

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 41 of 2016**

Ravishankar alias Ravi Yadav son of Sarju Yadav, aged about 19 years, resident of village Luraina, Mainpat, PS Kamleshwarapur, District Surguja, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through the Police Station Ambikapur, District Surguja, Chhattisgarh.

---- Respondent

For the Applicant	:	Ms. Neha Verma, Advocate.
For Respondent/ State	:	Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****01/03/2016**

1. Heard on I.A. No. 1 of 2016, an application for condonation of delay in filing the instant criminal revision as the instant criminal revision has been preferred after 309 days of its limitation.
2. For the reasons mentioned in I.A. No. 1 of 2016, the same is allowed and the delay in filing the instant criminal revision is hereby condoned.
3. Heard on admission. The revision is admitted for consideration.
4. With the consent of both the parties, the matter is heard finally.
5. Brief facts to appreciate the instant criminal revision are that the Applicant is facing trial before the Additional Sessions Judge (FTC), Ambikapur, District Surguja, Chhattisgarh in Sessions Trial No. 41 of 2014 (State of Chhattisgarh vs. Ravi Shankar @ Ravi Yadav) under Sections 363, 366 and 376 of the Indian Penal Code (for short 'the IPC'). During the trial, an application under Section 27 of the Code of Criminal Procedure, 1973

(in short 'the Code') was filed on behalf of the Applicant stating that on the date of incident, the Applicant was below the age group of 18 years and as such he was juvenile. Hence, he ought to have been tried by the Juvenile Justice Board. After considering the mark- sheets (Annexure- A/1 and A/2) and the statement of father of the Applicant, the Court below held that the Applicant has failed to produce declaration of the father and mother/ birth certificate/ Kotwari Panji and the certified copy of the Dakhil Kharij Panji. The concerned teacher of the said school from where the mark-sheets were issued was also not examined. The Court below held that as the Applicant failed to prove that he was below the age group of 18 years at the time of the incident and therefore, it dismissed the application filed on behalf of the Applicant.

6. Against the said order, the Applicant has filed the instant criminal revision taking grounds that the order passed by the Court below is contrary to the facts and evidence available on record. Though the authenticated documents were produced regarding the date of birth, but the trial Court wrongly disbelieved the same while passing the impugned order as no any ossification test was conducted by the prosecution to determine his age being above 18 years. The Court below has wrongly shifted the burden upon the present Applicant that he has not produced Kotwari register or Dakhil-Kharij register in support of his date of birth. Hence, the instant criminal revision may be allowed and the Applicant may be held as juvenile on the date of the incident and the impugned order dated 21.11.2014 may be quashed.

7. Perused the reply filed on behalf of the Respondent/ State wherein it is submitted that the Applicant has failed to prove the age being below 18

years as he did not produce admission register of the school and did not examine the teacher/ employee of the concerned school in support of the mark-sheets produced by him. The Applicant has also failed to point out any illegality committed by the Court below. The order passed by the Court below is in true spirit of legal provisions. Hence, it is submitted that the criminal revision preferred on behalf of the Applicant may be dismissed as not maintainable.

8. Heard Learned Counsel for the parties and perused the impugned order dated 21.11.2014.

9. Learned counsel for the parties duly supported their pleadings and submitted as above-stated. On minute examination, this Court finds that the provisions of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act of 2000') are relevant for adjudication of the present issue. The provisions are 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.]”

The said amendment has been incorporated in the Act of 2000 with effect from 22.8.2006.

10. Prior to passing of the impugned order dated 21.11.2014, the Court below did not appreciate that after the legislation of Special Act i.e. the Juvenile Justice (Care and Protection of Children) Act, 2000, Section 27 of the Code of Criminal Procedure, 1973 is not attracted to the instant matter. It is the provisions of the Act of 2000 which are applicable regarding the juvenility in the trial of such juvenile. It appears that the Court below has completely failed to appreciate that the relief claimed in the present matter is concerned only with the provisions of Section 7A of the Act of 2000 and not with Section 27 of the Code.

11. From perusal of the impugned order, it shows that an opportunity to adduce evidence was afforded to the Applicant by the Court below and the Applicant filed his mark-sheets i.e. Annexures A-1 and A-2 in support of his juvenility and also examined his father. On the other hand no evidence was adduced or collected by the prosecution contrary to the evidence adduced by the Applicant before passing of the impugned order dated 21.11.2014.

12. As per provisions of Section 7A of the Act of 2000, the Court below shall make an enquiry and take such evidence as may be necessary as to

determine the age of such person and thereafter shall record a finding regarding juvenility. In the present matter, only the aforesaid two documents i.e. Mark-sheets and the statement of the father of the Applicant were appreciated. From perusal of the entire order, it does not reveal that what enquiry was conducted by the Court below as expected under Section 7A of the Act of 2000. In view of the above, the impugned order passed by the Court below requires interference and the said order cannot be held as an order passed after compliance of provisions of Section 7A of the Act of 2000.

13. On due consideration, it would be appropriate to order for an enquiry as expected under the provisions of law under Section 7A of the Act of 2000 and thereafter to pass an appropriate order afresh. Hence, the order passed by the Court below on 21.11.2014 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 of the Applicant. Needless to mention that while passing such an order, the impugned order dated 21.11.2014 shall not come in way.

14. With the aforesaid directions, the instant criminal revision succeeds and disposed of. The Applicant may produce a copy of this order before the Court below for compliance.

15. 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