

Judicial Trends on Juvenile Delinquency

Akshay Singh*

Research Scholar, Department of Law, M. D. University, Rohtak

Abstract – “The Supreme Court needs to have concentrated the most on involving the community in the operations under the JJA. The JJA provided ample scope for involving voluntary social workers and organizations at various stages and bodies related to the JJS. The Supreme Court could have also ensured implementation of those provisions by asking the voluntary organizations to depute one of their workers for various activities under the JJA. A direction by the Supreme Court was not likely to be ignored by the voluntary organizations. In addition, the Supreme Court could have directed the creation of district level committees constituted by voluntary social workers or organizations to act as watchdogs of the children’s interest. It would have not only increased community participation but also worked as a measure of quality control, especially important in the case of children who themselves cannot raise a voice against deficient services.”

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DETERMINATION OF AGE OF JUVENILE :

It is primary duty and responsibility of the court that before convicting a person it must determine the age of such person whether he is juvenile or not. The courts have held that very young children should not be sent to prison¹ In *Smt. Prabhati v. Emperor*² it was held that as far as possible such young children should be released under the supervision and care of their parents or guardians. The court must have clear evidence of the age of a person before sending him/her to reformatory school. It was clarified that a child could not be sent to a reformatory school unless an order of institutionalization, that is, of imprisonment, was made.³ After recognizing the need for segregation of juveniles from the adult offenders not only during trial but also at the investigation stage, the constant view of the beneficial juvenile legislation and also the judiciary has been to protect the child from hardships of adversarial trial and punishment system which mainly deals with the adult offenders. So the important point which requires a determination at the very initial stage is the age of person charged with commission of an offence. A juvenile under Juvenile justice Act, 1986 means a boy who has not completed the age of 16 years and a girl who has not completed age of 18 years. In Juvenile Justice Act (C & P), 2000, the distinction of age of a male and female child has been done away with and a uniform age pattern has been provided. Section 2(k) of the Act defined a juvenile or a child as a person who has not complete 18 years of age. As per section 2(l) of the Act juvenile in conflict with law means a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of offence. So the primary duty and

responsibility of the court before convicting a person is to determine the age of such person and decide whether he/she is a juvenile. The Children Act, Juvenile Justice Act, 1986 and Juvenile Justice (Care & Protection of Children) Act, 2000 apply to children and defines who is a child by reference to age. They provide for continuation of enquiry after the children ceases to be a juvenile during its pendency what is the relevant date on which the child should be below the specific age is a material question. However, the J. I. (C &P) Act, 2000 has no finally set the controversy at rest by referring the child to a person who has not completed the age of 18 years as on date of commission of offence. However, the issue of the relevant time at which the child should be below the age of eighteen has been raised in many decisions and has resulted in a controversy that is likely to continue in future too.⁴

The protective philosophy underlying the special legal provision relating to children has been reiterated by the judiciary on various occasions. Delinquent and neglected children have enjoyed special protection under certain enactments like The Apprentices Act, 1850, the Indian Penal Code, 1860, The Reformatory Schools Act, 1897, The Code of Criminal Procedure 1898, The Code of Criminal Procedure 1973 and Borstal Acts. In India the main legislative Acts are the Children Act, The Juvenile Justice Act, 1986, The Juvenile Justice (C & P) Act, 2000 which are also influenced by the above mentioned Acts. For example under Section 82 of IPC, a child below 7 years of age is absolved from any criminal responsibility. Section 83 of IPC extends this exemption to children between 7 and 12 years of age if proved to be doli-incapax. The

question under the IPC is limited to Mens rea—rea and the age of the child.”

In *Sushil Kumar v. State of U.P.*⁵ the question of age at the time of occurrence was raised. However, the Supreme Court refused to allow the plea of child status and dismissed the petition believing the plea to be an after thought because it was not raised before the trial court or before the High Court or even in grounds of special leave petition as originally filed. Further, the Supreme Court took into consideration two statements of petitioner made by him relating to deceased being his aunt wanting to adopt him and suspicion of deceased's husband of illicit relation between him and deceased and said that such a stand would not have been taken if it petitioner was a child at the crucial time. The statements of the petitioner were contradictory from point of his being a child. This case was decided after about six months of Gopinath Ghosh's case and follows just opposite approach without any reference to this case. In Gopinath Ghosh the accused had given his age as much above the cut-off age prescribed for being a child. However, the court not only allowed the plea of child status to be raised but also referred the matter to the Sessions Judge for determination of the age of the accused who after examination of medical report of the accused, Chief Medical Officer, Radiologist, Orthopedic Surgeon, the Doctor, mother of the accused and Headmaster of the school certified that the accused was a child on the date of offence.”

The question before the Supreme Court in *Arnit das*⁶ was whether a person is juvenile and crucial date is the date when he is brought before the competent authority and not the date of commission of offence. After considering all the trends and material in this regard, the court held that as far as the present context is concerned the crucial date for determining the question whether a person is Juvenile, is the date when he is brought before the competent authority. So far as the finding regarding the age of the appellant is concerned, it is based on appreciation of evidence arrived at after taking into consideration of the material on record and valid reasons having been assigned for it.

In case of *Krishan Bhagwan*⁷ a question arose as to what procedure should be followed where a child within the meaning of the Children Act is being tried and convicted by the ordinary criminal court and plea regarding bar of his trial by the ordinary court was taken for the first time at the appellate stage. The Bench made reference to the decision of case of Gopinath Ghosh and treated the appellant as juvenile under sec. 3 of the Act and exercising power of Juvenile Court u/s 7(3) of the Act while maintaining the conviction of appellant under sec. 302 IPC the court directed the appellant to be released on probation of good conduct on executing a bond to the satisfaction of the trial court that will keep peace and he be of good behavior for period of

three years. It further directed him to pay a sum of Rs. 5000/- as fine, which shall be paid to the widow of deceased. Similarly, in *Jayendra's case*⁸ where accused had been wrongly sentenced to imprisonment instead of being treated as a “child” under S. 2(4) of U.P. Children Act and sent to an approved school, the accused having crossed the maximum age of detention in an approved school i.e. 18 years the court sustained the conviction of the appellant under all charges framed against him but quashed the sentence awarded to him and directed his release forthwith. The appeal was therefore partly allowed by the Supreme Court.”

In *Bhola Bhagat v. State of Bihar*,⁹ it was held that where plea is raised by accused in any court that he was a child at the time of commission of offence it is obligatory for the court to examine the plea and hold enquiry if necessary to determine the age and give a finding in the regard. The court cannot overlook beneficial provisions of Acts on technical grounds. The Patna High Court in *Krishna Bhagwan v. State of Bihar*¹⁰, in complete disregard to the intendment of the JJA for keeping children away from adult offenders even during trial, laid down that in case the plea of child status was taken up in appeal. This appellate court should proceed as if the JJA did not apply, and record its finding on the charge. Only if it found the accused guilty and prima-facie a child on the date of commission of offence, then it should ask for a finding of age from the juvenile court under Section 32 of JJA.”

In *Bhoop Ram's case*¹¹ Supreme Court was confronted with the question whether the appellant who had been convicted and sentenced along with adult accused should have been treated as a child within the meaning of the U.P. Children Act and sent to the approved school for the detention instead of being sentenced to undergo imprisonment in jail. The court after considering the material on record opined that appellant should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment. The Supreme Court ruled that since the appellant is now aged more than 28 years of age there is no question of appellant now being sent to an approved school under the U.P. Children Act for being detained there.

In *Pratap Singh v. State of Jharkhand and another*¹² first information Report was filed charging the appellant for causing the death of the deceased by poisoning. On the basis of the FIR the appellant was arrested and produced before the Chief Judicial Magistrate (CJM) Chas on 22.11.1999. On production CJM assessed the age of the appellant to be around 18 years old. On 28.2.2000, a petition was filed on behalf of the appellant claiming that he was a minor on the date of occurrence, whereupon the CJM transmitted the case to the juvenile court. The juvenile court assessed the age of the appellant by appearance

to be between 15 and 16 years and directed the Civil Surgeon to constitute a Medical Board for the purpose of assessing the age of the appellant by scientific examination and submit a report. No such Medical Board was constituted. The parties were therefore asked to adduce evidence, and on examining the school leaving certificate and marks-sheet of Central Board of Secondary Education, juvenile court came to the finding that the appellant was below 16 years of age as on date of occurrence of crime and he was then released on bail. Aggrieved thereby the informant filed an appeal before the 1st Additional Sessions Judge, who after referring to the judgement *Arnit Das v. State of Bihar* disposed of the appeal holding that the juvenile court had erred in not taking note of the fact that the date of production before the juvenile court was the date relevant for deciding whether the appellant was juvenile or not for the purpose of trial and directed a fresh inquiry to assess the age of the appellant. Aggrieved thereby the appellant moved the High Court by filing Criminal Revision Petition. The High Court while disposing of the Revision followed the decision rendered in *Arnit Das* and held that reckoning date is the date of production of the accused before the Court and not the date of the occurrence of the offence. The High Court also held that for determining the age of juvenile, the provisions of 1986 Act would apply and not 2000 Act. The High Court took the view that the date of birth, as recorded in the school and the school certificate, should be the best evidence for fixing the age of the appellant and any other evidence in proof of age would be of much inferior quality. Pending the inquiry, the Supreme Court was called upon to decide on conflicting views given by it in *Arnit Das v. State of Bihar*¹³ and *Umesh Chandra v. State of Rajasthan*¹⁴. The Court referred the matter to the Constitution Bench. The questions which Bench decided were :

- (a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as Juvenile offender or the date when he is produced in the Court/competent authority.
- (b) Whether the Act of 2000 will be applicable in the case a proceeding initiated under 1986 Act and pending when the Act of 2000 was enforced with effect from 1.4.2001.

The legislative intendment underlying Section 3 and 26 read with the preamble, aims and objects of the Act is clearly discernible. A conjoint reading of the Sections, preamble, aims and objects of the Act leaves no matter of doubt that the legislature intended to provide protection, treatment, development and rehabilitation of neglected of delinquent juveniles and for the adjudication thereof. Interpretation of Sections 3 and 26 of the Act are no more res-integra. Sections 3 and 26 of the 1986 Act as quoted above are in pari materia with sections 3

and 26 of the Rajasthan Children Act, 1970. A three-Judge bench of this Court in *Umesh Chandra* after considering the preamble, aims and objects and section 3 of 26 of the Rajasthan Act, held that the Act being a piece of social legislation is meant for the protection of infants who commit criminal offences and, therefore, such provisions should be liberally and meaningfully construed so as to advance the object of the Act. The decision rendered by a three-Judge bench of this Court in *Umesh Chandra* was not noticed by a two-Judge bench of this court in *Arnit Das*. We are clearly of the view that the law laid down in *Umesh Chandra* is the correct law and that the decision rendered by a two-Judge bench of this Court in *Arnit Das* cannot be said to have laid down a good law. We, accordingly, hold that the law laid down by a three-Judge bench of this Court in *Umesh Chandra* is the correct law.”

Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that Court as if the 2000 Act has not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass order in respect of that juvenile. Therefore, the provisions of 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences committed under the 1986 Act provided that the person had not completed 18 years of age as on 1.4.2001.

The 1986 Act was holding the field till it was eclipsed by the emergence of 2000 Act. w.e.f. 1.4.2001, the date on which the date Act came into force by the Notification dated 28.2.2001 in the Official Gazette issued by the Central Government in exercise of the powers conferred by Sub-section (3) of Section 1 of the Act. Section 69(1) of the Act repealed the 1986 Act. Sub-section (2) postulates that anything done or any action taken under the 1986 Act shall be deemed to have been done or taken under the corresponding provisions of the 2000 Act. Section 20 of the 2000 Act deals with the special provision in respect of pending cases and begins with non-obstante clause. The sentence “Notwithstanding anything contained in this Act all proceedings in respect of a juvenile pending in any Court in any area on date of which this Act came into force” has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act is relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term “any court” would include even ordinary criminal courts. If the person was a “juvenile” under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts

only if the body has crossed 16 years or girl had crossed 18 years.”

The intention of the Legislature was that the provisions of the 2000 Act were to apply to pending cases provided, on 1.4.2001 i.e. the date on which the 2000 Act came into force, the person was a 'juvenile' within the meaning of the term as defined in the 2000 Act i.e. he/she had not crossed 18 years of age. The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1.4.2001.

Research Scholar, Department of Law, M. D. University, Rohtak

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Corresponding Author

Akshay Singh*