

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 800 of 2016**

Manoj Vishwkarma S/o Raju Vishkarma, aged about 18 years, R/o Imalibhata, PS Sarkanda, Bilaspur, District Bilaspur (CG), present address village Mahali, PS Kunda, Revenue & Civil District Kabirdham (CG)

---- Applicant**Versus**

State of Chhattisgarh through PS Kunda, District Kabirdham (CG)

---- Respondent

For Applicant	:	Shri Pravin Kumar Tulsyan, Advocate
For Respondent/State	:	Shri U. K. S. Chandel, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****30/08/2016**

The present revision petition has been preferred assailing the order dated 22.07.2016 whereby the Court below has rejected an application for transferring the matter to the Juvenile Board taking a plea that the applicant before this Court was not a juvenile on the date of the alleged commission of offence.

2. Counsel for the applicant submits that he had produced school records along with the application showing the date of birth of the applicant as 06.08.2000 that means on the date of commission of the offence i.e. 25.03.2016, the age of the applicant was about 15 years 8 months. However, the police Authorities while registering the case relied upon the Kotwari Register for assessing the age of the applicant wherein his date of birth is mentioned as 01.10.1997 and if this is taken into consideration, the age of the applicant on the date of incident would be more than 18 years.

3. Counsel for the applicant further submits that upon moving an application by the applicant, it is incumbent of the Court for holding an

enquiry first to decide the fact whether the applicant on the date of incident was in fact a juvenile or not. It is also the statutory requirement that whenever an application is so made, it has to be first adjudicated upon and then the Court should proceed further with the case. Counsel for the applicant refers to Sub section 2 of Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred as 'the Juvenile Justice Act, 2015') which came into force w.e.f. 31st December, 2015 and it would be applicable in the present case on account of the fact that the date of incident is subsequent to the Juvenile Justice Act, 2015 came into force.

4. Sub Section 2 of Section 9 of the Juvenile Justice Act reads as under:

“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:”

5. A plain reading of the said section very emphatically gives a message that whenever it is alleged that the offender was a juvenile on the date of commission of the offence, the Court '**shall**', emphasis is to be laid on the term '**shall**' which by itself reflects the mandatory force which has to be applied and which shows that the Court shall make an inquiry after taking such evidence as may be necessary to determine the age of the person and shall record a finding on the matter stating the age of the person as nearly as may be.

6. In the instant case when we look into the impugned order, it would be evident that the present applicant had specifically brought documents before the Court below wherein his date of birth is reflected to be 06.08.2000 as is evident from the school certificate and under the said

circumstances, a presumption would have to be drawn under Section 94 of the Juvenile Justice Act, 2015. However, the Court below without conducting an inquiry relied upon the Kotwari Register and decided the juvenility of the applicant only on the basis of the said record of the Kotwar which has been brought before the Court below. This in the opinion of this Court is not the mandatory requirement of law and the Court below appears to have committed an error of law in reaching to the said conclusion.

7. Thus, in the opinion of this Court, it would be proper if the matter is sent back to the Court below with a direction to adjudicate the issue of juvenility of the applicant first after taking necessary evidence on record and give a specific finding on the said issue and then proceed further with the trial in accordance with law. It is ordered accordingly.

8. With the aforesaid observations, the present Criminal Revision stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE