

Reserved

**AFR**

**Reserved on: 11.08.2016**

**Delivered on: 21.09.2016**

**Court No. - 21**

**Case :-** Criminal Appeal No.1883 Of 2013  
**Appellant :-** Sher Singh @ Sheru  
**Respondent :-** State of U.P.  
**Counsel for Appellant :-** Dharmendra Singhal, Babit Kumar, J.S. Audichya, Rajul Bhargava  
**Counsel for Respondent :-** Government Advocate

**Hon'ble V.K. Shukla, J.**

**Hon'ble Ramesh Sinha, J.**

**Hon'ble Bharat Bhushan, J.**

**(Oral : V.K. Shukla, J.)**

Kidnapping for ransom of a 3 year old child and his recovery in a police raid led to a trial by the Sessions Court in which the appellant has been convicted by the judgement dated 15.4.2013.

In this appeal, an issue of juvenility has been raised in the background that the incident in which the appellant is involved is of 15th/16th May 2003. The appellant claims that his date of birth recorded in the High School Examination (Matriculation) record is 15th October 1986 and as such on the date of the incident, he had not attained the age of 18 years, consequently, he was entitled to the benefit of being a juvenile as contemplated under the Juvenile Justice (Care and Protection of Children) Act, 2000 read with the the Juvenile Justice (Care and Protection of Children) Rules 2007 framed thereunder.

What appears from the record is that the appellant had moved

an application for declaring him to be juvenile before the concerned Court in Session Trial No. 188 of 2004. The prosecution had moved an application for conducting a joint trial of this case along with the Session Trial No. 56-A of 2004 and 188-A of 2004.

The application moved for declaring the appellant a juvenile in Session Trial No. 188 of 2004 was sent to the Juvenile Justice Board and in that file, vide order dated 5.9.2005, the claim of the appellant to declare him a juvenile in Case Crime No. 147 of 2004 and Case Crime No. 148 of 2004, the Juvenile Justice Board rejected the plea of the appellant after getting a medical report from the Chief Medical Officer, Mathura dated 4.7.2005. The order dated 5.9.2005 categorically records that since no other evidence was adduced the parties agreed for the disposal of the application and it was held that the applicant was aged about 19 years on the date of the incident in the aforesaid case crime numbers.

After almost four years thereafter, a prayer appears to have been made in Session Trial No. 188-A of 2004 connected with the same incident praying for declaration of the appellant in the said Session Trial as a juvenile. The matter was examined by the Juvenile Justice Board and on 19.11.2009, the prayer for declaring him a juvenile was rejected by the Juvenile Justice Board against which the appellant filed an appeal on 19.9.2011 in terms of Section 52 of the 2000 Act after a period of almost two years. It appears that at the stage of appeal the matriculation certificate was adduced and pressed for the first time as it conformed to the 2007 Rules. In these proceedings, a reference was made of the application moved for declaring the appellant to be juvenile bearing no. 35-Kha. This was the application, which was moved for sending the file to the Juvenile Justice Board, but prior to that, after the order dated 5.9.2005 referred to hereinabove, a request had been made to send the file to the learned Sessions Court.

Thus two sets of orders came into existence in relation to the claim of juvenility of the appellant, one dated 5.9.2005 and the other dated 19.11.2009.

The appeal, which was against the order dated 19.11.2009 was dismissed on 29.9.2011 and the appellate court recorded all the above noted facts in the said order. What appears from the order dated 29.9.2011 is that this contention of the appellant about declaring him to be a juvenile was dismissed on the observations that were noted including the observation that no appeal had been filed against the order dated 5.9.2005 passed earlier in relation to S.T. No. 188 of 2004.

Faced with this at this stage, the appellant filed an Appeal No. 153 of 2012 against the order dated 5.9.2005, which was dismissed on 4.2.2013 firstly, on the ground that the appeal had been presented after almost seven years and there was no reason to condone the delay and secondly, the appellant had full knowledge of the order dated 5.9.2005, that was subject matter of consideration by the Juvenile Justice Board in the subsequent order dated 19.11.2009 and dismissal of the appeal on 29.9.2011.

These facts have been mentioned clearly in the appellate order dated 4.2.2013.

The appellant, thereafter probably realising the legal obstruction on account of the order dated 5.9.2005 having become final, preferred Writ Petition No. 3438 of 2013 which was dismissed as withdrawn treating it to be infructuous vide order dated 13.10.2014 but with an observation that the right of the petitioner to raise the issue of juvenility shall not be affected in the present appeal.

The judgment in the writ petition dated 13th October 2014 is extracted hereunder :

"Learned counsel for the petitioner submitted that during the course of trial, the petitioner moved an application under Section 7 (a) of the Juvenile Justice Act, 2000 to declare him as juvenile. However, that application was rejected by the court concerned and accordingly, the petitioner was prosecuted under the general criminal law and was convicted by the trial court. Against the said judgment and order of conviction, the petitioner has already preferred criminal appeal in this Court.

Thus, this writ petition has now become infructuous. Learned counsel for the petitioner prays to withdraw this writ petition.

Accordingly, this writ petition is dismissed as withdrawn.

However, it may not affect the right of the petitioner to raise the issue of juvenility in the appeal pending in this Court. "

These peculiar facts, about the subsequent claim of juvenility emanating from the order dated 19.11.2009 rejecting the claim on the ground of excessive delay, and earlier rejection dated 5.9.2005 that was challenged subsequently in appeal, after rejection of the appeal against the order dated 19.11.2009 on 29.9.2011, gave rise to the writ petition that was dismissed on 13.10.2014 with observations noted therein.

A Division Bench that heard the appeal earlier passed the following order on 28.5.2015:-

"Hon'ble Bala Krishna Narayana,J.

Hon'ble Mohd. Tahir,J.

Heard learned counsel for the applicant-appellant, learned A.G.A for the State and perused the record.

Learned counsel for the applicant-appellant submitted that the applicant-appellant was juvenile at the time of occurrence in question, so this matter be referred to the Juvenile Justice Board, Mathura for ascertaining the age of the applicant-appellant at the time of occurrence in question.

In view of the submission of the applicant-appellant's counsel, this matter is referred to the Juvenile Justice Board, Mathura which shall after giving opportunity to the complainant / first informant and the State ascertain the age of the applicant-appellant at the time of the incident in question.

Let a copy of the F.I.R. and charge sheet submitted by the police along with the copy of the order be transmitted to the Juvenile Justice Board, Mathura through District Judge, Mathura for holding an inquiry for the aforesaid purpose. This Court expects that the inquiry shall be completed within a period of one month from the date of receipt of the copy of this order, where after the report shall be submitted by the Board. As soon as the report is received, the Registry shall list this appeal on 20.07.2015 before the appropriate Bench for passing appropriate order.

Order Date :- 28.5.2015"

Subsequently another Bench passed the following order on 20.7.2015:-

"Hon'ble Amreshwar Pratap Sahi,J.

Hon'ble Pramod Kumar Srivastava,J.

Heard Sri Dharmendra Singhal, learned counsel for the appellant.

A plea of juvenility was taken before the Juvenile Justice Board, which was rejected during the course of the trial itself. The appellant filed an appeal against the same which is stated to have been rejected on the ground of limitation. Against the said appellate order, a writ petition no. 3438 of 2013 was filed, but by the time the writ petition came to be decided, the trial court had already convicted the appellant.

The writ petition was, therefore, allowed to be withdrawn with liberty to take this plea of juvenility in this appeal itself.

Consequently, a supplementary affidavit dated 16.10.2014 alongwith an application was filed on which this court passed an order on 28.5.2015 referring the matter to the Juvenile Justice Board once again. What we find is that the issue of juvenility had become final but the writ petition was dismissed as withdrawn with the presumption that the issue has become infructuous. However, while permitting the withdrawal, the court observed that it shall not affect the right of the petitioner to raise issue of juvenility in this appeal. We find from the judgment of the trial court taking notice of this plea of juvenility in paragraph-4 of the judgment and then after having found that the appellant was not a juvenile, it assumed jurisdiction of trial and has now finally convicted the appellant. In such a situation, Sri Singhal may explain as to how without setting aside or overcoming the order of juvenility that has already been passed, this Court can now proceed once the said issue has been noticed by the trial court while assuming jurisdiction to try the appellant and then proceeded to convict to him. Even otherwise the report of the Juvenile Justice Board has not yet arrived.

Let the matter come up with a fresh report from the court below on Monday i.e. 27.7.2015.

Order Date :- 20.7.2015"

The report and the order dated 17.7.2015 as desired has been furnished in a sealed envelop sent by the Juvenile Justice Board, Mathura. The same is extracted hereinunder:

"पत्रावली आज पेश हुई। प्रश्नगत पत्रावली माननीय उच्च न्यायालय इलाहाबाद, द्वारा क्रि० अपील संख्या 1883/2013 शेरसिंह उर्फ शेरू बनाम उ०प्र० राज्य में इस निर्देश के साथ किशोर न्याय परिषद मथुरा को प्राप्त हुई थी कि किशोर न्याय परिषद् मथुरा माननीय उच्च न्यायालय के आदेश की प्रति प्राप्त होने के एक माह के अन्दर प्रार्थी शेरसिंह उर्फ शेरू की प्रश्नगत घटना के समय आयु निर्धारण जाँच करें। उक्त आदेश के अनुपालन में परिषद द्वारा शेरसिंह उर्फ शेरू तथा वादी मुकदमा को नोटिस निर्गत किये गये। उभयपक्ष न्यायालय के समक्ष उपस्थित आये। उनकी बहस सुनी गयी।

वादी मुकदमा द्वारा किशोर न्याय परिषद मथुरा को यह अवगत कराया गया कि प्रश्नगत

किशोर के सम्बन्ध में पूर्व में ही किशोर न्याय परिषद मथुरा द्वारा आयु निर्धारण जाँच की गयी है जिसमें अपने आदेश दिनांक 05-09-2005 को शेरसिंह उर्फ शेरू द्वारा कोई भी प्रपत्र नहीं प्रस्तुत किया गया है। तब तत्कालीन किशोर न्याय परिषद मथुरा शैक्षिक अभिलेखों के अभाव में मैडीकल कराया गया। उक्त मैडीकल आख्या में उसकी आयु 21 वर्ष पायी गयी। जिसके आधार पर तत्कालीन किशोर न्याय परिषद मथुरा के प्रधान मजिस्ट्रेट एवं सदस्य द्वारा उसे घटना की तिथि पर 19 वर्ष का पाते हुये उसे वयस्क ँ घोषित किया गया। वादी मुकदमा द्वारा उक्त आदेश की छायाप्रति पत्रावली पर दाखिल की गयी है एवं इसके अतिरिक्त उनके द्वारा किशोर न्याय परिषद मथुरा के आदेश दिनांक 05-09-2005 के विरुद्ध प्रस्तुत अपील संख्य 113/2012 के आदेश की सत्यापित प्रति भी प्रस्तुत की गयी है। जिसके अवलोकन से विदित होता है कि दिनांक 4-2-2013 को अपीलीय न्यायालय द्वारा उक्त अपील निरस्त कर दी गयी। पत्रावली पर वादी द्वारा एक अन्य आदेश जवैनाइल प्रकीर्ण वाद संख्या 34/2010 दिनांकित 29-09-2011 भी प्रस्तुत किया है जिसके अवलोकन से ज्ञात होता है कि प्रार्थी शेरसिंह उर्फ शेरू का उक्त प्रार्थना पत्र श्रीमान अपर जिला एवं सत्र न्यायाधीश न्यायालय संख्या-1 मथुरा द्वारा दिनांक 29-9-2011 को निरस्त किया जा चुका है।

उक्त समस्त प्रपत्रों के अवलोकन से स्पष्ट है कि किशोर के सम्बन्ध में पूर्व में उसको पर्याप्त मौका दिये जाने के उपरान्त किशोर न्याय परिषद मथुरा द्वारा दिनांक 05-09-2005 को घटना की तिथि को उसे वयस्क पाते हुये उसे किशोर नहीं माना गया।

परन्तु चूँकि माननीय उच्च न्यायालय द्वारा किशोर न्याय परिषद मथुरा को घटना के समय उसकी आयु निर्धारण जाँच का आदेश दिया गया है। अतः यह परिषद माननीय उच्च न्यायालय के आदेश से बाध्य है। माननीय उच्च न्यायालय के उक्त आदेश के परिप्रेक्ष्य में किशोर न्याय परिषद मथुरा द्वारा प्रार्थी शेरसिंह के पिता रामवीर सिंह को परीक्षित कराया गया। जिन्होंने अपनी मुख्य-परीक्षा में यह कथन किया है कि शेरसिंह उर्फ शेरू की जन्मतिथि 15-10-1986 है। सन 2003 में बृज आदर्श इण्टर कालेज मांट से हाईस्कूल की परीक्षा प्राईवेट दी थी। उसके पूर्व शेरसिंह उर्फ शेरू कक्षा 6 से 10 तक राष्ट्रीय इण्टर कालेज राया में पढ़ा था परन्तु 10 वीं में वहां फेल हो गया था। अन्य विद्यालयों में भी उसकी जन्मतिथि 15-10-1986 ही है। विद्वान सहायक अभियोजन अधिकारी द्वारा की गयी जिरह में उसने यह कहा है कि उसे अपने हर बच्चे की जन्मतिथि क्या है नहीं बता सकता। इसके अतिरिक्त इस साक्षी द्वारा अन्य कोई महत्वपूर्ण कथन नहीं किया है। किशोर न्याय परिषद मथुरा द्वारा बृज आदर्श इण्टर कालेज मांट के प्रधानाचार्य को शेरसिंह से सम्बन्धित शैक्षिक अभिलेखों के साथ आहूत किया गया। उन्होंने अपनी मुख्य-परीक्षा में बताया है कि शेरसिंह ने वर्ष 2005 में हाईस्कूल की परीक्षा उत्तीर्ण की है जिसमें उसकी जन्मतिथि 15-10-1986 अंकित है। उनके द्वारा माध्यमिक शिक्षा परिषद द्वारा जारी क्रॉस लिस्ट की छाया प्रति स्वप्रमाणित करके दाखिल की गयी है, जिस पर प्रदर्श ख-1 अंकित किया गया। जिसके अवलोकन से विदित होता है कि शेरसिंह पुत्र रामवीर की जन्मतिथि 15-10-1986 अंकित है। इसके अतिरिक्त इस साक्षी द्वारा प्रार्थी शेरसिंह के हाईस्कूल अंकपत्र एवं प्रमाण पत्र को देखकर यह बताया गया कि यह उसके विद्यालय की है। जिसकी प्रति पर क्रमशः प्रदर्श ख-2 व प्रदर्श ख-3 डाले गये। विद्वान सहायक अभियोजन अधिकारी द्वारा की गयी जिरह में साक्षी ने बताया है कि छात्र की जन्मतिथि कैसे अंकित की गयी है इसका उनके पास कोई साक्ष्य नहीं है। उसने कक्षा 9 तक की शिक्षा कहां से प्राप्त की। इसका भी कोई प्रमाण उनके पास नहीं है। वादी मुकदमा द्वारा अन्य कोई साक्ष्य प्रस्तुत नहीं किया गया।

यहाँ किशोर न्याय नियमावली 2007 का नियम 12 (3) का अवलोकन उचित प्रतीत होता है जिसमें यह धारित है कि किसी किशोर की आयु निर्धारण के समय वरीयताक्रम में साक्ष्य इस प्रकार लिये जावेंगे।

- 1- मैट्रिकुलेशन प्रमाण पत्र, यदि यह न हो तो,
- 2- प्रथम प्रवेश स्कूल का जन्म प्रमाण पत्र, यदि यह भी न हो तो,
- 3- नगर पालिका या पंचायत द्वारा जारी जन्म प्रमाण पत्र।

उक्त तीनों की अनुपस्थिति में चिकित्सीय द्वारा निर्धारित आयु।

उक्त नियम के प्रावधानों के अनुसार प्रार्थी द्वारा मैट्रिकुलेशन प्रमाण पत्र, दाखिल किये गये है, जिनकी सम्पुष्टि उक्त विद्यालय के प्रधानाचार्य की साक्ष्य से भी हो रही है तथा पत्रावली पर अभियोजन या वादी मुकदमा की ओर से ऐसा कोई साक्ष्य दाखिल नहीं किया गया है जिससे इस शैक्षिक अभिलेखों की सत्यता संदिग्ध होती हो।

इस प्रकार उपरोक्त समस्त विवेचना एवं पत्रावली पर प्रस्तुत साक्ष्य के एकरूपेण परिशीलन के उपरान्त किशोर न्याय परिषद मथुरा का सर्वसम्मत मत है कि प्रश्नगत घटना दिनांक 16-5-2003 की है जबकि शैक्षिक अभिलेखों के अनुसार प्रार्थी शेरसिंह उर्फ शोरा की जन्मतिथि 15-10-1986 है। इस प्रकार घटना की तिथि पर उसकी आयु 16 वर्ष 7 माह 1 दिन आ रही है। अतः घटना की तिथि पर 18 वर्ष से कम आयु का पाये जाने पर वह विधि का उल्लंघन करने वाला किशोर घोषित किये जाने योग्य है।

#### आदेश

तदनुसार शेरसिंह उर्फ शोरा पुत्र रामवीर सिंह निवासी गली मवेशियान थाना राया जिला मथुरा को घटना की तिथि 16-05-2003 पर 18 वर्ष से कम आयु का पाये जाने के कारण विधि का उल्लंघन करने वाला किशोर घोषित किया जाता है।

आदेश नियमानुसार सील बन्द लिफाफे में माननीय जनपद न्यायाधीश महोगदय मथुरा के माध्यम से माननीय इलाहाबाद उच्च न्यायालय अविलम्ब प्रेषित हो।”

The appellant has been held to be aged less than 18 years on the date of the incident.

Faced with this situation, the Division Bench has framed following questions to be considered to lay down the law correctly:

*(i) Whether the right of a juvenile to raise the issue of juvenility can be denied, by dismissing a writ petition as infructuous and then permitting him to raise the issue in a criminal appeal when the same issue had been raised before the Juvenile Justice Board and an appeal had been decided in accordance with Section 52 of the 2000 Act as in the present case, on applying the doctrine of finality?*

*(ii) Whether the law laid down by prescribing a procedure of allowing the question to be raised in a criminal appeal as an alternate substitute through a miscellaneous application under the judgment dated 13.10.2014 by the learned Single Judge is correct or not?*

*(iii) Whether in view of the law laid down by the Apex Court particularly in the case of Abuzar Hossain @ Gulam Hossain (supra) and Abdul Razzaq Vs. State of U.P. (supra), the issue presently raised, would also stand covered by the ratio and the observations made therein or not ?*

Shri Dharmendra Singhal, Advocate submits that the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000 is a beneficial piece of legislation for the benefit of the juvenile and the scheme of Act would go to show that once it is substantiated from the record in question that the incumbent was juvenile on the relevant date i.e. commission of the offence, then he/she cannot be sentenced and for this purpose he has proceeded to point out that all such cases are liable to be reopened at any stage and even those matters that have attached finality are also liable to be reopened and in view of this, liberal view should be

taken in the matter that would achieve the object of the Act and substantial justice should not be shackled by procedures as justice is not at all handmade of procedures and in view of this, once there is no order of determining age in consonance with sub-rule 3 of Rule 12 of The Juvenile Justice (Care and Protection of Children) Rules, 2007, the reference should be answered accordingly.

Shri Imran Ullah, learned Additional Advocate General, on the other hand, contended that closed chapter should not be permitted to be reopened and in view of this, the reference in question should be answered accordingly.

Shri Vimlendu Tripathi, Advocate appearing for the State also supplanted the argument advanced on behalf of the State by submitting that once a competent authority had proceeded to take a decision and full fledged remedial mechanism has been provided for to avail the said benefit and the same has been availed, then collateral challenge is not at all permissible in law and as such, the reference be answered accordingly.

In order to answer the issues that have been so raised, the legislative background as well as relevant statutory provisions holding the field will have to be looked into.

The Parliament felt it necessary that uniform juvenile justice system should be available throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the country and there was also need for larger involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles and with these objectives in mind, it enacted Juvenile Justice Act, 1986 (for short, '1986 Act').

Looking to the working of Juvenile Justice Act, 1986 review of

its working was carried out, and '1986 Act' was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, '2000 Act'). 2000 Act to carry forward the constitutional philosophy engrafted in Articles 15(3), 39(e) and (f), 45 and 47 of the Constitution and same also incorporates the standards prescribed in the Convention on the Rights of the Child, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) and all other relevant international instruments. Clause (k) of Section 2 defines "juvenile" or "child" to mean a person who has not completed eighteenth year of age. Clause (l) of Section 2 defines "juvenile in conflict with law" to mean a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age on the date of commission of such offence. Chapter II of Juvenile Justice Act, 2000 deals exclusively with juveniles in conflict with law who are alleged to have committed offence which are otherwise punishable under the general law of crimes.

Section 3 of 2000 Act provides for continuation of inquiry in respect of juvenile who has ceased to be a juvenile. It reads as under:

**"S.3 . Continuation of inquiry in respect of juvenile who has ceased to be a juvenile.—Where an inquiry has been initiated against a juvenile in conflict with law or a child in need of care and protection and during the course of such inquiry the juvenile or the child ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile or a child."**

Chapter II of 2000 Act deals with juvenile in conflict with law. This Chapter comprises of Sections 4 to 28. Section 4 provides for constitution of juvenile justice board and its composition. Section 5 provides for procedure, etc. in relation to juvenile justice board. Section 6 deals with the powers of juvenile justice board. Section 7

provides for the procedure to be followed by Magistrate not empowered under the Act. Section 18 of the Act prohibits joint proceedings and trial of juvenile and a person who is not a juvenile and the punishment that can be awarded to a juvenile has been provided for in Section 15 of the Act provides for the order that can be passed regarding juvenile. Relevant provisions i.e. Sections 6 is being quoted as under:

**“S.6 . Powers of Juvenile Justice Board.—(1) Where a Board has been constituted for any district, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.**

**(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.**

Section 49 of 2000 Act deals with presumption and determination of age. This Section 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 age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.”**

Sections 52 and 53 deal with appeals and revision. Section 54 provides for procedure in inquiries, appeals and revision proceedings, which reads as follows:

**52. Appeals.—**

**Subject to the provisions of this section, any person aggrieved by an order made by a competent authority under this Act may, within thirty days from the date of such order, prefer an appeal to the Court of Session: Provided that the Court of Session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.**

**(2) No appeal shall lie from—**

**(a) any order of acquittal made by the Board in respect of a juvenile alleged to have committed an offence; or**

**(b) any order made by a Committee in respect of a finding that a person is not a neglected juvenile.**

**(3) No second appeal shall lie from any order of the Court of Session passed in appeal under this section.**

**53. Revision.—**The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority or Court of Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit: Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

**“S.54 . Procedure in inquiries, appeals and revision proceedings.—**  
**(1)** Save as otherwise expressly provided by this Act, a competent authority while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974) for trials in summons cases.

**(2)** Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973(2 of 1974).”

In the State of U.P., in exercise of power conferred under Section 68 of the Juvenile Justice Care and Protection 2000 Act (Act No.56 of 2000), Rules have been framed known as, the U.P. Juvenile Justice (Care and Protection of Children) Rules, 2004 (*herein-after to be referred to as the 'U.P. Rules'*). The relevant Rule for the purpose of consideration of issue raised before us is Rule 22. Rule 22 reads as follows:

**“22. Procedure to be followed by a Board in holding inquiries and the determination of age.-**

**(1)** In all cases under the Act the proceedings shall be conducted in as simple a manner as possible and care shall be taken to ensure that the juvenile or child against whom the proceedings have been instituted is given home like atmosphere during the proceedings.

**(2)** When witnesses are produced for examination, the Board shall be free to use the power under Section 165 of the Indian Evidence At, 1872, (Act No.1 of 1872), to question them so as to bring out any point that may go in favour of the juvenile or the child.

**(3)** While examining a juvenile or child and recording his statement, the competent authority shall be free to address the juvenile or

child in any manner that may seem suitable, in order to put the juvenile or child at ease and to elicit the true facts, not only in respect of the offence of which the juvenile or child is accused, but also in respect of the home and social surroundings and the influence to which the juvenile or child might have been subjected.

(4) The record of the examination shall be in such form as the Board may consider suitable having regard to the contents of the statement and circumstances in which it was made.

(5) In every case concerning a juvenile or child, the Board shall either obtain-

(i) a birth certificate given by a corporation or a municipal authority;

or

(ii) a date of birth certificate from the school first attended; or

(iii) matriculation or equivalent certificates, if available; and

(iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board, regarding his age and, when 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.

(6) The State Government shall recognize voluntary organizations, which have 10 years experience of child welfare to supervise and submit periodical reports, as directed by the Board regarding the orders passed under Clauses (b) and (c) of sub-section (1) of Section 15 of the Act.

(7) The Board shall, in Form-I, order a Probation Officer, or otherwise to conduct a special investigation, reporting on the character and antecedents of the juvenile or child with a view to assess the best possible mode for placement, such as, with the family, an institution or otherwise permissible under the Act.

(8) When a juvenile or child is placed under the care of a parent or a guardian and the Board considers it expedient to place the juvenile or child under the supervision of a probation officer, it shall issue a supervision order in Form-II.

(9) The competent authority may, while making an order placing a juvenile under the care of a parent, guardian or fit person, as the case may be, direct such parent, guardian or fit person to enter into a bond in Form IV with or without sureties.

(10) Whenever the Board orders a juvenile or child to be kept in an institution, it shall forward to the Superintendent of such institution a copy of its order, in Form III with particulars of the home and parents or guardian and previous record.

(11) The juvenile or child shall be lodged in a home closest to place where he belongs.

(12) The Superintendent of an institution, certified as special home under sub-section (2) of Section 9 of the Act, shall be informed in advance by the Board before any juvenile or child is committed to it.

**(13) The Superintendent of the said institution may, on receipt of the information, intimation in writing objections, if any, to the committal of the juvenile or child and the objections shall be taken into consideration by the Board before the juvenile or child is committed to the said institution.**

**(14) In case the Board orders the parent of the juvenile or child, or the juvenile or child to pay a fine, the amount realized shall be deposited in Government Treasury.”**

By Act 33 of 2006, the Parliament brought significant changes in 2000 Act. Section 7A provides for procedure to be followed when claim of juvenility is raised before any court. Section 20 dealt with pending cases. It reads as follows:

**“S.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 orders and the sentence, if any, passed by a court shall be deemed to have no effect.**

**20. Special provision in respect of pending cases.— Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.**

**Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.**

**Explanation.—In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said**

**provisions had been in force, for all purposes and at all material times when the alleged offence was committed.] ”**

The provisions of Act No.33 of 2006 also introduces Section 20 in reference to pending cases by providing a clear cut provision that notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court or in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence. A proviso has also been added that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile. The explanation provided to the same clearly proceeds to make a mention that in all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in terms of clause (I) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.

From the perusal of the provisions that have been quoted above, it is clearly reflected that under '2000 Act', the inquiry in respect of the claim of juvenility was required to be conducted by the Competent Authority having jurisdiction over the proceedings and by means of Act No.33 of 2006 Section 7-A has been introduced in the '2000 Act', wherein for the first time in reference of claim of juvenility, which has been permitted to be raised before any Court or

where is the Court is of the opinion that an accused person was juvenile on the date of commission of the offence, the Court is entitled to make an enquiry, 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. A proviso has been added to the same clearly providing that the claim of juvenility may be raised before any Court and it is to 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 the Act and the Rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of the Act. Sub-Section 2 of Section 7-A clearly mentions that 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 orders, and the sentence, if any, passed by a court shall be deemed to have no effect.

Thus this particular provision clearly entitles the Court to answer the issue of juvenility on being raised before the Court or even otherwise when Court is of the opinion that an accused person was juvenile on the date of commission of the offence, the Court shall make an enquiry and proceed accordingly.

By insertion of section 7-A, the legislative intent was clear inasmuch as the claim of juvenility could be raised before any Court at any stage, and the Court was conferred power to make an enquiry by taking such evidence as may be necessary to determine the age of such person with a rider that such claim shall be determined in terms of the provisions contained in the Act and the Rules made thereunder. Legislative intent was also made clear by means of Section 64 of J.J. Act to extend benefit of the provisions of the said Act qua juvenile in conflict with law who were undergoing

sentence for reviewing their respective case on the parameters of clause (l) of Section 2 and other provisions contained in the Act and the Rules and then taking consequential action. To confer power to the Central Govt. to frame model rules to carry out the purposes of the Act, a proviso to sub section (1) of section 68 was inserted by Act No.33 of 2006. The amended sub section (1) to section 68 along with its proviso reads as under:

**“68. Power to make rules.--(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.**

**Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of the matter is made by the State Government and while making such rules, so far as practicable, they conform to such model rules.”**

Prior to the insertion of the proviso to sub section (1) of section 68 as well as sub section (3) of section 68 by Act No.33 of 2006, there was no provision enabling the Central Govt. to frame model rules in respect of all or any of the matters with respect to which the State Govt. could make rules under the said section. As a result by taking the aid of section 70, which enabled the Central Govt. to remove difficulties, Model Rules were framed in the year 2000, the validity of the same came for consideration before a 5 judges Bench of the Apex Court in the case of ***Pratap Singh v. State of Jharkhand: (2005) 3 SCC 551. Hon'ble S. B. Sinha, J.***, one of the members of that Bench, in a separate judgment, partly dissenting from the majority view, discarded the Model Rules by holding that it had no statutory backing and held that the court thus would be entitled to apply the ordinary rules of evidence for the purpose of determining the age of the juvenile taking into consideration the provisions of section 35 of the Indian Evidence Act. The relevant observations are contained in paragraphs 107 to 112 of the report, which reads as under:

"107. We, however, do not agree that the Model Rules have been framed in terms of the provisions of the Act so as to attract the principles that rules validly framed are to be treated as part of the Act. It is one thing that the rules validly framed are to be treated as part of the Act as has been held in *Chief Forest Conservator (Wildlife) v. Nisar Khan* and *National Insurance Co. Ltd. v. Swaran Singh* but the said principle has no application herein as in terms of the provisions of the said Act, the Central Government does not have any authority to make any rules. In the absence of any rule-making power it cannot refer to the omnibus clause of power to remove difficulty inasmuch as it has not been stated that framing of any model rule is permissible if a difficulty arises in giving effect to the provision of the Act. The Central Government is a statutory functionary. Its functions are circumscribed by Section 70 of the Act only. It has not been authorised to make any rule. Such rule-making power has been entrusted only to the State. The Central Government has, thus, no say in the matter nor can it exercise such power by resorting to its power "to remove difficulties". Rule-making power is a separate power which has got nothing to do with the power to remove difficulty. By reason of the power to remove difficulty or doubt, the Central Government has not been conferred with any legislative power. The power to remove doubt or difficulty although is a statutory power but the same is not akin to a legislative power and, thus, thereby the provisions of the Act cannot be altered. [See *Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Union*]

108. The age of the delinquent juvenile, therefore, cannot be determined in terms of Model Rule 62. Any law mandating the court to take into consideration certain documents over others in determining an issue, must be provided for only by law. Only a validly made law can take away the power of the court to appreciate evidence for the purpose of determination of such a question in the light of Section 35 of the Indian Evidence Act. It cannot be done by the Central Government in exercise of the executive power (See *Union of India v. Naveen Jindal* and *State of U.P. v. Johri Mal.*)

109. In *Birad Mal Singhvi v. Anand Purohit* this Court held:

"To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded." (emphasis supplied)

110. In *Sushil Kumar v. Rakesh Kumar* this Court as regards determination of age of a candidate in terms of Section 36(2) of the Representation of the People Act, 1951 observed:

"32. The age of a person in an election petition has to be determined not only on the basis of the materials placed on record but also upon taking into consideration the circumstances attending thereto. The initial burden to prove the allegations made in the election petition although was upon the election petitioner but for proving the facts which were within the special knowledge of the respondent, the burden was upon him in terms of Section

106 of the Evidence Act. It is also trite that when both parties have adduced evidence, the question of the onus of proof becomes academic [see *Union of India v. Sugauli Sugar Works (P) Ltd. and Cox and Kings (Agents) Ltd. v. Workmen*]. Furthermore, an admission on the part of a party to the lis shall be binding on him and in any event a presumption must be made that the same is taken to be established."

This Court therein followed, inter alia, *Birad Mal Singhvi v. Anand Purohit* and several other decisions.

111. The Court, therefore, must determine the age of the appellant herein keeping in view our aforementioned findings that the relevant date for reckoning the age of the juvenile would be the date of occurrence and not the date on which he was produced before the Board.

112. The upshot of the aforementioned discussions is:

(i) In terms of the 1986 Act, the age of the offender must be reckoned from the date when the alleged offence was committed.

(ii) The 2000 Act will have a limited application in the cases pending under the 1986 Act.

(iii) The Model Rules framed by the Central Government having no legal force cannot be given effect to.

(iv) The court, thus, would be entitled to apply the ordinary rules of evidence for the purpose of determining the age of the juvenile taking into consideration the provisions of Section 35 of the Indian Evidence Act."

It appears that the amendment brought by Act No.33 of 2006 was to obviate the outcome of the decision of the Apex Court in the case of *Pratap Singh (supra)*, as has been observed in various decisions of the Apex Court in the case of ***Hari Ram v. State of Rajasthan:(2009) 13 SCC 211*** has held as follows:

Section 7-A makes provision for a claim of juvenility to be raised before any Court at any stage, even after final disposal of a case and sets out the procedure which the Court is required to adopt, when such claim of juvenility is raised. It provides for an inquiry, taking of evidence as may be necessary (but not affidavit) so as to determine the age of a person and to record a finding whether the person in question is a juvenile or not. The aforesaid provisions were, however, confined to Courts, and proved inadequate as far as the Boards were concerned. Subsequently, in the Juvenile Justice (Care and Protection of Children) Rules, 2007, which is a comprehensive guide as to how the provisions of the Juvenile Justice Act, 2000, are to be implemented, Rule 12 was introduced providing the procedure to be followed by the Courts, the Boards and the Child Welfare Committees for the purpose of determination of age in every case concerning a child or juvenile or a juvenile in conflict with law. Since the aforesaid provisions are interconnected and lay down the procedures for determination of age, the said Rule is reproduced hereinbelow:

"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 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;

(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 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 with 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 7A, 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 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."

**Sub-Rules (4) and (5) of Rule 12 are of special significance in that they provide that once the age of a juvenile or child in conflict with law is found to be less than 18 years on the date of offence on the basis of any proof specified in sub-rule (3) the Court or the Board or as the case may be the Child Welfare Committee appointed under Chapter IV of the Act, has to pass a written order stating the age of the juvenile or stating the status of the juvenile, and no further inquiry is to be conducted by the Court or Board after examining and obtaining any other documentary proof referred to in Sub-rule (3) of Rule 12. Rule 12, therefore, indicates the procedure to be followed to give effect to the provisions of Section 7A when a claim of juvenility is raised.**

**One of the problems which has frequently arisen after the enactment of the Juvenile Justice Act, 2000, is with regard to the application of the definition of "juvenile" under Section 2(k) and (l) in respect of offences alleged to have been committed prior to 1st April, 2001 when the Juvenile Justice Act, 2000 came into force, since under the 1986 Act, the upper age limit for male children to be considered as juveniles was 16 years. The question which has been frequently raised is, whether a male person who was above 16 years on the date of commission of the offence prior to 1st April, 2001, would be entitled to be considered as a juvenile for the said offence if he had not completed the age of 18 years on the said date. In other words, could a person who was not a juvenile within the meaning of the 1986 Act when the offence was committed, but had not completed 18 years, be governed by the provisions of the Juvenile Justice Act, 2000, and be declared as a juvenile in relation to the offence alleged to have been committed by him?**

**Read with Sections 2(k), 2(l), 7A and Rule 12, Section 20 of the Juvenile Justice Act, 2000, as amended in 2006, is probably the Section most relevant in setting at rest the question raised in this appeal, as it deals with cases which were pending on 1st April, 2001, when the Juvenile Justice Act, 2000, came into force. The same is, accordingly, reproduced hereinbelow :**

"20. Special provision in respect of pending cases.- Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.

[Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.- In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.]"

The Proviso and the Explanation to Section 20 were added by Amendment Act 33 of 2006, to set at rest any doubts that may have arisen with regard to the applicability of the Juvenile Justice Act, 2000, to cases pending on 1st April, 2001, where a juvenile, who was below 18 years at the time of commission of the offence, was involved. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of Clause (I) of Section 2, even if the juvenile ceased to be a juvenile on or before 1st April, 2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the Court to consider and determine the juvenility of a person even after conviction by the regular Court and also empowers the Court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.

At this point it may be noted that the decision of the Constitution Bench in Pratap Singh's case (supra) was rendered at a point of time when the amendments to Sections 2(I) and 20 and the introduction of Section 7-A had not yet been effected, nor was Rule 12 of the 2007 Rules available. Several decisions on the applicability of the 2000 Act to children who were above 16 but below 18 years on the date of commission of the offence have been rendered after the Juvenile Justice Act, 2000, came into force and several others were rendered after the amendments were introduced in the said Act by Amendment Act 33 of 2006 and the introduction of the 2007 Rules. The decisions rendered by this Court and the High Courts prior to 1st April, 2001, when the Juvenile Justice Act, 2000, came into force and thereafter can, therefore, be divided into two groups. The decision in Pratap Singh's case (supra) and in the case of Munney @ Rahat Jan Khan vs. State of U.P. [(2006) 12 SCC 697] fall into the first category, whereas the decisions in Jameel vs. State of Maharashtra [(2007) 11 SCC 420], Vimal Chadha vs. Vikas Chaudhary [(2008) 8 SCALE 608], Babloo Pasi vs. State of Jharkhand [(2008) 13 SCALE 137] and Ranjit Singh vs. State of Haryana [(2008) 9 SCC 453] fall into the second category. Although, the Constitution Bench decision in Pratap Singh's case (supra) and Munney's case (supra) are not really relevant since they have been rendered prior to 22nd August, 2006, when the Amending Act 33 of 2006 came into force, they assume a modicum of significance since they have been referred to and relied upon even after the Amending Act and the 2007 Rules came into force on 22.8.2006 and 26.10.2007, respectively.

28. Of the decisions rendered after the amendments effected in 2006 to the Juvenile Justice Act, 2000, the first decision of note is that of Jameel's case (supra) rendered on 16.1.2007 wherein the amendments to the Act effected by the Amendment Act 33 of 2006, which came into effect on 22.8.2006, were not even noticed. The next decision rendered on 27.5.2008 is in the case of Vimal Chadha's case (supra), wherein, although, the amendment of the Act and the introduction of the Juvenile Justice Rules, 2007, were brought to the notice of the Court, the same were not considered and the decision was rendered in the light of the decision rendered in Pratap Singh's case (supra) and other cases decided prior to 1.4.2001.

The next decision rendered on the same point on 11.9.2008 was the decision in Ranjit Singh's case (supra) wherein also the amendments to Section 2(l) and 20 and the introduction of Section 7-A in the Juvenile Justice Act, 2000, and the introduction of the 2007 Rules had not been considered and the decision passed sub silentio.

In fact, after the amendment, the Central Govt. made and notified the Rules, 2007, vide notification dated 26.10.2007, and those Rules came into effect from the date of the publication of notification in the Gazette of India, (Extra.), Part II, Section 3(i), dt. 26.10.2007.

The relevant provisions governing the procedure to be followed in determination of age of a juvenile in conflict with law is contained in Rule 12, which provides as follows:

**"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 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;**

**(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 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 with 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 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."

Rule 96 of the Central Rules provides that until the new rules conforming to these rules are framed by the State Govt. concerned under Section 68 of the 2000 Act, the Central Rules shall mutatis mutandis apply in that State.

Rule 97 of the Central Rules provides that all pending cases, which have not received finality, shall be dealt with and disposed of in terms of the provisions of the Act and the rules made thereunder. For convenience Rule 97 of the Central Rules is being extracted herein below:

**"97. Pending Cases.--(1) No juvenile in conflict with law or a child shall be denied the benefits of the Act and the rules made thereunder.**

**(2) All pending cases which have not received a finality shall be dealt with and disposed of in terms of the provisions of the Act and the rules made thereunder.**

**(3) Any juvenile in conflict with law, or a child shall be given the benefits under sub-rule (1) of this rule, and it is hereby clarified that such benefits shall be made available to all those accused who were juvenile or a child at the time of commission of an offence, even if they cease to be a juvenile or a child during the pendency of any inquiry or trial.**

**(4) While computing the period of detention or stay or sentence of a juvenile in conflict with law or of a child, all such period which the**

juvenile or the child has already spent in custody, detention, stay or sentence of imprisonment shall be counted as a part of the period of stay or detention or sentence of imprisonment contained in the final order of the court or the Board."

In this regard it would be useful to refer to the decision of the Apex Court in the case of ***Ashwani Kumar Saxena vs. State of M.P. 2012 Law Suit(SC) 607***. In this case, the Apex Court, after considering various judgments as well as the provisions of the Act, 2000 as also the Rules, 2007, in paragraphs 30 to 32 of the report, observed as follows:

"30. Consequently, the procedure to be followed under the JJ Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under Section 7-A of the Act. In many of the cases, we have come across, it is seen that the criminal courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the penal laws forgetting the fact that the specific procedure has been laid down in Section 7-A read with Rule 12.

31. We also remind all courts/Juvenile Justice Boards and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate, etc. mentioned in Rules 12(3)(a)(i) to (iii). The courts in such situations act as a *parens patriae* because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

32. "Age determination inquiry" contemplated under Section 7-A 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 needs 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 needs to 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 abovementioned 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. (Emphasis Supplied)

After observing as above, the Apex Court deprecated the practice of the courts in making a roving enquiry with regards to the correctness of the date of birth entered in matriculation or

equivalent certificates or other documents unless those documents or certificates were fabricated or manipulated. The relevant observations of the apex court are contained in paragraphs 34 and 35 of the report, which are being reproduced herein below:

"34. Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination.

35. We have come across several cases in which the trial courts have examined a large number of witnesses on either side including the conduct of ossification test and calling for odontology report, even in cases, where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal authority or a panchayat are made available. We have also come across cases where even the courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted." (Emphasis Supplied)

Apex Court in the case of ***Abuzar Hossain @ Gautam Hussain vs. State of West Bengal in Criminal Appeal No.1193 of 2006 decided on 10.10.2012*** has held as follows:

"Now, we summarise the position which is as under:

(i) A claim of juvenility may be raised at any stage even after final disposal of the case. It may be raised for the first time before this Court as well after final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in appeal court.

(ii) For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

(iii) As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to

raise presumption of juvenility but the documents referred to in Rule 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under [Section 313](#) of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard and fast rule can be prescribed that they must be prima facie accepted or rejected. In *Akbar Sheikh*<sup>2</sup> and *Pawan*<sup>8</sup> these documents were not found prima facie credible while in *Jitendra Singh*<sup>10</sup> the documents viz., school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of [Section 7A](#) and order an enquiry for determination of the age of the delinquent.

(iv) An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of age of the delinquent.

(v) The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in 2000 Act are not defeated by hyper-technical approach and the persons who are entitled to get benefits of 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

(vi) Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at threshold whenever raised."

The judgment in *Ashwani Kumar Saxena's* case (supra) has been consistently followed by the apex court in ***Jodhbir Singh v. State of Punjab: (2012) 13 SCC 591; Ranjeet Goswami v. State Of Jharkhand: (2014) 1 SCC 588; and Kulai Ibrahim @ Ibrahim v. State*** represented by the Inspector of Police, B-I, Bazar Police Station, Coimbatore: (2014) 12 SCC 332.

The scope of Section 7A of the Act and Rule 12 of the 2007 Rules again came up for consideration before Apex Court in ***Dharambir v. State (NCT of Delhi) and Another [(2010) 5***

**SCC 344]**, wherein the appellant was convicted for offences under section 302/34 and 307/34 IPC for committing murder of one of his close relatives and for attempting to murder his brother. The appellant was not a juvenile within the meaning of 1986 Act, when the offences were committed but had not completed 18 years of age on that date.

Apex Court keeping in view the language of the Explanation to Section 20 that in all pending cases, which would include not only trial but even subsequent proceedings by way of revision or appeal etc., the determination of juvenility of a juvenile has to be in terms of clause (l) of Section 2, even if the juvenile ceases to be a juvenile on or before 1st April 2001, when the Act of 2000 came into force, and the provisions of the Act would have applied as if the said provision had been in full force for all purposes and for all material times when the alleged offence was committed. Apex Court held clause (l) of Section 2 of the Act 2000 provides that "juvenile in conflict with law" means a "juvenile" who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of the commission of such offence. Section 20 also enables the Court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the Court, while maintaining the conviction to set aside the sentence imposed and forward the case to the J.J. Board concerned for passing sentence in accordance with the provisions of the 2000 Act.

Apex Court in **Mohan Mali and Another v. State of Madhya Pradesh [(2010) 6 SCC 669]** has again considered the scope of Section 7A of the Act, wherein plea of juvenility was raised before Apex Court by the convict undergoing sentence. The appellant therein was convicted under sections 302/34, 326/34 and 324/34 IPC and was sentenced to life imprisonment and had already undergone 9 years of imprisonment. In that case a copy of the birth

certificate issued by the Chief Registrar (Birth and Death) Municipal Corporation, Dhar u/s 12 of the Birth and Death Registration Act 1969 maintained by the Corporation was produced. Apex Court noticed that as per that certificate the date of birth of the accused was 12.11.1976. After due verification, it was confirmed by the State of Madhya Pradesh that he was a juvenile on the date of commission of the offence and had already undergone more than the maximum sentence provided under Section 15 of the 2000 Act by applying Rule 98 of the 2007 Rules read with Section 15 and 64 of the 2000 Act. The accused was ordered to be released forthwith.

***In Jabar Singh v Dinesh and Another [(2010) 3 SCC 757]***, Apex Court while examining the scope of Section 7A of the Act and Rule 12 of the 2007 Rules and Section 35 of the Indian Evidence Act took the view that the trial court had the authority to make an enquiry and take necessary evidence to determine the age. Holding that the High Court was not justified in exercise of its revisional jurisdiction to upset the finding of the trial court, remitted the matter to the trial court for trial of the accused in accordance with law treating him to be not a juvenile at the time of commission of the alleged offence. Apex Court noticed that the trial court had passed the order rejecting the claim of juvenility of respondent No.1 therein on 14.02.2006, the Rules, including Rule 12 laying down the procedure to be followed in determination of the age of a juvenile in conflict with law, had not come into force. Apex Court opined that the trial court was not required to follow the procedure laid down in Section 7A of the Act or Rule 12 of the Rules and therefore in the absence of any statutory provision laying down the procedure to be followed in determining a claim of juvenility raised before it, the Court had to decide the claim of juvenility on the materials or evidence brought on record by the parties and section 35 of the Evidence Act.

In ***Anil Agarwal and Another v. State of West Bengal [(2011) 2 SCALE 429]***, Apex Court while examining the claim of juvenility made at a belated stage took the view that the appellants were minor at the time of the alleged offence and hence should not be tried along with the adult co-accused. The trial court dismissed the appellant's application as not maintainable as it had been filed at a belated stage. The High Court, in revision, while holding that the application had been made belatedly, granted liberty to appellants to raise their plea of juvenility and to establish the same before the Sessions Judge at the stage of the examination under section 313 Cr.P.C.

Reversing the finding recorded by the High Court, Apex Court took the view that Section 7A of the Act, as it now reads, gives right to any accused to raise the question of juvenility at any point of time and if such an issue is raised, the Court is under an obligation to make an inquiry and deal with that claim. The court held Section 7A has to be read along with Rule 12 of the 2007 Rules. Apex Court, therefore, set aside the order of the High Court and directed the trial court to first examine the question of juvenility and in the event, the trial court comes to a finding that the appellants were minor at the time of commission of the offence, they be produced before the J.J. Board for considering their cases in accordance with the provisions of the 2000 Act.

We may in the light of the judgments referred to herein before and the principles laid down therein while examining the scope of Section 7 A of the Act, Rule 12 of the 2007 Rules and Section 49 of the Act examine the scope and ambit of inquiry expected of a court, the J.J. Board and the Committee while dealing with a claim of juvenility.

Section 7A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal

Procedure, but under the J.J. Act. Statute requires the Court or the Board only to make an 'inquiry' and in what manner that inquiry has to be conducted is provided in JJ Rules, 2007. The expressions used in Section 7A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7A has used the expression "court shall make an inquiry", "take such evidence as may be necessary" and "but not an affidavit". The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates etc. as evidence need not be oral evidence.

Rule 12 which has to be read along with Section 7A has also used certain expressions which are also to be borne in mind at the point of time when enquiry of juvenility is underway. Rule 12(2) uses the expression "prima facie" and "on the basis of physical appearance" or "documents, if available". Rule 12(3) uses the expression "by seeking evidence by obtaining". These expressions in our view re-assert the fact that what is contemplated in Section 7A and Rule 12 is only an inquiry.

Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word 'inquiry' has not been defined under the J.J. Act, but Section 2(y) of the J.J. Act says that all words and expressions used and not defined in the J.J. Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

"Inquiry" as defined in Section 2(g), Cr.P.C. reads as follows:

"Inquiry" means every inquiry, other than a trial, conducted

under this Code by a Magistrate or Court.

The word "enquiry" is not defined under the Code of Criminal Procedure which is an act of asking for information and also consideration of some evidence, may be documentary.

"Investigation" as defined in section 2(h), Cr.P.C. reads as follows:

"Investigation" includes all the proceedings under this code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

The expressions "trial" has not been defined in the Code of Criminal Procedure but must be understood in the light of the expressions "inquiry" or "investigation" as contained in sections 2(g) and 2(h) of the Code of Criminal Procedure."

The expression "trial" has been generally understood as the examination by court of issues of fact and law in a case for the purpose of rendering the judgment relating some offences committed. We find in very many cases that the Court /the J.J. Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry under Section 2(g) of the Code of Criminal Procedure, but an inquiry under the J.J. Act, following the procedure laid under Rule 12 and not following the procedure laid down under the Code.

Consequently, the procedure to be followed under the J.J. Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules, when the claim of juvenility is raised before the court exercising powers under section 7A of the Act.

"Age determination inquiry" contemplated under section 7A of

the Act r/w 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 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.

Once the court, following the above mentioned procedure, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subsection (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.

On these parameters the issue that has been raised is to be looked into.

Under the The Juvenile Justice (Care and Protection of Children) Act, 2000, prior to insertion of Section 7-A, claim of juvenility was required to be decided on the parameters of the provisions as are contained under The Juvenile Justice (Care and

Protection of Children) Act, 2000 read with The Uttar Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2004 and on the adjudication being made on the aforementioned parameters, if decision was done by the Board, then appeal was to be filed under Section 52 of The Juvenile Justice (Care and Protection of Children) Act, 2000 that gives right to any person aggrieved against the order made by Competent Authority under the said Act to prefer an appeal to the Court of Sessions. The High Court has been conferred with revisional power under Section 53 by providing that the High Court may at any point of time either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority or Court of Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit.

Thus in proceedings so undertaken under The Juvenile Justice (Care and Protection of Children) Act, 2000, where the issue of juvenility is required to be answered after introduction of Section 7-A of J.J. Act such an issue of juvenility has to be answered strictly in consonance with the provisions as contained under Rule 12 of 2007 Rules.

Sub-rule (5) of Rules 12 talks of cases where further enquiry or otherwise is required, therein the Court or the Board, after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of Rule 12, is not empowered to make any further enquiry. Sub-rule 6 of Rule 12 clearly provides that the provision contained in this Rule shall also apply to those disposed off cases, where the status of juvenility has not 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.

The scheme of the Act would thus clearly reflect that once Section 7-A has been introduced under The Juvenile Justice (Care and Protection of Children) Act, 2000, thereafter in all the matter that come up before the Court therein either on application moved by the delinquent or on *suo moto* basis, the Courts are obligated to make an inquiry under the provisions that are provided under Rule 12 of 2007 Rules. All matters that have been decided not on the parameters of the The Juvenile Justice (Care and Protection of Children) Act, 2000 and The Juvenile Justice (Care and Protection of Children) Rules, 2007 are open to further inquiry to be conducted by the Court or the Board after examining and obtaining certificate referred to sub-rule 3 of Rule 12.

An adjudication of juvenility cannot be permitted to be accepted as final until and unless it is demonstrated before the Court that the juvenility in question has been determined on the parameters as are provided for in sub-rule 3 of Rule 12 of The Juvenile Justice (Care and Protection of Children) Rules, 2007.

The inevitable conclusion would be that where proceedings have been undertaken to make declaration of juvenile before the Board/Court in consonance with the provisions as contained under 2007 Rules and against the said decision, appeal and revision has been preferred and same has attained finality, then the said proceeding has to be accepted as final but in all other cases wherein the procedure that is prescribed for determination of age under 2007 Rules has not been undertaken, then the orders passed, determining the juvenility on the parameters of the earlier provisions, are not binding and will not have any binding effect and such an issue can be taken up in appeal at the point of time when such an issue is raised and in case, the Appellate Court finds that the determination in question is not at all in accordance with the provisions under Sub-

Rule 3 of Rule 12 of the Act, then the said finding has to be ignored and the Appellate Forum is fully competent to either get further inquiry conducted on its own level on the parameters as are provided in sub-rule 3 of Rule 12. This particular opinion would subserve the cause of justice, inasmuch as, the aim and object of The Juvenile Justice (Care and Protection of Children) Act, 2000 is to extend the benefit to a juvenile.

Accordingly, the reference in question is answered as follows:

**Issue no.I**

*"Whether the right of a juvenile to raise the issue of juvenility can be denied, by dismissing a writ petition as infructuous and then permitting him to raise the issue in a criminal appeal when the same issue had been raised before the Juvenile Justice Board and an appeal had been decided in accordance with Section 52 of the 2000 Act as in the present case, on applying the doctrine of finality?"*

The right of a juvenile to raise the issue of juvenility cannot be denied by dismissing the Writ Petition as infructuous and in case Writ Petition in question has been filed though wrongly, the issue can be raised in Criminal Appeal even though the same has been raised before the Juvenile Justice Board and appeal has been decided under Section 52 of the 2000 Act once it is demonstrated before the Court that the issue of juvenility has not been answered on the parameters of Sub-Rule 3 of Rule 12 of the 2007 Rules.

**Issue no.II**

*"Whether the law laid down by prescribing a procedure of allowing the question to be raised in a criminal appeal as an alternate substitute through a miscellaneous application under the judgment dated 13.10.2014 by the learned Single Judge is correct or not?"*

Once the issue of juvenility has not been decided on the parameters of provisions as are contained under Sub-Rule 3 of Rule 12 of 2007 Rules, then such an issue can be examined by the Competent Criminal Court either on its own and even on a miscellaneous application being moved.

**Issue no.III**

*“Whether in view of the law laid down by the Apex Court particularly in the case of **Abuzar Hossain @ Gulam Hossain (supra)** and **Abdul Razzaq Vs. State of U.P. (supra)**, the issue presently raised, would also stand covered by the ratio and the observations made therein or not ?”*

The law laid down by the Apex Court in the case of **Abuzar Hossain @ Gulam Hossain (supra) and Abdul Razzaq Vs. State of U.P. (supra)** would also cover the issue presently raised.

The reference is accordingly answered. The Appeal shall now be placed before the appropriate Bench according to roster for disposal in light of this judgement.

**(Bharat Bhushan, J.) (Ramesh Sinha, J.) (V.K. Shukla, J.)**

**Order Date :-21.09.2016**

A. Pandey