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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 177 of 2016**

Rampukar Verma @ Chhotu S/o Late Malik Ram Verma Aged About 19 Years (as per prosecution) R/o Bajrang Chowk, Ward No. 14, Village Ravanbatha, Police Station Khamtarai, Raipur, Tahsil & District Raipur Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Khamtarai, Raipur District Raipur Chhattisgarh

---- Respondent

For Applicant	:	Shri Y.C. Sharma, Advocate.
For Respondent/ State	:	Shri S.C. Khakhariya, Deputy Advocate General on advance copy.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****26/02/2016**

1. Heard.
2. Issue notice to the Respondent.
3. Shri S.C. Khakhariya, Deputy Advocate General accepts notice on behalf of the State/ Respondent.
4. It is submitted on behalf of the Petitioner that a very short question of law is involved in this revision and therefore the matter may be disposed of at the motion stage.
5. On due consideration, the matter is heard finally at the motion stage.
6. Learned counsel for the Petitioner submits that Sessions Case No.1223 of 2015 (State of Chhattisgarh vs. Rampukar Verma @ Chhotu) is pending before the Additional Sessions Judge (FTC), Raipur, Chhattisgarh under Sections 376 and 511 of the Indian Penal Code (for short 'the Code')

and Section 8 of the Protection of Children from Sexual Offences Act, 2012 against Crime No. 386 of 2015. In the said case, the Petitioner/ accused has filed an application under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'Act of 2000') to determine his juvenility as claimed by him that he was a juvenile at the time of the incident. As per the requirement, the Court below has only appreciated the inquiry report submitted by the police of Khamtarai, Raipur and disposed of the said application whereas as per provision, the Court should make an inquiry to take such evidence as it may be necessary to determine the question of juvenility. The Court below has not appreciated regarding any such evidence which is necessary in the matter thereby the order passed by the Court below is not in compliance with the provision of Section 7A of the Act of 2000 which requires interference. Hence, it is submitted that the matter may be remitted back for an inquiry under the provisions of Section 7A of the Act of 2000 and thereafter to pass an appropriate order afresh.

7. On the other hand, Learned State counsel has opposed the prayer and submitted that it is apparent from the order dated 12.1.2016 that the Court below duly appreciated the material adduced on behalf of the accused and the prosecution and thereafter passed the order impugned. It shows that the inquiry as possible was conducted. Hence, the petition may be dismissed.

8. For the purposes of appreciation of the entire arguments advanced relating to Section 7A of the Act of 2000, the same is required to be gone through, which is as under:

“[7A. 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.]”

9. From perusal of the entire order, it shows that along with the application some documents were annexed to demonstrate the juvenility and the Court below merely asked for the enquiry report from police station Khamtarai and thereafter passed the impugned order by appreciating the facts stated in the application, the alleged certificate of birth and the report submitted by the prosecution.

10. Section 7A of the Act of 2000 provides that the Court shall make an inquiry, take such evidence as may be necessary 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. From this, it is apparent that initially the Court was required to afford an opportunity to adduce any evidence necessary to prove the juvenility and after granting such opportunity to adduce evidence, to prove and to disprove the juvenility,, and thereafter the Court was required to pass an appropriate order.

11. From perusal of the impugned order, it shows that an opportunity to adduce the evidence of both the parties, which is required, was not granted. Therefore, the impugned order requires interference.

12. Consequently, the order passed by the Court below on 12.1.2016 is hereby quashed. The Court below is directed to make an enquiry and to take such evidence as may be necessary as provided by the provisions of Section 7A of the Act of 2000 and thereafter to pass an appropriate order afresh and to determine the question of juvenility. Needless to mention that while passing such an order, the impugned order dated 12.1.2016 shall not come in the way.

13. With the aforesaid direction, the instant criminal revision succeeds and disposed of. The Petitioner may produce a copy of the order before the trial Court for compliance.

14. Registrar (Judicial) is also directed to send a copy of this order to the concerned Court below through usual and fax modes for compliance.

Sd/-

Chandra Bhushan Bajpai
Judge