

Kamil Vs. State of U.P.

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Court : Allahabad

Decided On : Oct-01-1992

Reported in : 1993(2)ALT(Cri)20; 1994CriLJ1491

Judge : J.P. Semwal, J.

Acts : [Juvenile Justice Act, 1986](#) - Sections 1(3), 5, 7(2), 7(3), 18, 18(1), 20, 21, 22, 26, 32, 39, 56 and 63; Uttar Pradesh Children Act, 1951 - Sections 1, 2 to 76, 77 and 78 to 88; [Children Act, 1960](#); [General Clauses Act, 1897](#) - Sections 6 and 63; West Bengal Children Act, 1959 - Sections 6 and 24; Uttar Pradesh Juvenile Justice Rules, 1987; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 5, 6, 26 and 27; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 29(B); Madhya Pradesh Bal Adhiniyam, 1970 - Sections 6; Haryana Children Act; Bihar Children 3rd Ordinance, 1979

Appeal No. : Criminal Revn. No. 941 of 1991

Appellant : Kamil

Respondent : State of U.P.

Advocate for Def. : Govind Krishna, A.G.A.

Advocate for Pet/Ap. : Viresh Misra, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

J.P. Semwal, J.

1. This revision is directed against the order dated 12-6-1991, passed by the 1st Additional District and Sessions Judge, rejecting the application (88 kha) of the accused-applicant,

2. The accused applicant and one Raju moved an application 88 kha, on 12-6-1991, before the lower court, praying that their trial be separated from other co-accused and be transferred to the Juvenile Court in accordance with law. It was also prayed that suitable orders be passed for holding an enquiry by the Chief Judicial Magistrate or by the said court itself as contemplated under Section 5, read with Section 20/32 of the Juvenile Justice Act. Affidavit and papers in support of proof in regard to age, were also filed. Authorities were cited on behalf of the revisionist before the lower court. The lower court considered the authorities cited on behalf of the revisionist and came to the conclusion that there was no question of separating the case or holding an enquiry, because when in defence the accused give their evidence in support of their age, then it would be decided at the time of final sentence. In the opinion of the lower court, the applicants do not get any benefit of the rulings at this stage. The crime was committed before Juvenile Justice Act came into force and, therefore, the lower court held that Children Act, would be applicable. Section 63 of the U.P. Children Act, 1951, provides joint trial of the child and the adult and that the sentence, if any, awarded to the child shall be in accordance with the provisions of this Act, In the result, the application 88 kha, was rejected.

3. I have heard the learned counsel for the parties at considerable length and have considered the submissions made before me.

4. The main ground of the applicant is that the order dated 12-6-3991, is against law and the lower Court has erred in holding that the provisions of Juvenile Justice Act, are not applicable.

5. Learned counsels referred to the provisions of Juvenile Justice Act 1986, Children Act 1960, and U.P, Children Act 1951. It was conceded before me that [Juvenile Justice Act, 1986](#), came into force subsequent to the occurrence in the present case. According to the averments made in para 3 of the affidavit of Bundu Khan the alleged offence was committed on 9-3-1986, and the date of birth of the revisionist Kamil is 1-7-1971. It was, thus, argued by the learned counsel for the revisionist that the revisionist was below 16 years of age at the time of the occurrence. His contention was that the provisions of the Juvenile Justice Act would be applicable and Section 24 of the said Act. bars joint trial of juvenile and a person not a juvenile. He further argued that enquiry in accordance with the provisions of Section 39 has to be held by the Juvenile Court under Section 20 of the Act. He also referred to Section 32 of the Act, regarding presumption and determination of the age of juvenile. Aware of the fact that occurrence had taken place and proceedings were started before the Juvenile Justice Act came into force, the learned counsel for the revisionist argued that even if the provisions of the Juvenile Justice Act were not applicable, the provisions of Children Act 1960, having identical provisions, would apply. The State Counsel refuted this contention and urged that the Children Act 1960 extended to Union Territories only. This contention has force in view of the preamble and Section 1 of the said Act.

6. The Juvenile Justice Act 1986 (53 of 1986) came into force on 2-10-1987, in exercise of the powers conferred under Sub-section (3) of Section 1 of the Juvenile Justice Act 1986, by Notification No. G.S.R. 710(E), dated 13th August 1987. This Act extends to whole of India, except the State of Jammu and Kashmir. It is, thus, quite clear that the [Juvenile Justice Act, 1986](#), came into force in U.P. on 2-10-1987. In exercise of powers under Section 62 of the [Juvenile Justice Act, 1986](#), the U.P. Government made applicable Juvenile Justice (U.P.) Rules 1987, by Notification No. 323/G.I/XX VI-2-87-26 (p)-87 dated January 15, 1988, to carry out the purpose of the Act. These rules came into force from the date of the publication in the U.P. Gazette Extra Part IV Section (ka) dated 19th January, 1988.

7. Prior to the [Juvenile Justice Act, 1986](#), the [Children Act, 1960](#) having analogous provisions extended to Union Territories while various states had their own Statute

on the subject, namely Children Act.

8. In the State of Uttar Pradesh, the U.P. Children Act 1951 (U.P. Act No. 1 of 1951), received assent of the President on 5-2-1952. The present case relates to district Aligarh within Agra Division. Sections 1 and 77 came into force on 19-2-1952. Sections 2 to 76 and 78 to 88 came into force w.e.f. 10-10-1970 by Notification No. 5078/XXXVI-SW-32(p)-67 dated September 29, 1970.

9. Section 60 of the U. P. Children Act, 1951, provides for establishment of a juvenile court for any local area in a district. Sub-section (2) of Section 60 of the said Act reads as under:

'Section 60(2): For purposes of this Act, a Court means the juvenile court established by the State Government for any area and includes a Court of Session and a Magistrate of the first class specially empowered to exercise the powers of a Court under Act.'

Various officers were empowered under Section 60, aforementioned to exercise the powers of Court. Sub-Divisional Officer Igles in district Aligarh was empowered such power by Notification No. 1572(i) XXXVI-14(p)70 dated 17-5-1971.

10. Code of Criminal Procedure 1973, incorporates jurisdiction in the case of juveniles. It reads as under:

'Section 27 : Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the I Children Act (70 of 1960) or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.'

This section is analogous to Section 29(B) of the Code of Criminal Procedure, 1898.

11. As already stated, various States have enacted their own Children Acts providing procedures to deal with trial of a child, juvenile courts constituted under

the said Acts, had the exclusive jurisdiction to try juveniles even for offences punishable with death or imprisonment for life. The question arose as to whether the Section 27 of the Criminal Procedure Code has taken away the powers of the juvenile courts under the Children Act. Under the M.P. Bal Adhiniyam 1970, the Full Bench of M.P. High Court expressed the view that Section 6 of the M.P. Bal Adhiniyam, 1970, being repugnant to Section 26 of the new Code of Criminal Procedure is void and a child must be tried for the offence punishable with death or imprisonment for life by a Court of Session under the new Cr.P.C. : AIR 1978 MP100 , Devi Singh v. State).

12. The Supreme Court while considering a similar provision of Haryana Children Act, overruled that Full Bench decision of the M.P. High Court and observed, 'The Section 27 is not a specific provision to the contrary' within the meaning of Section 5 of the Code. The intention of the Parliament was not to exclude the trial of the delinquent children for offences punishable with death or imprisonment for life inasmuch as Section 27, does not contain any expression to the effect 'notwithstanding anything contained in any Children Act passed by the State Legislature.'

13. It was further observed that the relevant provisions of the Code and the Act can co-exist and their spheres of operation are different. By a combined reading of Sections 5, 6 and 27 of the Code, it is evident that Section 27 of the Code does not, by implication, take away the power of a juvenile court to try a juvenile offender even for an offence punishable with death/imprisonment for life.

14. In the case of Sheela Bharse v. Union of India, reported in : [1986]3SCR562 the Supreme Court called upon the State Governments to bring into force and to implement vigorously the provisions of the Children's Act enacted in the various States. It was further observed (para 13):

'But we would suggest that instead of each State having its own Children's Act different in procedure and content from the Children's Act in other States, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. The Children's Act which

may be enacted by Parliament should contain not only provisions for investigation and trial of an offences against children below the age of 15 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or abandoned or destitute or lost.'

15. In accordance with the aforesaid directions of the Supreme Court, the Central Government enacted the Juvenile Justice Act 1986 to deal with the problems of juvenile's delinquency in India.

16. As already stated, the Juvenile Justice Act 1986 came into force throughout India except Jammu and Kashmir on 2-10-1987. Prior to the said Act, different States had different Children's Act and the [Children Act, 1960](#) was applicable to Union Territorian only. Different Children Act provided for the care, protection, treatment, development and rehabilitation of the neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent Juveniles. In this Act juvenile 'means of a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. The Children Act also contains similar definition of child. In the U.P. Children Act 1951, the child means a person under the age of 15 years.

17. Section 5 of the Juvenile Justice Act provides for the constitution of juvenile courts by the notification by the State Government. The State of U.P., constituted juvenile courts in different divisions including Agra by notification No. 1402/36-2/88/32-(87) dated 25th May 1988, by which the Additional Chief Judicial Magistrate and First Class Judicial Magistrate have been designated as juvenile courts to be assisted by two honorary social workers referred in column No. 6 of the said notification. Where no Board or Juvenile Court has been constituted for any area Under Section 7(2) of the [Juvenile Justice Act, 1986](#), the powers conferred on the Board or the Juvenile court by or under this Act, shall be exercised in that area, only by the following namely:-

(a) the District Magistrate, or

(b) the Sub-Divisional Magistrate; or

(c) any Metropolitan Magistrate or Juvenile Magistrate of the first class, as the case may be.

18. Section 7(3) of the said Act provides that the powers conferred on the Board or Juvenile Court 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. The Juvenile Justice Act is an special act which deals with all cases of juveniles.

19. Section 63 of the Juvenile Justice Act repeals Children Act which was enforced in any State. The proviso to Section 63, is important which reads as under:

Provided that the repeal shall not affect -

(a) the previous operation of any law so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any law as repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid:

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty forfeiture or punishment may be imposed, as if this Act had not been passed.'

20. Section 6 of the [General Clauses Act, 1897](#), which deals with the effect of repeal, is as follows:

'Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereinafter to be made then, unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect; or,

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceedings, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.'

It is, thus, evident that in spite of Juvenile Justice Act 1986, any legal proceeding which was pending in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment under any repealed law may be continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the Juvenile Justice Act has not been passed.

Section 26 of the Juvenile Justice Act provides separate provisions in respect of the pending cases. It reads as follows:

'26. 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 Juvenile Court which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied an enquiry under this Act that the juvenile has committed the offence.'

21. The occurrence in the present case had taken place on 9-3-1986 and the proceeding started before the [Juvenile Justice Act, 1986](#), came into force. At that time U.P. Children Act 1951, was in force which was repealed by Section 63. However, in view of the proviso to Section 63 and Section 6 of the General Clauses Act, the proceedings which were started under the U.P. Children Act 1951, will continue and the provisions of Section 26, would come into play.

22. Under Section 63 of the U.P. Children Act 1951, the joint trial of the child and adult is permitted. In the present case, the trial of the accused applicant along with others has reached the concluding stage.

23. Section 62 of the U.P. Children Act, 1951 makes provisions for submission of proceedings and for forwarding the child to the nearest Juvenile Court or to the nearest Magistrate empowered to exercise the powers of a Court under this Act. Under Section 61 of the said Act, it is provided that where a Juvenile court has been established for any local area, such court shall deal all cases of the delinquent child. Where a Juvenile court has not been established for any local area, no Court other than Courts empowered under Section 60 to exercise the powers of a Juvenile Court shall have powers to deal with any case of delinquent child. The powers of the Sessions Court as laid down in the Code of Criminal Procedure has not been omitted either by Section 60 of the U.P. Children Act, 1951 or Section 7(3) of the Juvenile Justice Act 1986.

24. It cannot be disputed that procedure prescribed under the Special Act would prevail in the proceedings against Juvenile delinquent. The procedure for enquiry of a child needing care or protection is contained in Section 3 of the U.P Children Act 1951. Section 27 of the said Act deals with the sentences that may not be passed on child. Section 73 of the said Act relates to enquiry about the age of a child. The said section reads as under:

'Section 73. (1) Where a person, whether charged with an offence or not is brought before any court otherwise than for the purpose of giving evidence and it appears to the Court that he is a child, the court may make due enquiry as to the age of that person for that purpose may take such evidence as may be forthcoming, and may record a finding thereon, stating his age as nearly as may be.

(2) A declaration by the court under the proceeding sub-section as to the person brought before it being under the age of sixteen years shall, for the purposes of this Act be final and no court shall in appeal or revision interfere with any such declaration.'

25. It is apparent from the aforementioned Sections that it is discretion of the court before which a person is brought if it appears that he is a child.

26. In the present case, there is nothing to show that the matter was agitated before the Magistrate concerned before committal and thereafter before the Session's Court. It was conceded before me that trial is at the stage of defence evidence. It appears from the record that the accused applicant had moved another application No. 87 kha, before the lower court which was allowed on 12-6-1991. By this application, the accused applicant had prayed that the only defence witness may be summoned along with relevant records and in the I alternative he may be summoned as the court witness. One last opportunity was given by allowing this application for defence witness. The contention of the learned counsel for the revisionist that the enquiry may be held under Section 20/ 32 of the Juvenile Justice Act is devoid of force. There is also no provision for Trial court to direct the C.J.M. concerned to hold such enquiry nor the learned counsel for the revisionist could show any provision of law or authority. The case has already proceeded up to the final stage and the proceedings of joint trial against the applicant along with non-juvenile commenced before the enforcement of the Juvenile Justice Act. Now, at this stage, Section 26 of the Juvenile Justice Act would be applicable and the learned trial court has already dealt with this point saying that the sentence if any, will be awarded to the child in accordance with the provisions of the Juvenile Justice Act.

27. I do not find any illegality or jurisdictional error in the impugned order challenged in this revision. Learned counsel for the revisionist cited following five rulings which were also cited before the lower court:

(1) Jayendra v. State of U.P. 1981 SCC (Cri) 809 : (1982 Cri LJ 1000).

(2) Sheo Shankar Singh v. State of Bihar 1982 SCC (Cri) 258.

(3) Hukumdas v. State of Madhya Pradesh 1983 SCC (Cri) 105 (2).

(4) Gopinath Ghosh v. State of West Bengal 1984 SCC (Cri) 478 : (1984 Cri LJ 168), and

(5) Bhoop Ram v. State of U.P. 1989 SCC (Cri) 486 : (1990 Cri LJ 2671).

28. It is argued by the learned counsel for the revisionist that the protection of the beneficial provisions of the Juvenile Justice Act should go to the applicant and that the Supreme Court had given that benefit in the case of Gopinath Ghosh v. State of West Bengal, 1984 SCC (Cri) 478 : (1984 Cri LJ 168). No doubt in that case the Supreme Court entertained the plea of the accused claiming for the first time that he was aged 18 years on the date of occurrence and was, therefore, entitled to the benefits of the West Bengal Children Act. The occurrence in that case had taken place on 19-8-1974, when the appellant was aged below 18 years and was, therefore, a child within the meaning of West Bengal Children Act 1959. It was contended that the court had no jurisdiction to sentence him to suffer imprisonment after holding trial. The Supreme Court remitted the issue for determination of the age of accused to the learned Sessions Judge, Naida. The Sessions Judge found that the appellant was aged about 16-17 years on the date of occurrence. The finding was not challenged before the Supreme Court. Section 24 of the West Bengal Children Act, 1959, which is analogous to Section 22 of the Juvenile Justice Act, starts with a non obstante clause which takes away the jurisdiction of the court to impose a sentence of death on a juvenile delinquent as well as power to impose sentence of imprisonment or commitment to imprisonment in default of payment of fine. The Supreme Court, therefore, set aside conviction and the sentence of the accused appellant and remitted the case to the Magistrate for disposal in accordance with law.

29. In the case of Jayendra v. State of U.P., (1982 Cri LJ 1000) (supra) the accused was below 17 years on the date of commission of offence and, therefore, he was child under the U.P. Children Act. The Supreme Court has referred to Sections 27 and 29 of the said Act. Section 27 of the said Act, is analogous to Section 22 of the Juvenile Justice Act. Section 29 of the U.P. Children Act 1951, is regarding commitment of child to approved school. In this case, the Supreme

Court upheld the conviction but quashed the sentence and instead of sending him to an approved school under Section 29, he was ordered to be released forthwith as he had reached the age of 23 years.

30. In the case of Sheo Shankar Singh v. State of Bihar (1982 SCC (Ori) 258), aforesaid, the accused was found to be below 16 years of age at the time of occurrence and, therefore, the provisions of Clauses 21 and 26 of the Bihar Children 3rd Ordinance 1979 were held applicable. Clauses 21 and 26 of the said ordinance are identical to Sections 21 and 26 of the Juvenile Justice Act. Clause 21 of the said Ordinance is identical to Section 21 of the Juvenile Justice Act and Section 21 of the aforesaid Ordinance makes provisions for appropriate orders that may be passed against a child by the Children's court. The Supreme Court confirmed the order of conviction, but order of sentence was set aside and the matter was remitted to the Children's Court for passing appropriate order.

31. In the case of Hukum Das v. State of Madhya Pradesh (1983 SCC (Cri) 105 (2)), the age of the accused was below 15 years, at the time of occurrence. The Supreme Court, set aside the conviction as well as the sentence passed against the accused appellant and the Sessions Judge was directed to dispose of the case in accordance with the provisions of Madhya Pradesh Bal Adhiniyam, 1970.

32. In the case of Bhoop Ram v. State of U.P. (1990 Cri LJ 2671) the accused was aged 16 years at the time of occurrence and was wrongly sentenced considering him to be below 18 years. The Supreme Court did not accept the findings of the Sessions Judge concerned, which was mainly based upon the report of the C.M.O. and not on any independent material. The Supreme Court having found the accused below 16 years of age on the date of offence, held that the appellant should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment. Since the appellant had crossed the maximum age of detention in an approved school, the Supreme Court sustained the conviction of the accused appellant under all the charges but quashed the sentence awarded to him and directed his release forthwith.

33. None of the aforesaid rulings have direct bearing on the facts of the present case.

34. The aforesaid cases came up before the Supreme Court after conviction and sentence. One thing which emerges from the said rulings is that the age of the accused on the date of the offence is relevant for the application of the Children Act or Juvenile Act and that the object of the benevolent provisions of the Children Act should be extended to the accused. In all the aforesaid rulings including two rulings which relate to U.P. Children Act 1951, the accused was convicted and sentenced to imprisonment. The Supreme Court, referring to Sections 27 and 29 of the U.P. Children Act, quashed the sentence awarded to the accused who was below 16 years of age on the date of occurrence. Section 27 of the U.P. Children Act, reads as under:

'Section 27. Sentence that may not be passed on child - Notwithstanding anything to the contrary contained in any law, no Court shall sentence a child to death or transportation or imprisonment for any term or commit him to prison in default of payment of fine:

Provided that a child who is twelve years of age or upwards may be committed to prison when the Court certifies that he is of so unruly, or of so deprave a character that he is not fit to be sent to an approved school and that none of the other methods in which the case may legally be dealt with is suitable.

35. The [Juvenile Justice Act, 1986](#), also contains, similar provisions in Section 22 with slight changes and additions. As already stated, various States enacted Children Acts and now Juvenile Justice Act has been enacted to give effect to the National Policy for providing special treatment to the Children. The Children Act and the Juvenile Act were enacted to provide for care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of delinquent juveniles. The law relating to juveniles provides for juvenile home, special home, observation home and aftercare organisation. This is in consonance with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. The Children Act and Juvenile Justice Act, are special Acts which deal with all the cases of juveniles. Law is very much concerned to see that

the juveniles do not come in contact with hardened criminals and their chances of reformation are not blighted by contact with criminal offenders. The law throws clock of protection round juveniles and seeks to isolate them from criminal offenders because the emphasis placed by the law is not on incarceration but on reformation *Munna v. State of U.P.* 1982 SCC (Cri) 269 : (1982 Cri LJ 620).

36. In the case of *Sheela Bharase v. Union of India* reported in : [1986]3SCR562 , the Supreme Court has condemned and discouraged the detention of children below 16 years in Jails. In other case of *Sanjay Suri v. Delhi Administration* reported in : 1988 CriLJ705 , the Supreme Court, directed that due care shall be taken to ensure that the juvenile delinquents are not assigned work in the same area where regular prisoners are made to work. The Supreme Court has emphasised that Board should not consist of cross sections of society, social activist, journalist, lady social workers, jurists, retired public officers from the judiciary as also the executive.

37. The Juvenile Justice Act has done away with the idea of treating the juvenile delinquents at par with adult accused persons or convicts. The U.P. Children Act, 1951, as well as [Juvenile Justice Act, 1986](#) contain special provisions regarding bail and custody of children. Children Act as well as Section 18 (chapter IV) of the Juvenile Justice Act deal with the bail custody of children juveniles. It is quite evident that when a person accused of an offence is apparently a juvenile, he shall be released on bail and in a case he is not released under Section 18(1) of the Juvenile Justice Act or Section 23 of the Children Act, he shall be kept in observation home or a place of safety in the prescribed manner until he can be brought before a court. Under Section 20 of the Juvenile Justice Act 1986, it is mentioned that when a delinquent juvenile appears or is produced before a juvenile court, the juvenile Court shall hold the enquiry in accordance with the provisions of Section 39 of the said Act. The procedure of enquiry to be followed by the Magistrate is the procedure laid down in the Cr. P.C. for trial in summons cases. Section 32 of the Juvenile Justice Act has enjoined on the competent authority to make enquiry as to age of a person who is brought before it under the provisions of the said Act, who appears to be a juvenile and to take such evidence as may be necessary. Section 24 of the Juvenile Justice Act, bars joint trial of

Juvenile and a person not a Juvenile. Section 32 of the Juvenile Justice Act contains words 'shall make due enquiry' whereas Section 73 of the U.P. Children Act contains words 'may make due enquiry' as to age of that person who appears to the Court that he is a child.

38. Section 63 of the U.P. Children Act permits joint trial of the child and adult and it clearly mentions that nothing in the said Act shall require the child to be tried by a Juvenile Court but the sentence if any awarded to the child shall be in accordance with the provisions of the said Act. Section 27 of the U.P. Children Act, provides for the sentence that may not be passed on child. This section has already been reproduced earlier. Section 29 of the said Act makes provisions for sending a child to an approved school in case he is found to have committed an offence punishable with transportation or imprisonment. Section 30 deals with the power to discharge youthful offender or to commit him to suitable custody. Section 31, deals with the power to order parent of child to pay fine. Section 32, deals with the detention in case of serious crimes by children and Section 33 lays down the methods of dealing with children charged with offences. Section 68 of the U.P. Children Act lays down factors to be taken into consideration for passing orders by Court and Section 30, provides that every court in dealing with a child shall have regard to the welfare of the child.

39. The Juvenile Justice Act 1986, also contains identical provisions for welfare of Juveniles. Section 24 of the Juvenile Justice Act prohibits joint trial of the juvenile and a person not a juvenile. This provision is, thus, different from Section 63 of the U.P. Children Act. The scheme of the U.P. Children Act, 1951, and [Juvenile Justice Act, 1986](#) emphasise special treatment of the children and juveniles with the object of their rehabilitation.

40. In instant case, the occurrence had taken place and the proceedings, had started before the Juvenile Justice came into force. A combined reading of Section 63 and Section 26 of the Juvenile Justice Act would indicate that the proceedings which had already started in respect of a juvenile or a child, would continue in that court as if the said Act had not been passed. Before the Juvenile Justice Act 1986, the U.P. Children Act, 1951 was in force in the U.P. The proceedings having

already started will continue after the Juvenile Justice Act came into force in U.P. on 2-10-1987. The contention of the learned counsel that the trial of the revisionist should be separated at this stage and the trial court should pass order for holding enquiry by CJM or by the court itself, has no force in the facts and circumstances of this case.

41. Section 20 of the said Act is attracted only where a juvenile having been charged with an offence appears or is produced before a Juvenile Court. Section 32 of the said Act, is attracted when it appears to a Juvenile court or other competent authority that a person brought before it, is a juvenile. At that stage, the said court or Authority shall proceed to make enquiry as to the age of that person.

42. It would, thus appear that Sections 20/32 of the Juvenile Justice Act, come into play at the initial stage when any person charged with an offence, appears or is brought and the said person is apparently a Juvenile.

43. Adverting to the facts of the prosecution case, it was conceded before me that the proceedings had already commenced before the enforcement of the Juvenile Justice Act and the trial has reached the concluding stage before the Sessions Court. It is, thus, no stage for enquiry under Sections 20/32 of the Juvenile Justice Act.

44. As regards the applicability of Section 24, even if it is assumed that no joint trial could have proceeded in view of Section 24, which contains a mandate prohibiting joint charge and joint trial of juvenile with an adult, even then the said section does not come into play at this stage for two reasons; firstly the charges were framed and joint trial had already proceeded, and secondly, it was never contended before the Magistrate when the revisionist appeared before him or before committal or before the trial court prior to 12-6-1991 that the revisionist was a juvenile.

45. It would be relevant to refer to a Full Bench ruling of the Calcutta High Court in case of Gobind Chandra Bhowmick v. State of West Bengal reported in : AIR1977 Cal371 . In that case, the petitioner was below 18 years of age at the time of offence and when he was produced before the Magistrate, it was not contended,

that as the petitioner was juvenile delinquent, he should be dealt with according to the provisions of West Bengal Children Act, 1959. The Magistrate proceeded with the case and framed charges and committed the petitioner along with other accused to the Sessions Court. The Sessions Judge after receiving commitment took cognizance. The Calcutta High Court after referring to Section 6 of the West Bengal Children Act was of the opinion that as the point that the petitioner was a juvenile i delinquent was not raised before the learned I Magistrate, the learned Magistrate was right in taking cognizance and proceeding with the ; case, as such his order of commitment cannot i be challenged. Section 62 of the U.P. Children Act, 1951, contains analogous provision.

46. In the instant case also, the trial court has after taking cognizance on commitment has already proceeded with the trial and the date has been fixed for defence evidence. By virtue of Section 26 of the Juvenile Justice Act, it shall be taken as if the said Act has not been passed in respect of the proceedings which have already been going on before the trial court. However, if the Trial court finds that the juvenile has committed offence then the later part of Section 26 of the said Act will come into play and the Trial Court instead of ! passing any sentence in respect of juvenile shall forward him to Juvenile court which ; shall pass orders in respect of that juvenile in accordance with the provisions of the said Act as if it has been satisfied on enquiry under the said Act that the juvenile has committed offence. Section 21 of the aforesaid Act deals with type of orders that may be passed regarding juvenile, while Section 22 of the said Act deals with the orders that may not be passed against the 1 delinquent juvenile. Section 22 of the Juvenile Justice Act, reads as follows:

'22. Orders that may not be passed against delinquent juvenile:- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no delinquent juvenile shall be sentenced to I death or imprisonment or committed to i prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of fourteen years has committed an offence and the juvenile court is satisfied that the offence committed

is of so serious nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, juvenile court, may order the delinquent juvenile to be kept in safe custody in such place and manner as it thinks fit and shall report the case for the orders of the State Government.

(2) On receipt of a report from a Juvenile Court under sub-sec. (1), the State Government may make such arrangement in respect of the juvenile as it deems to be proper and may order such delinquent juvenile to be detained at such place and on which conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.'

47. At the conclusion of the trial if the Trial Court comes to the conclusion that accused being a juvenile has committed an offence, it shall after recording such finding forward the juvenile to the juvenile court as required by Section 26.

48. The trial court will have to give its finding about the age of the accused on the date when the offence is alleged to have been committed and for this purpose the lower court may, if necessary, refer the accused to the Medical Board or C.M.O. as the case may be for obtaining credit worthy evidence for age. The lower court may as well call upon the accused also to lead evidence about his age. The application 87 Kha of the accused applicant for summoning defence witness along with relevant records was allowed on 12-6-1991 by the lower court. The lower Court, as already stated, will require evidence to come to a finding about the age of the accused on the date of alleged occurrence. In case, he is found to be below 16 years of age, then second part of Section 26 of the Juvenile Justice Act, aforesaid, shall be attracted. The juvenile law is much concerned about the welfare and rehabilitation of the juveniles. The Juvenile Justice Act even contains provisions regarding delinquent juvenile already undergoing sentence at the commencement of the Act. The benefit of the Juvenile Justice Act also goes to the juvenile whose trials have already been completed for sending the said delinquent

to a special home or to be kept in safe custody by the State Govt. This provision has been incorporated in Section 56 of the Juvenile Justice Act.

49. Thus, it is clear from the scheme of the Juvenile Justice Act and U.P. Children Act that any person found to be a child/juvenile shall not be sent to the jail and will not be treated at par with the adult accused persons or convicts.

50. It will not be out of place to mention , that enforcement of the Children, Act/Juvenile Justice Act for the welfare of the children is the need of the day and statutory scheme of the Juvenile Justice Act contemplates a judicial officer with more sensitive approach oriented outlook. The Supreme Court has impressed upon the Magistrates in the State I of U.P. and the Magistrates in other parts of the country where the Children Acts are in force, that they must be extremely careful (sic) that no person apparently under the age of 16 years is sent to jail, but he must be drained in a children's Home or other place of safety (see 1989 Supplementary (2) SCC 154 Munna v. State).

51. The Officer In charge of the Police Stations, the Magistrate and the Courts should be extremely careful that any person accused of an offence, if apparently to be a juvenile is arrested or appears or is brought before them the said person should not be sent to jail and the provisions of the Juvenile Justice Act must be applied in letter and spirit. I trust and hope that the State Government will issue necessary directions to the Police Departments in this regard.

52. In no case, sentence of death or imprisonment is to be passed against a juvenile and the juveniles should be dealt with strictly according to the provisions of the Juvenile Justice Act as discussed above.

53. For the reasons given above, the revision is liable to be dismissed and is, accordingly, dismissed.