

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1058 of 2017**

Hem Singh, S/o Nand Ram Satnami, aged about – 32 years, R/o
Village Nawagaon, Tahsil – Lormi, District – Mungeli, C.G.

----Revisioner/applicant**Versus**

The State of Chhattisgarh, Through : Police Station – Lormi, District
Mungeli, Chhattisgarh.

---- Non Revisioner/Respondent

For Revisioner/applicant	: Shri D.K. Gwalre, Advocate
For Non-revisioner	: Anil S. Pandey, G.A. for the State.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****15.11.2017**

1. Heard on admission.
2. This revision is preferred under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015, against the judgment dated 26.09.2017 passed by the Session Judge, Session Division Mungeli, in Criminal appeal No. 28/2017 wherein the said Court affirmed order passed by Juvenile Justice Board dated. 05.07.2017.
3. The revisioner is charge-sheeted for offence under Section 307 read with Section 34 of I.P.C. which is registered as Criminal Case No. 20/2001 of Police Station House Lormi, District – Mungeli. Earlier on the basis of one certificate issued by the Kotwar, the Additional Sessions Judge relying upon the said certificate determined age of the revisioner to be on 20.07.1983. Thereafter, one application is preferred before the Juvenile Justice Board in which it is alleged that date of birth of the revisioner is 27.01.1983 and the date of incident is on 28.01.2001 and at the relevant time he was more than 18 years of age. The Juvenile Justice Board inquired for

determination of age of the revisioner and on the basis of School Certificate and other evidence determined the age of the appellant to be more than 18 years. The issue involved in this revision is whether the order passed by the Additional Session Judge Mungeli is final or whether the order passed by the Board is inconsonance with the provisions of law. Section 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000, may be read as under;-

Presumption and determination of Age:- (i)

Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.

4. As per Section 7 (a) of the Juvenile Justice (Care and Protection of Children) Act, 2000, read with rule 12 of Juvenile Justice (Care and Protection of Children) Rules 2007, the competent authority is Juvenile Justice Board to determine the age as per the provisions of the Act. As per the law laid down by the **Hon'ble Supreme Court (2012, 9 SCC 750). Aswani Kumar Vs. State of Madhya Pradesh.**

“Age determination inquiry contemplated under Section 7A of the Act, read with Rule 12 of the 2007 Rules enables the Court to seek evidence and in that process, the Court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the Court need to

obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the Court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the Court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

5. In the present case original Certificate for admission in Government School was filed before the Board and that was proved by the principal of that school. It appears from the order of the board that birth certificate issued by the Kotwar of village Nayapara was considered by Additional Sessions Judges and in inquiry before the Board said Kotwar denied issuance of any such certificate and on the basis of school certificate Board opined that oral evidence is corroborating the certificate and opined that the revisioner is not juvenile. Looking to the legal provisions, the finding of the Board is not liable to be interfered by this Court invoking jurisdiction of this revision.

6. Accordingly, the revision is dismissed at the motion stage itself.

7. Consequently IA No. 1/2017 for grant of stay also stand dismissed.

Sd/-

(Ram Prasanna Sharma)

JUDGE