



2024:DHC:2127



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 15.02.2024
Pronounced on: 18.03.2024

+ CRL.REV.P. 292/2022 & CRL.M.A. 9474/2022

HARBHAJAN SINGH

..... Petitioner

Through: Mr.R.S. Juneja, Mr.Shiv
Kumar, Mr.J.S. Juneja, Advs.

versus

THE STATE OF DELHI

..... Respondent

Through: Mr.Aman Usman, APP with SI
Jeetendra Kumar.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Sections 397 and 401 read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the Order dated 16.03.2022 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge-05, (POCSO), North District, Rohini Courts, Delhi (hereinafter referred to as the 'Trial Court') in SC No. 658/2018, titled *State v. Harbhajan Singh Etc.*, directing charge under Section 23 of the Juvenile Justice Act, 2000, as was then applicable (hereinafter referred to as the 'J.J. Act'), to be framed against the petitioner herein.

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Factual Matrix:

2. It is the case of the prosecution that on 16.12.2014, during a child labour rescue operation, a girl aged about 12 years was rescued from the house of the petitioner herein. The statement of the recovered girl was recorded by the Tehsildar and, accordingly, the FIR No.1480/2014 was registered at Police Station: Mukherjee Nagar, Delhi under Sections 23 of the J.J. Act, Section 370 of the Indian Penal Code, 1860 (in short, 'IPC'), and Sections 3/14 of the Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred to as the 'Child Labour Act').

3. The victim in her statement under Section 164 of the Cr.P.C. had stated that, after the death of her father, the co-accused-Prem Kisku, brought her to Delhi in October, 2014 on the pretext of procuring a job for her. Initially, she lived in Shakurpur, Delhi in the house of Co-accused Urmila. She further stated that thereafter, through the agency of the co-accused Urmila, named 'Urmila Maid Services', she was employed at the place of the petitioner as a maid for doing household work, including cleaning and looking after the children of the petitioner. She further stated that she worked at the house of the petitioner for two months and she also used to stay there. She stated that she was not given salary since the month of October 2014, and was also not given a proper diet at the house of the petitioner.

4. As there was no proof of or document proving the age of the victim, as specified under the provisions of Section 49 of the J.J. Act

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read with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 'J.J. Rules'), an ossification test of the victim was conducted on 24.12.2014. The Doctor opined her age to be between 16 and 18 years. Thereafter, the girl was handed over to her sister as per the Child Welfare Committee Orders.

5. On completion of the investigation, Chargesheet against the petitioner under Section 26 of the J.J. Act and Sections 3/14 of the Child Labour Act was filed.

6. The learned Trial Court, by the Impugned Order, has framed a charge against the petitioner herein under Section 23 of the J.J. Act, while discharging the petitioner of offence under Section 26 of the Child Labour Act. The present petition has been filed challenging the said Order.

Submissions of the Learned Counsel for the Petitioner:

7. The learned counsel for the petitioner submits that the learned Trial Court, while passing the Impugned Order, has erred in not considering the fact that the age of the victim was written as 18 years in the Employment Letter given by the Agency, that is, Urmila Maid Services. He further submits that the co-accused Urmila has been discharged by the learned Trial Court by the Impugned Order itself.

8. He submits that admittedly, there was no documentary proof of the age of the victim and, therefore, the victim was examined medically vide MLC no.89986 dated 24.12.2014, and the Doctor opined the probable age of the victim to be between 16 and 18 years.

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He submits that the benefit of the doubt on the age of the victim is to be given to the accused/petitioner. He submits that, therefore, the age of the victim is to be considered to be more than 18 years and, the petitioner cannot be charged with Section 23 of the J.J. Act. He places reliance on the judgments of this Court in *State v. Rama Dhall*, Neutral Citation No.2018:DHC:7413; *Umesh Kumar v. The State of NCT of Delhi*, Neutral Citation No.2009:DHC:545, and *Shweta Gulati & Anr. v. The State Govt. of NCT of Delhi*, Neutral Citation No.2018:DHC:4957.

Submissions of the Learned APP:

9. The learned APP submits that the victim in her statement under Section 164 of the Cr.P.C., has supported the case of the prosecution and has specifically stated that the petitioner has caused her physical and mental agony.

10. Placing reliance on the judgment of the Supreme Court in *Rishipal Singh Solanki v. State of Uttar Pradesh & Ors.*, (2022) 8 SCC 602 and *P. Yuvaprakash v. State Rep. By Inspector Of Police*, 2023 SCC OnLine SC 846; and of this Court in *Raju Yadav v. State of NCT of Delhi*, Neutral Citation No.2023:DHC:3392, he submits that the victim is a juvenile, and the charge has been rightly framed by the learned Trial Court.

Analysis and Findings:

11. I have considered the submissions made by the learned counsels for the parties.

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12. As is evident from the above, the issue that arises for consideration of this Court is of the determination of the age of the victim. There is no document available with the complainant in the form of matriculation or equivalent certificate, the date of birth certificate from the school first attended, or the birth certificate given by a Corporation or a Municipal Authority or a Panchayat, or the documents stipulated in Rule 12 of the J.J. Rules. In the absence of these documents, on the Orders of the learned Trial Court, the medical examination of the victim was conducted to determine her age. The Doctors have opined her age to be between 16 and 18 years. It is based on this report that the age of the victim is to be determined.

13. Section 49 of the J.J. Act provides for presumption and determination of the age of the person brought before the competent authority contending that such person is a juvenile or a child. It reads as under:

“49. Presumption and determination of age.

— (1) 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 the

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age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.”

14. Rule 12 of the JJ Rules prescribed the procedure to be followed in determination of the age of the person brought before the Court or the Board. It reads as under:

“12. Procedure to be followed in determination of age. — (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as to the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

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(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of the one year,

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified, in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict the law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not



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been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

15. Interpreting the above Rule, the Supreme Court in **Jarnail Singh v. State of Haryana**, (2013) 7 SCC 263, has held as under:

“23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth

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depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.”

16. In ***Rishipal Singh Solanki*** (Supra), the Supreme Court considered the provisions of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the ‘J.J. Act, 2015’), which reads as under:

“94. Presumption and determination of age.—(1) *Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.*

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or



- equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*
- (ii) *the birth certificate given by a corporation or a municipal authority or a panchayat;*
- (iii) *and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:*

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

17. The above provision, though similar to Rule 12 of the J.J. Rules, is not identical thereto. The Supreme Court, while interpreting the above provision, held as under:

“33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the court or the JJ Board.

33.2.1. When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015 but



when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

33.2.2. *If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.*

33.2.3. *When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).*

33.3. *That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act,*



2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. *The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.*

33.5. *That the procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.*

33.6. *That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.*

33.7. *This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.*

33.8. *If two views are possible on the same evidence, the court should lean in favour of*



holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. *That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.*

33.10. *Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and authentic as per the provisions of the Evidence Act viz. Section 35 and other provisions.*

33.11. *Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015."*

18. The above view of the Supreme Court was reiterated by the Supreme Court in ***P.Yuvaprakash*** (Supra), observing as under:

"14. *Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination*



board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court.The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon....

xxxx

17. In Abuzar Hossain @ Gulam Hossain v. State of West Bengal, (2012) 9 SCR 224 this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference.

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19. It is clear from the above narrative that none of the documents produced during the trial answered the description of “the date of birth certificate from the school” or “the matriculation or equivalent certificate” from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim's age was below 18 years as per Section 94(2)(iii) of the JJ Act. PW-9, Dr. Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the X-ray reports and deposed that in terms of the examination of M, a certificate was issued stating “that the age of the said girl would be more than 18 years and less than 20 years”. In the cross-examination, she admitted that M's



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age could be taken as 19 years. However, the High Court rejected this evidence, saying that “when the precise date of birth is available from out of the school records, the approximate age estimated by the medical expert cannot be the determining factor”. This finding is, in this court's considered view, incorrect and erroneous. As held earlier, the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94(2)(i) mandates; nor are they in accord with Section 94(2)(ii) because DW-1 clearly deposed that there were no records relating to the birth of the victim, M. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test, based on several X-Rays of the victim, and on the basis of which PW-9 made her statement. She explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this court is of the opinion that the result of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor, PW-9.”

19. Recently, the Supreme Court in ***Vinod Katara v. State of U.P.*** Neutral Citation No. 2024 INSC 171, has held as under:

“20. Section 94(2) of the JJ Act provides for the mode of determination of age. In the order of priorities, the date of birth certificate from the school stands at the highest pedestal whereas ossification test has been kept at the last rung to be considered, only in the absence of the criteria Nos. 1 and 2, i.e. in absence of both certificate from school and birth certificate issued by a Corporation/Municipal Authority/Panchayat.”

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20. From the above, it would be evident that when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court and to discharge such burden, in terms of Rule 12(3) of the J.J. Rules (equivalent to Section 94 (2) of the J.J. Act, 2015 to some extent); preference is to be given to the matriculation or equivalent certificate; on the non-availability thereof, birth certificate given by a Corporation or a Municipal Authority or a Panchayat; and only in absence of any of the above, by way of an ossification test or any other latest medical age determination test.

21. The Supreme Court has also consistently held that through the ossification test, it is difficult to determine the exact age of a person. It has further held that the judicial notice of margin of error in the age ascertained by radiological examination is two years on either side. Reference in this regard can be had to the judgments of the Supreme Court in *Jaya Mala v. Govt. of J&K* (1982) 2 SCC 538; *Jyoti Prakash Rai v. State of Bihar* (2008) 15 SCC 223; *Ram Suresh Singh v. Prabhat Singh & Anr.* (2009) 6 SCC 681; and, *Md. Imran Khan v. State (Govt. of NCT of Delhi)* (2011) 10 SCC 192.

22. Though, Rule 12(3)(b) of the J.J. Rules provides that where the age of the person produced before the Board is determined on the basis of the opinion of a Medical Board, for the reasons to be recorded, benefit to the child or juvenile should be given by considering his/her age on the lower side within the margin of one year; this is to be reconciled with the principle that if there is any doubt in the case of the prosecution, the benefit thereof must be given to the accused. Therefore, where the age is determined on the basis of

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the medical examination of the alleged victim and the medical opinion gives a range within which the age of the victim lies, the benefit of doubt should be given to the accused, and in such a case, it is the higher limit of the age opined which should be taken and the benefit of doubt extended to the accused. In this regard, reference may be had to the judgments of the Supreme Court in *Triveniben v. State of Gujarat*, (1989) 1 SCC 678; *Maru Ram v. Union of India & Ors.*, (1981) 1 SCC 107; *Rajak Mohammad v. State of Himachal Pradesh*, (2018) 9 SCC 248; of the Division Bench of this Court in *State v. Basir Ahmed*, 2023 SCC OnLine Del 5852; *State (NCT of Delhi) v. Deepak*, Neutral Citation No. 2019:DHC:4861-DB; *State (NCT of Delhi) v. Chand*, Neutral Citation No. 2019:DHC:6371-DB; and, of the Coordinate Bench of this Court in *Shweta Gulati & Anr.* (Supra).

23. In *Raju Yadav* (supra), the Court, apart from bone ossification test report, had other evidence before it, including the presumption of guilt which operates against the accused therein under Section 29 of Protection of Children from Sexual Offences Act, 2012, which was invoked therein, to conclude that even though the bone ossification test says the age of the prosecutrix to be between 15 and 17 years, the prosecutrix therein should not be treated as more than 18 years.

24. In the present case, as noted hereinabove, apart from the ossification test report, which opines the age of the victim to be between 16 and 18 years, there is no other evidence/document on record by which the age of the victim can be determined. Even without giving the benefit of the period of two years' addition, as has been accepted by the Supreme Court in the above judgments, and only

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considering the higher age, as opined in the medical report of the victim, the age of the victim should be taken as 18 years as on the date of the alleged offence.

25. The prosecution has, therefore, failed to prove that, at the time of commission of the alleged offence, the victim was a 'juvenile' or a 'child', as defined in the J.J. Act.

26. In *State of Haryana & Ors. v. Bhajan Lal & Ors.* 1992 Supp (1) SCC 335, the Supreme Court has laid down the guidelines and circumstances where the Court would be empowered to put an end to a criminal prosecution, which includes where the uncontroverted allegations made in the Complaint/FIR and the evidence collected in support of the same, do not disclose the commission of the alleged offence and make out a case against the accused person. It was held as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the



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complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

27. In the present case, as there is a doubt on the age of the victim and the benefit of such doubt has to be given to the accused, that is, the petitioner herein, in my view, the charge under Section 23 of the J.J. Act should not have been framed against the petitioner by the learned Trial Court.

28. Accordingly, the Impugned Order dated 16.03.2022 passed by the learned Trial Court is hereby set aside. Consequently, the petitioner is discharged in the criminal case being SC no.658/2018, titled ***State v. Harbhajan Singh Etc..***

29. The petition is allowed in the above terms. The pending application is also disposed of as infructuous. There shall be no order as to costs.

NAVIN CHAWLA, J

MARCH 18, 2024/RN/AS

Click here to check corrigendum, if any

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 **Crl.Rev.P. 292/2022**