisional court. A five-judge bench of the Hon'ble Supreme Court in ***Hindustan Petroleum Corporation Ltd. vs Dilbahar Singh*****, (2014) 9 SCC 78,** held as under: -

> *"43. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out facts recorded by the Court/Authority below is according to the law and does not suffer from any error of law.*
>
> *... to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the Order impugned before it suffers from procedural illegality or irregularity."*

This Court, in view of the aforesaid findings and the law laid down by the Hon'ble Supreme Court, in its Revisional jurisdiction will not proceed into the enquiry of the records, documents and other evidence in consideration before the learned Trial Court, but shall constrain itself to the findings of the learned Trial Court in the impugned order.

CONCLUSION

21. Taking into consideration the findings and observations of the learned Trial Court, it is found that the documents placed on record by the Petitioner/Revisionist were irregular, unreliable, flimsy and doubtful, corroborated by the fact that all of them came into existence only after the

arrest of the Petitioner/Revisionist, and hence, the reliance on medical examination was the correct recourse by the learned Trial Court.

22. In view of the above facts and circumstances and law discussed, this Court is convinced that learned Additional Sessions Judge/Special Judge (NDPS), North District, Rohini Courts, New Delhi has rightly dismissed the application of the Petitioner/Revisionist herein under Section 7A of JJ Act, 2000 read with Section 94 of JJ Act, 2015.

23. This Court does not find any substantial ground for invoking the revisional jurisdiction to interfere in the impugned order, there being no illegality, impropriety, error or oversight in the observations of the learned Trial Court. In view of the above, this revision petition is dismissed as the same is devoid of any merit.

24. Pending application, if any, stands disposed of.

25. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

November 24, 2021
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