

Devisingh and ors. Vs. the State of Madhya Pradesh

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SooperKanoon Citation : sooperkanoon.com/498656

Court : Madhya Pradesh

Decided On : Nov-19-1977

Reported in : AIR1978MP100; 1978CriLJ585; 1978MPLJ238

Judge : Shiv Dayal, C.J., ;J.S. Verma and ;C.P. Sen, JJ.

Acts : Madhya Pradesh Bal Adhinyam, 1970 - Sections 6, 19, 39 and 67; Code of Criminal Procedure (CrPC) , 1974 - Sections 4, 5 and 27; [Constitution of India](#) - Article 254; Criminal Procedure Code , 1898 - Sections 1(2), 5 and 29B

Appeal No. : Criminal Appeal No. 806 of 1976

Appellant : Devisingh and ors.

Respondent : The State of Madhya Pradesh

Advocate for Def. : M.V. Tamaskar, Govt. Adv.

Advocate for Pet/Ap. : S.C. Dutt and ;Surendrasingh, Advs.

Judgement :

Shiv Dayal, C.J.

1. Devisingh the first appellant, had admittedly not attained the age of 16 years on the date of the offence. He was then a 'child' within the meaning of the definition contained in Section 2(c) of the M. P. Bal Adhinyam, 1970 (No. 15 of 1970) (hereinafter called the 'Bal Adhinyam'). He was tried for the offence of murder

punishable under Section 302, Penal Code. He was, along with three other accused, tried by the Sessions Judge, Seoni, who found him guilty of that offence. However, he was dealt with under Section 6 of the Bal Adhiniyam.

2. He preferred this appeal for his acquittal. When the appeal went before a Division Bench, the following question arose, which has been referred to us for opinion:--

'Whether the exclusive jurisdiction conferred by the provisions of the Bal Adhiniyam, 1970, on Juvenile Courts to try a 'child' within the meaning of the definition contained in Section 2 (c) of the Adhiniyam for all offences, including those punishable with life imprisonment or death, continues after the enforcement of the new Cr, P. C. (1974).'

In the order of reference, there is a mention of State of M. P. v. Ramesh Nai, 1975 MPLJ 1 : (1975 Cri LJ 713) (FB) where it was held that the exclusive jurisdiction of the Juvenile Courts had been taken away after the enforcement of the new Cr. P. C. with effect from April 1, 1974. Relying on that decision, the learned Sessions Judge tried Devisingh.

3. Formerly, i. e. under the Cr. P. C. 1898 it had been held by a Division Bench of this Court in Rupsingh v. State, 1974 MPLJ 341 : (1975 Cri LJ 500), that the Juvenile Court had exclusive jurisdiction to try a child as defined in the Adhiniyam, in respect of all offences, including those punishable with life imprisonment or death.

4. Section 2 (c) of the Bal Adhiniyam defines a 'child' thus:--

' Child' means a boy or a girl who has not attained the age of 16 years.' Clause (f) of that section defines 'delinquent child' as follows:--

' 'Delinquent child' means a child who has been found to have committed an offence.'

5. Under Section 4 of the Adhiniyam, a Juvenile Court is established and as soon as such Court is established, it has to deal with a delinquent child, by virtue of

Section 6. The jurisdiction was exclusive as declared by the non obstante clause. It is subject to the provisions expressly made in the Adhiniyam itself. Section 19 of the Adhiniyam provides for an enquiry to be made in accordance with Section 39 of the Adhiniyam, in respect of a child who is charged with an offence and who appears or is produced before a Juvenile Court. Section 24 prohibits joint trial of a child with adult. Section 39 enacts that save as otherwise provided by the Adhiniyam, a Juvenile Court, by holding an enquiry under any of the provisions of the Adhiniyam, shall follow such procedure as may be prescribed and subject thereto the procedure laid down in the Cr. P. C. 1898, for trial in summons cases, would be followed. S, 67 excludes the application of Section 29-B of the old Code. Thus, a child who is charged with any offence, irrespective of whether it is punishable with death or imprisonment of life, is required to be dealt with by the Juvenile Court in accordance with the provisions of the Adhiniyam.

6. Adverting now to the Cr. P. C. (1974), Section 4 enacts that

'(1) all offences under the Indian Penal Code shall be investigated, enquired into, tried and otherwise dealt with according to the provisions herein contained; (2) all offences under any other law shall be investigated, enquired into.....'

Now, the offence of murder, which is punishable under Section 302, Penal Code, falls within Sub-section (1) of Section 4 and has, therefore, to be tried according to the provisions of the Cr. P. C.

7. However, Section 5 of the Code saves from the operation of the Code 'any special or local law for the time being in force, or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being in force'. But, this saving provision contained in Section 5 of the Code is itself subject to the exception 'in the absence of specific provision to the contrary'. Thus, the rules deducible from Section 5 of the Code are:--

(1) Where special jurisdiction or special power is conferred or any special form of procedure is prescribed by any other law for the time being in force, that jurisdiction, power and procedure will prevail over those contained in the Cr. P. C.

(2) However, if there is a specific provision to the contrary, it will override such special jurisdiction, power or procedure.

Applying these tests here, under the provisions of the Bal Adhinyam, special jurisdiction and powers are conferred and special form of procedure is prescribed to deal with offences committed by a child. It has then to be seen whether there is any specific provision to the contrary. That provision we find in Section 27 of the Cr. P. C. which enacts that an offence not punishable with death or imprisonment for life, committed by a person under the age of 16 years, may be tried by a Chief Judicial Magistrate or by any Court specially empowered under the Children's Act, 1960, or any other law for the time being in force, providing for the treatment, training and rehabilitation of youthful offenders. The Bal Adhinyam is such other law. Under Section 27 of the Code, an offence committed by a juvenile offender is made triable by a Court specified in the Bal Adhinyam, unless it is one which is punishable with death or imprisonment for life. This is a specific provision relating to a person under 16 years of age, i. e. a child within the meaning of the Bal Adhinyam. This section is specifically made to govern offences committed by persons under 16 years of age-It is thus a specific provision within the meaning of Section 5. It completely covers the field of operation of the provisions contained in the Bal Adhinyam and lays down a contrary rule as to the trial of offences committed by a child under the age of 16 years, which offence is punishable with death or imprisonment for life. That being so, Section 5 of the Code does not save the provisions contained in the Bal Adhinyam in respect of special jurisdiction conferred by it for the trial of an offence punishable with death or imprisonment for life committed by a child. To put it differently, the combined effect of Sections 4, 5 and 27 of the Cr. P. C-, is that an offence punishable with death or imprisonment for life, committed by a child, must be tried by a Court of Session. Under the schedule to the Code of Criminal Procedure, an offence under Section 302, Penal Code, is triable by a Court of Session.

8. What emerges from the above narration is that an offence punishable with death or imprisonment for life, committed by a child (i.e. person under 16 years of age), must be dealt with:

(i) on the one hand, under the provisions of the Bal Adhiniyam to the exclusion of any other enactment; and

(ii) on the other hand, by the Court of Session under the Cr. P. C.

Thus, there is a repugnancy between the two. The subject-matter falls within Entry 2 of List III (Concurrent List) in the 7th Schedule to the Constitution: 'Criminal Procedure, including all matters included in the Cr. P. C. at the commencement of this Constitution', as also within Entries 1 and 5 of the same list.

9. Bal Adhiniyam is a law made by the legislature of the State of Madhya Pradesh. The Cr. P. C. (1974), is a law made by Parliament. The State law is repugnant to the law made by Parliament, inasmuch as there is a direct conflict between the provisions contained in the two enactments and one cannot be obeyed without disobeying the other. See *Deepchand v. State of U. P.* AIR 1959 SC 648; *Premnath v. State of J. and K.* AIR 1959 SC 749; *Zaverbhai v. State of Bombay*, (1955) SCR 799; (1974 Cri LJ 1822 (SC)) and *Ukha v. State of Maharashtra*, AIR 1963 SC 1531 (1541) : ((1963) 2 Cri LJ 418).

10. Article 254 of the Constitution must then resolve the repugnancy. When a question arises as to repugnancy between any provision contained in a law made by the legislature of a State and any provision contained in any law made by Parliament, Clause (2) of Article 254 has first to be considered, because if a case falls under Cl (2), then Clause (1) becomes inapplicable. (*M. P. S.R.T.C. v. Ramchandra*) 1977 Jab. L. J. 292: (AIR 1977 Madh. Pra. 243) (F.B.).

11. Clause (2) of Article 254 of the Constitution reads thus:--

'Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative of the State'.

This clause comes into play only when (i) the two laws in question deal with a matter in Concurrent List; (ii) the State law has been made with the consent of the President; and (iii) the provisions of the law made by Parliament were earlier. When all these three conditions are satisfied, the law made by the State Legislature will prevail. If any of these three conditions is not satisfied. CL (2) of Article 254 is out of the way. In the present case, Clause (2) clearly does not apply, because the third condition is absent. The Cr. P. C. (1974), was not made earlier than the Bal Adhiniyam.

12. Having reached the conclusion that Clause (2) of Article 254 is out of the way, Clause (1) of that Article applies and the law made by Parliament i.e. the Cr. P. C. (1974), must prevail and the provisions of the Bal Adhiniyam, to the extent of the repugnancy, must be held to be void. Clause (1) of Article 254 may be reproduced here:--

'If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of CL (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void'.

13. As a result of the above discussion, it must be held that for the offence punishable with death or imprisonment for life, a child must be tried by a Court of Session under the provisions of the Code of Criminal Procedure and not under the provisions of the Bal Adhiniyam. With respect we concur with the majority view in State of M. P. v. Ramesh Nai, 1975 MPLJ 1 : (1975 Cri LJ 713) (FB).

14. We must, however, mention that *Rupsingh v. State* 1974 MPLJ 341 : (1975 Cri LJ 500), was also correctly decided inasmuch as in that case, the provisions applicable were those of the Cr. P. C. 1898. Repugnancy in that case was between the provisions of the Bal Adhiniyam 1970, on the one hand, and the Cr. P. C., 1898 on the other hand. In that case, all the three requisites of Clause (2) of Article 254 of the Constitution were satisfied, and, consequently, the law made by the State Legislature, i.e. Bal Adhiniyam, prevailed. The position be-came reverse on the enactment of the Cr.P. C., (1974), because then Clause (2) of Article 254 became inapplicable and the provisions of the Cr. P. C., (1974), override those of the Bal Adhiniyam., by virtue of Clause (1) of Article 254.

15. In the result, we would answer the reference thus:

(1) The exclusive jurisdiction conferred by the provisions of the Bal Adhiniyam, 1970, on Juvenile Courts to deal with a child (a person under 16 years of age) for all offences, except those punishable with death or imprisonment for life, continues after the enforcement of the new Cr. P. C. (1974).

(2) Any provision of the Bal Adhiniyam, 1970, which is repugnant to any provision contained in the Cr. P. C. (1974), in relation to a subject-matter pertaining to the Concurrent List in the 7th Schedule to the Constitution, to the extent of repugnancy, being void, a child must be tried, for the offences punishable with death or imprisonment for life, by a Court of Session under the provisions of the Cr. P. C. (1974).

(3) The appeal shall now be laid before the Division Bench.

Verma, J.

16. The circumstances which have given rise to this reference are stated in the order of reference and the opinion of the learned Chief Justice. They need not, therefore, be reiterated here. I regret my inability to agree with the View taken by my lord the Chief Justice.

17. The question for decision is: Whether the exclusive jurisdiction conferred by the Madhya Pradesh Bal Adhiniyam, 1970 (No. 15 of 1970) on the Juvenile Courts constituted under it to try juveniles for all offences including those punishable with life imprisonment or death continues even after the enforcement of the new Cri. P.C. 1973 (Act No. II of 1974), (hereinafter called the new Code)? Rupsingh Devlia v. State 1974 MPLJ 341 : (1975 Cri LJ 500), a Division Bench held with reference to the old Cr. P. C., 1898 (hereinafter called the old Code) that the Juvenile Courts constituted under the Bal Adhiniyam had exclusive jurisdiction to try juveniles for all offences including those punishable with life imprisonment or death. That view with reference to the old Code was affirmed by a Full Bench in State of Madhya Pradesh v. Ramesh Nai, 1975 MPLJ 1 : (1975 Cri LJ 713).

18. The provisions of the Bal Adhiniyam conferring exclusive jurisdiction on the Juvenile Courts to try all offences including those punishable with life imprisonment or death were considered at length in Rupsingh's case (1975 Cri LJ 500) (MP) (supra) and approved by the Full Bench in Ramesh Nai's case, (1975 Cri LJ 713) (MP) (supra). That position is not in dispute and does not require a fresh consideration.

19. The only question before us is whether the provisions of the New Code have brought about any change in this position. There can be no doubt that if there is an irreconcilable conflict between the provisions of the New Code and those of the Bal Adhiniyam, then the New Code being the later Central enactment it will supersede Bal Adhiniyam, the earlier State enactment to the extent of repugnancy by virtue of Clause (1) of Article 254 of the Constitution. The real question, therefore, is whether there is any such repugnancy between the two enactments so as to attract Article 254. It is equally clear that in case there is no such repugnancy and the relevant provisions of the two enactments are capable of co-existence, then Article 254 would not be attracted, and the provisions of the Bal Adhiniyam conferring exclusive jurisdiction on the Juvenile Courts to try all offences including those punishable with life imprisonment or death would continue to operate. Such a conclusion is supported also by the fact that the Bal Adhiniyam is a special local Act while the New Code is a general enactment applicable throughout the country on account of which the special local Act would apply

within this State in preference to the general law on the subject. It is in this light that the question has to be examined with a view to determine whether there is any such irreconcilable conflict so as to attract Article 254 of the Constitution. This is the real question for decision.

20. Before embarking on this enquiry, it would be proper to briefly state the settled rules of construction applicable to such an enquiry. It is settled that the principle of implied repeal may be applied to determine repugnancy for the purposes of Article 254 of the Constitution. In Maxwell on the Interpretation of Statutes, Twelfth Edition, the relevant extracts are as follows:--

'The fact that jurisdiction is conferred on one authority does not necessarily take away jurisdiction which another already possesses in the same matter'. (Page 155).

'It is also presumed that a statute does not create new jurisdictions or enlarge existing ones, and express language is required if an Act is to be interpreted as having this effect'. (Page 159).

'A later statute may repeal an earlier one either expressly or by implication. But repeal by implication is not favoured by the courts.....If, therefore, earlier and later statutes can reasonably be construed in such a way that both can be given effect to, this must be done.....And when the later Act is worded in purely affirmative language, without any negative expressed or implied, it becomes even less likely that it was intended to repeal the earlier law', (Page 191).

'If, however, the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together, the earlier is abrogated by the later.' (Page 193).

'Now, if anything be certain it is this,' said the Earl of Selborne L.C. in *The Vera Cruz*, 'that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words,

without any indication of a particular intention to do so'. In a later case, Viscount Haldane said: 'We are bound.....to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to'. (Page 190).

In Justice G. P. Singh's Principles of Statutory Interpretation, Second Edition, these principles have been summarised taking into account also our Supreme Court decisions on the point. As such, reference to the same is sufficient to indicate the up-to-date law as settled by the Supreme Court. The relevant portions are as follows:--

'The continuance of existing legislation, in the absence of an express provision of repeal, being presumed, the burden to show that there has been a repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act 'that the two cannot stand together'. But, if the two may be read together and some application may be made of the words in the earlier Act, a repeal will not be inferred, The Supreme Court has indicated that the test applied for determining repugnancy under Article 254 of the Constitution, may be applied for solving a question of implied repeal and that it should be seen: '(1) Whether there is direct conflict between the two provisions; (2) Whether the legislature intended to lay down an exhaustive Code in respect of the subject-matter replacing the earlier law; (3) Whether the two laws occupy the same field.' The doctrine of implied repeal is based on the theory that the legislature, which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine, it does no more than give effect to the intention of the legislature by examining the scope and the

object of the two enactments and by a comparison of their provisions. The matter in each case is one of construction and comparison of the two Acts'. (Pages 354-355).

'As an application of the above principles a prior particular or special law is not readily held to be impliedly repealed by later general enactment. The particular or special law deals only with a particular phase of the subject covered by the general law and, therefore, a reconciliation is normally possible between a prior particular Act and a later general Act, and so the particular Act is construed as an exception or qualification of the general Act. To quote the words of Lord Phillimore: 'It is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one. This, as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute, or be the underlying common or customary law of the country. Whether general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, that earlier and special legislation is not to be held indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so'. The principle has been accepted by the Supreme Court and has been expressed by Mudholkar J, as follows: 'A general statute applies to all persons and localities within its jurisdiction and scope as distinguished from a special one which in its operation is confined to a particular locality and/ therefore, where it is doubtful whether the special statute was intended to be repealed by the general statute the court should try to give effect to both the enactments as far as possible.

The provisions of a Municipal Act which empowered a Municipal authority to provide for bus stands, were not held to be repealed by a subsequent Motor Vehicles Act, which empowered the Government or its delegate to do the same. The reasons for this conclusion were mainly twofold: (1) that the Municipal Act was a special law applying to Municipal areas, and the Motor Vehicles Act was a general law applying to all areas in general and (2) that both the provisions were

enabling ones and there could be no question of conflict till the authority in the later Act also provided for bus stands for the same areas for which bus stands had already been provided under the earlier Municipal Act'. (Page 356-357).

'On the same principle it was held that a provision in the Bengal Ghatwali Lands Act, 1859, enabling the Court of Wards to grant leases of Ghatwali Lands in perpetuity for erection of dwelling houses and certain other purposes was not affected by the Court of Wards Act, 1870, which enacted that no lease in respect of land under the management of the Court of Wards shall, except under the sanction of the Board of Revenue, be given for a term exceeding 10 years nor beyond the expiration of the Ward's minority'. (Pages 357-358)

'So, if the later affirmative enactment does not imply a negative, it will not be construed as impliedly repealing an earlier affirmative enactment'. (Page 361).

21. It is in this back ground that the question should be considered. The relevant provisions of the new Code are Sections 4, 5 and 27 which correspond to Sections 5, 1 (2) and 29-B of the Old Code. A comparison of the corresponding provisions of the two Codes shows that they are substantially the same and are in effect a reproduction in the new Code of their corresponding provisions in the Old Code. The statement of Objects and Reasons together with Notes of Clauses of the Bill relating to the New Code (The Gazette of India, Extraordinary, dated 10-12-1970, Part II, at Pages 1309, 1312 and 1314) shows that the Clauses which have finally become Sections 4, 5 and 27 of the new Code were treated as corresponding to the sections of the old Code already referred and incorporated without any material changes. It is, therefore, clear that these provisions of the new Code which alone are relevant for our purpose operate in the same field as the corresponding provisions of the old Code and by these provisions in the New Code the Parliament did not intend to create a new jurisdiction or enlarge the existing ones of the general Courts specified in the Code which had not existed under the old Code. In other words, if the corresponding provisions of the Old Code were capable of co-existence with the provisions of the Bal Adhinyam and there was no irreconcilable difference between the provisions of the two enactments, then there is no occasion to hold that the provisions of the new Code

have altered this position and taken away the exclusive jurisdiction of the Juvenile Courts constituted under the Bal Adhinyam which undoubtedly was not affected by the corresponding provisions of the old Code even without the aid of Article 254 as I will presently show.

22. I would now briefly state the substance of the relevant provisions of the new Code. Section 4 deals with the general jurisdiction for the trial of offences under the Penal Code or other laws and provides that the same shall be in accordance with the provisions of the Code contained thereafter. Same was Section 5 of the old Code. Section 5 of the New Code corresponds to Section 1(2) of the old Code and there is no material difference between the two. The saving contained in this provision provides that the provisions of the Code, in the absence of any specific provision to the contrary, shall not affect any existing special or local law or special jurisdiction or special procedure provided by any other existing law. This section clearly saves all existing special or local laws dealing with the procedure and jurisdiction etc. for trial of such offences unless a contrary intention has been expressed. It is in this context that Section 27 of the New Code which corresponds to Section 29-B of the Old Code has to be examined. Section 27 reads as under:--

'27. Jurisdiction in the case of Juveniles.--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 Children Act, 1960 (60 of 1960) or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.'

There can be no doubt that for purpose of the question before us, this section is substantially the same as Section 29-B of the Old Code. As I read it, the plain words of the provision indicate that it is merely an enabling provision permitting the trial of Juveniles for offences not punishable with death or imprisonment for life in the manner provided in the section. The provision is couched in affirmative terms and uses the word 'may' which in its ordinary usage is permissive and not imperative. Unless there is any cogent reason to depart from the ordinary meaning of the word 'may', it is obvious that it cannot be read as imperative. This also

indicates that this provision is only enabling and not mandatory. In other words, Section 27 is only an enabling provision permitting the trial of Juveniles for offences not punishable with death or imprisonment for life in the manner indicated therein which itself provides more than one alternative and there is nothing in the provision to make it imperative and to read therein a prohibition that a juvenile charged with an offence punishable with death or life imprisonment cannot be tried according to the special law applicable within a locality conferring exclusive jurisdiction on Juvenile Courts constituted under that special law. This also appears logical in view of the saving of special or local laws provided in Section 5 of the New Code. Section 27 being an enabling provision cannot be read as a specific provision containing a contrary intention to supersede the saving of a special or local law provided in Section 5 of the New Code.

23. Sections 4, 5 and 27 of the new Code read together indicate that Parliament did not intend its legislation to be a complete and exhaustive Code on this subject; and that the Union law itself permits or recognises other laws restricting or qualifying the general provision made in it. In such a situation, the special provisions of a State local law cannot be said to be repugnant to the Union Law: *State of Haryana v. Chanan Mal* AIR 1976 SC 1654.

24. If I am right in my view that Section 27 of the New Code corresponds to Section 29-B of the Old Code and so also Sections 4 and 5 of the New Code correspond to Sections 5 and 1 (2) of the Old Code, then the above conclusion is supported by decisions wherein these provisions of the Old Code were construed similarly. I shall now refer to those decisions. A similar question arose for decision by the Madras High Court with reference to provisions of the Madras Children Act (4 of 1920), The question was whether the provisions of the Madras Children Act conferring jurisdiction on the Juvenile Courts constituted thereunder, to try juveniles for all offences including those punishable with death or imprisonment for life, were superseded by Section 29-B of the Old Code which was inserted by amendment in 1923 subsequent to the enactment of the Madras Children Act. In *In re Authony alias Bakthawatsalu* AIR 1960 Mad 308 : (1960 Cri LJ 927) it was held as follows (at p. 310 of AIR):--

'This juxtaposition of Section 1 (2) Cr. P. C. and Section 6, Criminal Procedure Code, taken along with the Government of India Act, 1919 and the schedules thereto clearly imply that the State Legislature had power to make a law for establishing juvenile Courts to try all juveniles, accused of any offence whatsoever. Hence, Section 29-B does not take away the power of the State Legislature to enact a measure like the Madras Children Act (Act IV of 1920). The power of the Juvenile Court to try all juvenile offenders for any offence, including murder, is therefore incontrovertible We accept the argument of the learned Advocate General that, upon the grounds set forth already, it was competent for the State Legislature to enact the provisions of the Madras Children Act (Act IV of 1920) and that, having regard to the juxtaposition of Section 1(2), Cr. P. C. and Section 6, Cr. P. C. Section 29-B, Cr. P. C. does not, by any necessary implication, take away the power of juvenile Court established by law to try a juvenile offender even for an offence punishable with death or imprisonment for life'.

This decision has been recently approved by Full Bench of the Madras High Court in Sessions Judge, Tirunelveli v. Perumal 1974 Cri LJ 261 and the relevant extracts from the Full Bench decision are as follows:--(at p. 271).

'Construed this way, Section 29-B of the Cr., P. C. would not in any way conflict with the provisions of the Madras Children Act, 1920, but would enlarge the powers of the courts other than the Courts of Session mentioned in Section 4 of the Madras Children Act, 1920, if the accused was under the age of fifteen years. In concrete terms, as a result of Section 29-B of the Cr. P. C., a District Magistrate, a Sub-Divisional Magistrate, a salaried Presidency Magistrate and any Magistrate of the first class or second class specially empowered by the Local Government (now State Government) to exercise all or any of the powers conferred by the Madras Children Act, 1920, might try any offence other than one punishable, with death or transportation for life, if the accused was under fifteen. This meant that those courts could try for instance, an offence under Section 312 I. P. C. which otherwise would have been triable only by the Court of Session under Schedule II of the Cr. P. C. So far the Juvenile Court constituted under Section 36 (1) of the Madras Children Act is concerned, it was not necessary to invoke Section 29-B of

the Cr. P. C. because, as we have seen, the Juvenile Court could try any offence whatsoever, including one punishable with death or transportation for life. The question, however, is whether Section 29-B of the Cr. P. C. should be construed not merely as an enabling provision, but also as a provision which by necessary implication meant that in respect of an offence punishable with death or transportation for life, it repealed the provisions of the earlier Act, the Madras Children Act, 1920; in other words whether it means that in respect of an offence punishable with death or transportation for life even the Juvenile Court constituted under Section 36 (1) of the Act could no longer try such offences even though prior to the enactment of Section 29-B of the Cr. P. C. the Juvenile Court could have tried any offence whatsoever. Stated this way it seems to me that there could be only one answer, that Section 29-B of the Cr. P. C. could not possibly be construed in any such manner. If it was meant to have any such repealing effect it should have been specially stated. Certainly the law does not favour an implied repeal.

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It follows that (Sivaguru v. Saroja 1960 Mad WN Cri 59 : 1960 Cri LJ 927), in so far as it laid down that a Juvenile Court established under Section 36 of the Madras Children Act, 1920 could try any offence, whatsoever, including an offence punishable with death or imprisonment for life and that that position was not in any way affected by Section 29-B of the Cr. P. C. is good law.

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The result of my discussion so far may be summed up thus. Where a juvenile alone is accused of an offence, the case against him will, as hitherto, be tried by the Juvenile Court established under Section 36 (1) of the Act even if the offence is one punishable with death or imprisonment for life'. The Madras High Court took the view that the subsequently enacted Section 29-B of the Old Code was merely an enabling provision and On a harmonious construction it was capable of co-existence with the provisions of the earlier enacted State Act. In short, it was held that Section 29-B of the Old Code was not inconsistent with the provisions of the Madras Children Act conferring jurisdiction upon juvenile Courts to try a juvenile

for any offence including those punishable with death or life imprisonment so as to result in any repugnancy between them.

25. Similar provisions of the Bombay Children Act, 1948, were similarly construed by P. N. Bhagwati, J. (as he then was) in *State v. Madhubharti* (1961) 2 Cri LJ 227 (Guj). One of the rules of construction adopted by Bhagwati, J., was that the Cr. P. C. being a general law and the State Children Act, the special law, the settled rule required that when they operate in the same field, it is the special law which must prevail as against the general law. In the Division Bench decision in *Rupsingh's case* (1975 Cri LJ 500) (Madh Pra) (supra) these cases are referred and relied on in Paras. 11 to 16 of that judgment. I rely on that reasoning being available even now because that was to show that Section 29-B of the Old Code was merely an enabling provision and was not in conflict.

26. Applying the tests indicated by the settled principles, I have no hesitation in holding that there is no real conflict between the provisions of the New Code, particularly Section 27 thereof, and the provisions of the Bal Adhinyam. In short, the provisions of the New Code clearly save any special or local law like the Bal Adhinyam and Section 27 of the New Code is merely an enabling provision which does not express any contrary intention to undo the saving provided in Section 5 of the New Code. There being thus no conflict or repugnancy, the question of Article 254 of the Constitution being attracted does not arise. In *Rupsingh's case* (1975 Cri LJ 500 (Madh Pra) (supra) the reliance on Art, 254 was merely an additional reason to support the conclusion reached therein because in that case even in case of repugnancy the Bal Adhinyam being the later enactment which had received the assent of the President would have the superseding effect. However, the reliance on the Madras, Bombay and Gujarat view as mentioned in Paras 11 to 16 of that decision, clearly shows that the Division Bench was of the view that there was no repugnancy between the provisions of the Old Code and that of the Bal Adhinyam. I have not been able to find any good reason to depart from that view. In my opinion, there is no conflict and these provisions of Bal Adhinyam can co-exist with the relevant provisions of the New Code, so that Article 254 of the Constitution is not attracted.

27. Balchand Jain v. State of Madhya Pradesh AIR 1977 SC 366 : (1977 Cri LJ 225) is a very recent decision reiterating the above principles of construction and indicating the extent to which Courts can go to avoid holding that provisions in two different statutes are conflicting. The question there was whether the provision of anticipatory bail contained in Section 438 of the New Code applied to offences falling under Rule 184 of the Defence of India Rules, 1971. The point really was whether there was any inconsistency between the two provisions so that the provision for anticipatory bail contained in the New Code could not stand side by side with Rule 184. These principles of construction to avoid inconsistency and attempt at a harmonious construction were followed and it was held that there was no direct conflict between Rule 184 of the said Rules and Section 438 of the New Code. One of the main tests applied by the Supreme Court for reaching this conclusion was stated by Fazal Ali, J., as follows (at p. 376 of AIR):--

'Thus one of the main tests pointed out by the Court was that the Court, while interpreting the statutes concerned must infer repeal by the later statute only if it causes inconvenience of where it is couched in an affirmative or negative terms. Maxwell on Interpretation of Statutes, 11th Edn., page 162 observes: 'A sufficient Act ought not to be repealed by implication without some strong reason.' We think it is reasonable to presume that the Legislature does not intend to keep contradictory enactments on the statute book and, therefore, a construction should be accepted which offers an escape from it.' (Page 376).

This view was taken by the Supreme Court notwithstanding the fact that there was some difficulty in importing fully the requirements of Rule 184 to a case of grant of anticipatory bail; Rule 184, in some cases, places the burden on the accused to show the existence of reasonable grounds indicating that he is not guilty, and this is difficult to achieve at the stage when anticipatory bail is applied for. This decision clearly points out the extent to which the Courts must make an attempt to avoid any conflict between two enactments and it may safely be inferred from this decision that unless there be no possibility for the two provisions to co-exist, the conflict should be avoided by giving such a meaning to the provisions which would enable both of them to co-exist. In the case before us, we are not faced even with any such difficulty as a result of the view taken by me. This consequence also

lends assurance to me for taking this view.

28. The modern trend to treat youthful offenders not as criminals but as delinquents and to resort to correctional methods for rehabilitating them is too widely accepted to require any further emphasis. A recent decision in *Hiralal Mallick v. State of Bihar* (1977) 4 SCC 44 : (1977 Cri LJ 1921), re-emphasised this trend in our country in a case where a juvenile was tried for murder and regretted the absence of a State Children Act in Bihar to deal with that case in a children's Court. This trend does not differentiate in the mode of trial of the juvenile with reference to the offence. At least till the new Code came into force in 1974, no one disputes that the Juvenile Courts constituted under the Bal Adhiniyam in this State: had exclusive jurisdiction to try juveniles for all offences. In this situation, if the Parliament intended while enacting the New Code, to reverse the trend in case of the more serious offences, it is reasonable to assume that the step in the opposite direction would have been taken in clear and unambiguous language. In my opinion, re-enacting the relevant provisions in the New Code in substantially the same old language and treating them merely as corresponding provisions cannot be construed as indicating a reversal of the existing modern trend. I take this as an additional reason to support my view.

29. I would, therefore, answer the reference in the affirmative and hold that the exclusive jurisdiction conferred on the Juvenile Courts constituted under the Bal Adhiniyam to try juveniles for all offences including those punishable with life imprisonment or death continues even after the enforcement of the New Code of Criminal Procedure, 1973.

Sen, J.

30. I had the privilege of going through the opinions expressed by Hon'ble the Chief Justice and brother Verma, J. I endorse the view of the learned Chief Justice that for offences punishable with death or imprisonment for life, a child must be tried by a Court of Session under the Cr. P. C. 1973 and not by a Juvenile Court under the M. P. Bal Adhiniyam, 1970, and the reference be answered in terms stated by him.

31. With respect I am unable to agree with the opinion expressed by my learned brother Verma, J. that there is no repugnancy between the Cr. P. C. 1973, and M. P. Bal Adhinyam, 1970, regarding trial of juvenile children in respect of offences punishable with death or imprisonment for life and that both the enactments can co-exist side by side.

32. Clause (1) of Article 254 of the Constitution gives a mandate that if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament shall prevail. Clause (2) provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law made by Legislature of State shall prevail in such State if it has received the assent of the President. Clause (2) saves only a State enactment in the Concurrent List which has received the consent of the President if it is later in point of time to the law made by the Parliament or an existing law on the subject. So if there is any repugnancy between the M. P. Bal Adhinyam, 1970, made by the State Legislature and the Cr. P. C. 1973 enacted by the Parliament Clause (2) will not be available to save it because the State Act is an earlier enactment.

33. It will be useful to quote Durga Das Basu from his book on Constitutional Law, 1977 edition. He has the following comments to make in Article 254 on Repugnancy--

'A State law may be 'repugnant' in any of the following ways:--

(i) Where there is direct conflict between the two provisions.

(a) Where one cannot be obeyed without disobeying the other.

(b) Two enactments may also be inconsistent although obedience to each of them may be possible without disobeying the other. It may arise where both the laws

operate in the same field and the two cannot possibly stand together, e. g, where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed--Zaverbhai v. State of Bombay AIR 1954 SC 752 : (1954 Cri LJ 1822) and Deepchand v. State of U. P. AIR 1959 SC 648.

(ii) Though there may not be any direct conflict between the Union and State legislation, where it is evident that the Union Parliament intended its legislation to be complete and exhaustive code relating to the subject, it shall be taken that the Union law has replaced State legislation relating to the subject. But if the Union law itself permits or recognises other laws restricting or qualifying the general provisions made in it, the special provisions of such State local law cannot be said to be repugnant to the Union law.

(iii) Even where the Union Act is not exhaustive, repugnancy may arise if it occupies the same field as the State Act--Tika Ramji v. State of U. P. AIR 1956 SC 676 and Deepchand v. State of U. P. AIR 1959 SC 643.

(iv) When a question of repugnancy arises under Article 254 every effort should be made to reconcile two enactments and to construe them so as to avoid them being repugnant to each other and care should be taken to see whether the two really operate in different fields without encroachment.'

34. In the present case, the provisions M. P. Bal Adhinyam provide that all offences committed by child delinquents are to be tried by Juvenile Court whereas Section 27 of the Cr. P. C. 1973, enacts that for offences punishable with death or imprisonment for life, a child must be tried by a Court of Session and all other offences can be tried by a Juvenile Court. Therefore, there is direct conflict between the two enactments regarding trial of juvenile offenders in respect of offences punishable with death or imprisonment for life and one cannot be obeyed without disobeying the other. Cr. P, C. 1973, may be a general enactment and Section 5 of the Code saves all special or local laws in the absence of specific provision to the contrary in the Code. However, it excludes the provisions of the M. P. Bal Adhinyam regarding trial of juvenile offenders in respect of offences punishable with death or imprisonment for life. The two enactments can be

reconciled by stating that all offences other than those punishable with death or imprisonment for life are to be tried by Juvenile Courts under the M. P. Bal Adhiniyam. The Full Bench of the Madras High Court in Sessions Judge. Tirunelveli v. Perumal 1974 Cri LJ 261 was not required to consider the effect of Article 254 on the enactments referred therein. They had no occasion to consider the effect of the Cr. P. C. 1973, on the Madras Children Act of 1920.

35. I, therefore, endorse the opinion of Hon'ble the Chief Justice.

OPINION

BY THE COURT

36. In accordance with the majority opinion the question referred by the Division Bench is answered as follows:

(1) The exclusive jurisdiction conferred by the provisions of the Bal Adhiniyam, 1970, on Juvenile Courts to deal with a child (a person under 16 years of age) for all offences, except those punishable with death or imprisonment for life, continues after the enforcement of the new Cr. P. C. 1973.

(2) Any provision of the Bal Adhiniyam, 1970, which is repugnant to any provision contained in the Cr. P. C. 1973, in relation to a subject-matter pertaining to the Concurrent List in the 7th Schedule to the Constitution, to the extent of repugnancy, being void, a child must be tried, for the offences punishable with death or imprisonment for life, by a Court of Session under the provisions of the Cr. P. C. 1973.

The appeal shall now be laid before the Division Bench.