



Judgment

406 revn264.233

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO.264 OF 2023

Ketan Sharad Badule,
aged about 22 years,
r/o Deshbandhu Ward,
Prabhu Road, Gondia.

..... **Applicant.**

:: VERSUS ::

State of Maharashtra,
through Police Station Officer,
Police Station Gondia City, Gondia. **Non-applicant.**

Shri S.V.Purohit, Counsel for the Applicant.
Mrs.Ritu Sharma, Additional Public Prosecutor for the
Non-applicant/State.
Shri Atharva Manohar, Counsel to Assist the Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 23/04/2025

PRONOUNCED ON : 07/05/2025

JUDGMENT

1. Heard learned counsel Shri S.V.Purohit for the
applicant; learned Additional Public Prosecutor Mrs.Ritu

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Sharma for the State, and learned counsel Shri Atharva Manohar assisting the prosecution.

2. **Rule.** Heard finally by consent of learned counsel appearing for the parties.

3. In this revision application, challenge is to judgment and order in Criminal Appeal No.17/2021 and common order below Exhs.1, 40, and 42 passed in Sessions Trial No.27/2020 on 6.11.2023 by learned District Judge-1 and Additional Sessions Judge, Gondia whereby the appeal and applications Exhs.40 and 42 are partly allowed by setting aside order dated 9.1.2020 passed by learned Principal Magistrate, Juvenile Justice Board, Gondia (JJB) to conduct a fresh preliminary assessment of the applicant by taking into consideration relevant reports and giving an opportunity to the Child to Conflict in Law (CCL) of cross examination.

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4. Facts relevant for disposal of this revision application can be summarized, as follows:

On 9.11.2019, one Rehan Mahendi Valiyani lodged a report that he along with Pratham @ Kanha Shyamsundar Sharma (the deceased), Girish Nanwani, and Mayank Kundani had been to Game Parlour of Lalence Gupta at Manohar Chowk, Gondia. The applicant CCL with other CCLs came there on a motorcycle and called the deceased outside the Game Parlour and raised quarrel with him. The deceased was assaulted by both of them by fists and kicks blows. Thereafter the CCLs took out knives from their waists and gave repeated blows on the person of the deceased. When owner Lalence Gupta of the Game Parlour made an attempt to intervene, he was also assaulted. The deceased was chased inside the Game Parlour by both CCLs and was assaulted brutally which resulted into his death and both CCLs fled away from the

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spot of the incident. After registration of the crime, the investigating officer completed investigation and filed chargesheet against both CCLs. During the investigation, it revealed that CCLs have purchased 6 knives from FlipKart. Out of 6 knives, 4 knives were delivered to the CCLs and 2 knives were pending to be delivered with the “Blue Dart Courier Services”. In all, 22 injuries were found on the person of the deceased. The CCTV Footage is also obtained. The CCL was kept in Observation Home. Subsequently, he was released on bail.

5. After filing of the chargesheet, in view of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (the Juvenile Justice Act), vide order dated 20.12.2019, below Exh.1, in Juvenile Case No.569/2019, preliminary assessment was directed of the CCL. The Councilor and Social Worker submitted Report that the CCL studying in 12th Std. is having remorse

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about his act and he is cooperative with the other children. The Report of the Psychiatrist is also obtained from which it revealed that there is no evidence of any psychopathology in the patient and he understands nature and possible consequences of the alleged offence and circumstances under which the offence is committed.

6. After receipt of both the Reports, the JJB passed order below Exh.1 that involvement of the CCLs is in heinous offence. Birth date of another CCL is 8.10.2002, the present CCL was born on 20.4.2002, CCL No.3 was born on 22.8.2002, and CCL No.4 was born on 14.3.2002. Thus, all CCLs are above 17 years of age when the incident occurred. In all, 22 stab injuries are found on the person of the deceased and *prima facie* it is apparent that the act is committed after understanding the nature and consequences of the said act. In view of the Preliminary Assessment Report and above description, the

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Board has come to conclusion that there is need for trial of these CCLs as an adult and referred the matter to the Juvenile Court at Gondia.

7. Being aggrieved and dissatisfied with the same, the present CCL preferred an appeal before learned District Judge-1 and Additional Sessions Judge, Gondia who partly allowed the application and remanded the matter back to the JJB for a fresh preliminary assessment of all 4 CCLs by taking all relevant reports and documents including Social Investigation Report (SIR) and Psychiatric Report by giving an opportunity to the CCLs of cross examination of psychiatric and other witnesses to the documents and of hearing. Learned Judge further directed the JJB to conduct preliminary assessment within three months from the receipt of the record.

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8. Being aggrieved and dissatisfied with the same, the present revision is filed by the CCL on the ground that the Appellate court has not considered that the Psychiatric Report is not as per requirement as he did not conduct any IQ or any other kind of Tests.

9. Being aggrieved and dissatisfied with the same, the present revision is filed by the CCL on the ground that the Appellate Court has not considered that the Psychiatric Report is not as per the requirement as he did not conduct any IQ or any other Tests. The Appellate Court has also erroneously remanded the matter to the JJB after four years after preliminary assessment is done in the year 2019. The Psychiatric Report does not indicate that which Tests were performed and a very cryptic and unreasoned certificate is issued and the Appellate Court has mechanically remanded the matter to the JJB.

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10. Learned counsel for the applicant CCL submitted that all the Reports are in favour of the CCL. The date of offence is 9.11.2019 on which date the CCL was 17 years and 6 months i.e. below 18 years of age. He took me through various provisions of the Juvenile Justice Act. There is absolutely non-compliance of provisions of the Juvenile Justice Act. The JJB has wrongly placed reliance upon the Psychiatric Report. The SIR is in favour of the applicant CCL. He further submitted that preliminary assessment was prior to 4 years. Now, no purpose will be served by sending the applicant CCL for the fresh assessment. The Psychiatric Report is without ascertaining the IQ Test of the applicant CCL and the said Report is a very cryptic and unreasoned. The preliminary assessment was required to be done which was done in the year 2019. The remand would result in filling lacuna in the evidence. The Appellate Courts have powers to

evaluate the evidence and the Appellate Court should have decided the matter and arrived at a specific finding based on the materials available on record that the judgment of the Trial Court is erroneous and liable to be aside. There is nothing adverse in the Social Investigation Report. Therefore, the Appellate Court should have held that the CCL was liable to be treated as juvenile. The decision of treating the juvenile as adult is a very drastic step which needs to be taken only after carefully examining the mental and physical ability properly of the CCL. Being it is very important requirement of law, the same is to be strictly complied with before arriving at conclusion that the child should be treated as adult. For all above these reasons, the order passed by Appellate Court remanding the matter back to the JJB for further reassessment is liable to be quashed and set aside. The

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order passed by the JJB treating the applicant CCL as an adult is also required to be quashed and set aside.

11. In support of his contentions, learned counsel for the applicant CCL placed reliance on following decisions:

1. Thirumoorthy vs. State, Represented by the Inspector of Police, reported in 2024 SCC OnLine SC 375, and

2. Criminal Appeal No.1153/2018 (Mumtaz Ahmed Nasir Khan vs. The State of Maharashtra (through JJ Marg Police Station) and anr and other connected matters) decided by this court on 15.7.2019.

12. Per contra, learned Additional Public Prosecutor for the State and learned counsel assisting the prosecution strongly opposed the revision application and submitted that the Appellate Court has rightly considered the aspect of reassessment and rightly remanded the matter back to the JJB. The investigation shows that there was

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preparation by CCLs to commit the said offence and they purchased 6 knives from the FlipKart. Out of said 6 knives, 4 knives were delivered to the applicant CCL. Whereas, 2 knives were pending with the “Blue Dart Courier Services.” In all, 22 injuries were found on the persons of the deceased. Even, the owner of the Game Parlour received injury on his right thumb as he intervened in the incident and CCTV Footage shows presence of the applicant CCL and other CCLs near the spot on the day and time of the incident. The Psychiatric Report shows that the CCLs are fully aware about consequences of their act. The involvement of the applicant CCL is in grievous offence and in view of the provisions of the Juvenile Justice Act, the matter is rightly remanded to the JJB. In view of that, the present revision being devoid of merits is liable to be dismissed.

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13. In support of their contentions, learned Additional Public Prosecutor for the State and learned counsel assisting the prosecution placed reliance on following decisions:

1. Barun Chandra Thakur vs. Master Bholu and anr, reported in (2023)12 SCC 401, and

2. Criminal Revision Application No.32/2020 (Mustafa Khan Jabbar Khan vs. State of Maharashtra and anr) decided by this court on 28.6.2023.

14. Before appreciating the above said submissions, it is necessary to go through the relevant provisions.

15. Section 3 of the Juvenile Justice Act, refers to the general principles to be followed in administration of justice. Chapter II consists of Section 3 provides for general principles of care and protection of children to be

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followed in administration of the Act. The relevant clauses are reproduced as under:

Clause (i) Principle of presumption of innocence: any child shall be presumed to be an innocent of any mala fide or criminal intent;

Clause (iii) Principle of Participation: every child will have a right to be heard and to participate in all processes and decisions affecting his interest;

Clause (iv) Principle of best interest: primary consideration in all decisions regarding the child shall be in his best interest.

Clause (xvi) Principles of natural justice: standards of fairness shall be adhered to including the right to fair hearing, rule against bias and right to review by all persons or bodies, acting in a judicial capacity under this Act.

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16. Section 9 of the Juvenile Justice Act, provides for the procedure to be followed by a Magistrate, who has not been empowered to exercise the powers of Board under the Act, when he is of the opinion that any alleged offender brought before him is a child. In that case, the Magistrate would immediately record his opinion and forward the child along with the record of proceedings to the Board having jurisdiction.

17. Section 15 deals with preliminary assessment into heinous offences by Board, which is reproduced for reference:

Section 15. Preliminary assessment into heinous offences by Board. (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and

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may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

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Thus, Section 15 provides for preliminary assessment where the alleged offence is heinous and where the child has completed or is above the age of 16 years, the Board is required to conduct the preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence and after such assessment, pass an order in accordance with sub-section (3) of Section 18. If the Board is of the opinion that the child needs to be tried as an adult then the case be transferred to the Children's Court having jurisdiction to try such offence. Otherwise, the Board itself will proceed to try the matter as a summons case under the Code of Criminal Procedure (now BNSS).

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18. Section 18 deals with orders regarding child found to be in conflict with law, which is reproduced for the reference:

Section 18. Orders regarding child found to be in conflict with law. - (1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, [or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,--

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

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(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services

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including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to

- (i) attend school; or
- (ii) attend a vocational training centre; or
- (iii) attend a therapeutic centre; or
- (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or
- (v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

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Thus, Section 18 requires the Board to pass appropriate orders where the child is found to be in conflict with law. Different categories are provided and various powers are conferred on the Board to take care of such children who are below the age of sixteen years and have committed heinous offence and for children up to the age of eighteen years who have committed petty offence or a serious offence. Subsection (1) of Section 18 and its various clauses from (a) to (g) confer a variety of powers on the Board for issuing necessary directions. Subsection (2) gives additional power to the Board providing for education, training, counselling, deaddiction programmes and even restricting the movement of the child, in his interest. Sub section (3) provides that the Board if after the preliminary assessment under Section 15 passes an order that there is a need for trial of the child as an adult, then the Board may order transfer of

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the trial of such a case to the Children's Court having jurisdiction.

19. Section 19 deals with the powers conferred on the Children's Court. The Children's Court upon receipt of the preliminary assessment from the Board will decide whether there is need for trial of a child as an adult in accordance with the CrPC and pass appropriate orders after trial subject to the provisions of this section as also Section 21.

20. Under the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, it is only rule 10(A) which refers to preliminary assessment into heinous offences by the Board. Sub-rule (1) mentions that the first thing to be determined by the Board is the age of the child as to whether he is below or above the age of 16 years which is to be done as per Section 14 of the Act. Sub-rule (2)

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mentions that the Board may take assistance of the experienced psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. It also provides that the “Model Rules” District Child Protection Unit would have a panel of such experts to be made available to the Board for its assistance or otherwise the Board could access such experts independently. Sub-rule (3) declares that the child shall be presumed to be innocent unless proved otherwise while making the preliminary assessment. Sub-rule (4) provides for the consequential order to be passed by the Board where it holds that the trial of the child is to be carried out as an adult for which, it is required to assign reasons and further to provide copy of order to the child forthwith.

21. In the light of the above said legal provisions, especially Rule 10(A), as far as age of the applicant CCL

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and other CCLs is concerned, their birth certificates were produced before the Board and the Board has observed in the order that they all above are more than 16 years of age.

22. The applicant CCL was also referred for assessment to the Psychiatrist and the SIR is also placed on record.

23. As far as the Psychiatric Report is concerned, it only mentioned that age of the child is 17 years at present and there is no evidence of any psychopathology in the patient and he understands nature and possible consequences of the alleged offence and circumstances under which the offence is committed. The SIR discloses that during communication with the applicant CCL, it revealed his birth date as 20.4.2002 and he is studying in 12th Std. He is cooperative with the other children and

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he is staying in Observation Home and there is possibility of improvement and reformation in him.

24. Thus, preliminary assessment of the applicant CCL made by the Board under Section 15 of the Juvenile Justice Act is under consideration.

25. As per Section 15 of the Juvenile Justice Act, in order to preliminary assessment of child in conflict with law the board can take the assistance of any psychologist or any other expert. The Board came to the conclusion on the basis of Psychiatric Report that the applicant is able to understand the nature and consequence of his act. Admittedly, Psychologist has not ascertained the applicant CCL's IQ Test and nothing is on record to show that he has carried out preliminary test to ascertain that he understands the nature and consequences of his act.

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26. The Hon'ble Apex has extensively dealt with this issue in the case of **Barun Chandra Thakur** *supra* and observed that the order of preliminary assessment decides whether the child in conflict with law, falling in the age bracket of 16-18 years and having committed heinous offence, is to be tried as an adult by the Children's Court or by the Board itself, treating him to be a child. There are two major consequences provided in the Act, 2015, if the child is tried as an adult by the Children's Court. First, that the sentence or the punishment can go up to life imprisonment if the child is tried as an adult by the Children's Court, whereas if the child is tried by the Board as a child, the maximum sentence that can be awarded is 3 years. The second major consequence is that where the child is tried as a child by the Board, then under Section 24(1), he would not suffer any disqualification attached to the conviction of an offence, whereas the said removal

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of disqualification would not be available to a child who is tried as an adult by the Children's Court, as per the proviso to Section 24(1). Another consequence, which may also have serious repercussions, is that as per Section 24(2), where the Board or the Children's Court, after the case is over, may direct the police or the registry that relevant records of such conviction may be destroyed after the period of expiry of appeal or a reasonable period as may be prescribed. Whereas, when a child is tried as an adult, the relevant records shall be retained by the relevant Court, as per the proviso to Section 24(2).

The Hon'ble Apex Court further observed that Preparation of SIR is a statutory requirement for every child in conflict with law, which is to be prepared by the Probation Officer or any other agency as may be directed by the Board. Its format is also provided in Form 6 to the Model Rules. The object of getting an SIR prepared is to

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obtain as much as possible information about the background of the child. It has as many as 48 columns to be filled up and thereafter, the Probation Officer has to submit his opinion also.

While concluding the issue, the Hon'ble Apex Court observed that we are conscious of the fact that the power to make the preliminary assessment is vested in the Board and also the Children's Court under Section 15 and 19 respectively. The Children's Court, on its own, upon a matter being referred to under Section 18(3), would still examine whether the child is to be tried as an adult or not, and if it would come to the conclusion that the child was not to be tried as an adult then it would itself conduct an inquiry as a Board and pass appropriate orders under Section 18. Thus, the power to carry out the preliminary assessment rests with the Board and the Children's Court. This Court cannot delve upon the

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exercise of preliminary assessment. This Court will only examine as to whether the preliminary assessment has been carried out as required under law or not. Even the High Court, exercising revisionary power under Section 102, would test the decision of the Board or the Children's Court with respect to its legality or propriety only. In the present case, the High Court has, after considering limited material on record, arrived at a conclusion that the matter required reconsideration and for which, it has remanded the matter to the Board with further directions to take additional evidence and also to afford adequate opportunity to the child before taking a fresh decision.

27. In view of the above observations, if the facts of the present case are taken into consideration, it reveals that preliminary assessment should consist of mental and psychological capacity to commit such offence and ability

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to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. While passing order under Section 18 of the Juvenile Justice Act, conducting preliminary investigation and obtaining SIR are requirements. The order passed by the JJB discloses that it had not considered the SIR. It also reveals that the SIR and Psychiatric Report are also not supplied to the applicant CCL.

28. The observations of the Hon'ble Apex Court in the case of **Barun Chandra Thakur** *supra* show that CCL is entitled to all relevant documents including SIR and Psychiatric Report etc..

29. In the present case, neither Psychiatric Report; SIR; nor other relevant documents are provided to the applicant CCL so also opportunity of cross examination was not given to the applicant CCL. This opportunity was

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required as to ascertain which test the Psychiatric has conducted to know the mental capacity of the applicant CCL. Report of the Psychiatric does not reveal that on the basis of which test he came to conclusion that the applicant CCL understands the nature and consequences of the said crime. The mental age as per the applicable formula based on the IQ of the child s also not ascertained by the Psychiatric.

30. Learned counsel for the applicant placed reliance on the decision of the Hon'ble Apex Court in the case of **Thirumoorthy vs. State** *supra* which shows that the accused therein was CCL and the proceedings were required to be conducted in accordance with the mandatory procedure prescribed under the Juvenile Justice Act. Despite of the above said provision, chargesheet was filed against the accused directly before the Sessions Court. The Special Court held an enquiry,

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conducted psychological evaluation, procured the report, and dismissed the application of the mother of the accused. Thus, the observations of the Hon'ble Apex Court in the said case show that Children's Court brushed aside all requirements of holding an inquiry under Section 19(1)(i) of the Juvenile Justice Act and, therefore, the CCL was never subjected to preliminary assessment by the Board so as to find out whether he should be tried as an adult and directing such exercise, at this stage, would be sheer futility. The accused therein was acquitted by the Hon'ble Apex Court.

31. As far as the present case is concerned, preliminary assessment was held by the JJB. However, sufficient opportunity was not granted to the applicant CCL and, therefore, learned Sessions Judge remanded the matter for fresh preliminary assessment of all 4 CCLs by taking into consideration all relevant Reports and documents

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including SIR and Psychiatric Report by giving an opportunity to the applicant CCL of cross examination of Psychiatric and other witnesses to the documents and of hearing.

32. Thus, the Appellate Court taking into consideration the material remanded the matter and also directed for further assessment of the applicant CCL and further directed to carry out the said exercise within 3 months. Though, at this stage, it is difficult to give an opinion as to whether any further Test can be carried out as to the age of the CCL and mental capacity, as now he is more than 21 years of age. However, it is the discretion of the JJB who may be consulted as to whether any fresh examination would be of any relevance/assistance or not.

33. As far as the order passed by learned District Judge-1 and Additional Sessions Judge, Gondia is

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concerned, no illegality is committed by the Appellate Court and, therefore, no interference is called for.

34. In this view of the matter, the revision being devoid of merits is liable to be dismissed and the same is **dismissed**.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!