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In Re: Rupsingh Devjia

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Court : Madhya Pradesh

Decided On : Feb-22-1974

Reported in : 1975CriLJ500

Judge : J.S. Verma and; G.G. Sohani, JJ.

Appellant : In Re: Rupsingh Devjia

Advocate for Pet/Ap. : Shri. B. S. Johar

Judgement :

J.S. Verma, J.

1. This appeal raises the question whether, on construction of the various provisions of the Madhya Pradesh Bal Adhiniyam, 1970 (No. 15 of 1970)(hereinafter referred to as the Bal Adhiniyam), a 'child' within the meaning of that expression as defined in the Act when charged with the offence of murder has also to be dealt with in accordance with the provisions of that Act.

2. The appellant Rupsingh, admittedly, aged 14 years when tried for the offence of murder was charged with having committed the murder of Mst. Balgi wife of Nakala of village Jhauli, tahsil Aliraipur, district Jhabua on 14-4-1970. The challan was filed in the Court of the Magistrate First Class, Alirajpur for the said offence against the appellant on 15-5-1970,who after holding an inquiry in accordance with Section 207A of the Code of Criminal Procedure, 1898 by the order dated 3-9-

1970 passed under Sec-213 of the Code committed the appellant for trial by the Court of Session. The first Additional Sessions Judge, Alirajpur after holding the requisite trial on such commitment has held the charge proved and convicted the appellant on 29-1-1971 for the offence of murder under Section 302, Indian Penal Code and passed the sentence of life imprisonment. The present appeal is against the said conviction and sentence.

3. The main ground urged in support of this appeal is that the order of commitment by the Magistrate First Class, Alirajpur and the consequent trial by the Sessions Court resulting in conviction and sentence was without jurisdiction inasmuch as the Bal Adhiniyam having been extended to the area in question before the challan had been put up, the trial of the appellant should have been only in accordance with the pro-visions of the Bal Adhiniyam and that not having been done the entire proceedings before the Magistrate First Class and in the Sessions Court need to be quashed.

4. Having heard at length Shri B. S. Johar, learned counsel for the appellant, as also the Learned Advocate General on behalf of the State and Shri P. K. Saxena, appearing as amicus curiae, we have reached the conclusion that the appeal must be allowed on the above ground alone. For this reason, we shall state only such facts as are relevant for deciding the only question involved in this appeal.

5. The Bal Adhiniyam after being enacted by the State legislature received the assent of the President on 14-2-19-70 and by notification No. 367-653-XXVI-70 dated 17-2-1970 issued under Sub-section (3) of Section 1 thereof, published in Madhya Pradesh Rajpatra dated 17-2-1970 the enactment was brought into force from 18-2-1970 in all districts of Indore Division in addition to the other areas mentioned therein. Accordingly, with effect from 18-2-1970, the Bal Adhiniyam was applicable to the area with which we are concerned. Admittedly, it was in March, 1972 that the Juvenile Court was constituted under Section 4 of the Bal Adhiniyam for the area in question but from 18-2-1970 till such constitution of the Juvenile Court for that area, it was the Magistrate First Class for the area, who was vested with the powers conferred on the Juvenile Court by or under the Bal Adhiniyam by virtue of Sub-section (2) of Section 6 of the Bal Adhiniyam. It is, therefore, clear

that all events commencing from the offence in the present case upto the judgment of the Sessions Court were subsequent to the enforcement of the Bal Adhiniyam in that area on li8-2-1970. For this reason there is no dispute that the provisions of the Bal Adhiniyam were applicable to the present case provided the same extended also to the offence of murder with which the appellant is charged. This is so because the appellant was then a 'child' within the meaning of that expression as defined in Clause (c) of Section 2 of the Bal Adhiniyam being, admittedly, below the age of 16 years.

6. The argument in this case depends in turn on the question whether a child charged with the offence of murder, which is punishable with death is also governed by the provisions, of the Bal Adhiniyam. We shall first consider the relevant provisions of the Bal Adhiniyam.

7. The relevant provisions of the Bal Adhiniyam are as under:

Section 2. Definitions- In this Act, unless the context otherwise requires:

* * *(c) 'Child' means a boy or a girl who has not attained the age of sixteen years;

* * * *(f) 'delinquent child' means a child who Has been found to have committed an offence:

* * * *(i) 'Juvenile Court' means:

(a) a Court constituted under Section 4: and

(b) where no such court has been constituted for any area the Court empowered under Sub-section (2) of Section 6:

(1) 'offence' means an offence punishable under any law for the time being in force:

Section 6. 'Power of Juvenile Court: (1) Where a Juvenile Court has been constituted foe any area, such court shall notwithstanding anything contain- ed 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 neglected children or delinquent children, as the case may be,(2) Where no such court has been constituted for any area, the powers conferred on the Juvenile Court by or under this Act shall be exercised in that area by a Magistrate of the First Class.

(3) The powers conferred on the 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.

Section 19. 'Inquiry by Juvenile Court regarding delinquent children:

Where a child having been charged with an offence appears or is produced before Juvenile Court, such court shall hold enquiry in accordance with the provisions, of Section 39 and may subject to provisions of this Act make such orders in relation to the child as it deems fit.

Section 20. Orders that may be passed regarding delinquent children: -(1) Where a Juvenile Court is satisfied on inquiry that a child has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Juvenile Court may, if it so thinks fit:

(a)...

(b)...

(C)...

Section 24. 'No joint trial of child and person not child- (1) Notwithstanding anything contained in Section 239 of the Code of Criminal Procedure, 1898 (Central Act. No. 5 of 1898), or in any other law for the time being in force, no child shall be charged with or tried for, any offence together with a person who is not a child.

(2) If a child is accused of an offence for which under Section 239 of the Code of Criminal Procedure, 189i8 (Central Act, No. 5 of 1898) or any other law for the time being in force, such child and any person who is not a child would but for the prohibition contained in Sub-section (1) have been charged and tried together, the

court taking cognizance of that offence shall direct separate trials of the child and other person.'

Section 39. 'Procedure in inquiries, appeals and revision proceedings. (1) Save as otherwise expressly provided by this Act, a Juvenile Court 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, 1898 (Central Act No. 5 of 1898), 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, 1898 (Central Act No. 5 of 1898.)'

Section 67: 'Act 8 of 1897 and certain provisions of Act 5 of H89i8 not to apply: (1) The Reformatory Schools Act, 1897 (Central Act No. 8 of 1897) and Section 29B and Section 399 of the Code of Criminal Procedure, 1898 (Central Act No. 5 of 1898). shall cease to apply to any area in which this Act has been brought into force.

(2) The Women's and Children's Institution (Licensing) Act 1956 (Central Act No. 105 of 1956) shall not apply to any children's home, special school or observation home established and maintained under this Act.

(All underlining is by us)

8. Section 2 of the Bal Adhiniyam contains the various definitions in its several clauses and in Clause (b) thereof it is ultimately provided that the words and expressions used in the Bal Adhiniyam but not defined therein shall have the meaning assigned to them in the Code of Criminal Procedure, 1898 if defined in the Code, unless the context otherwise requires, Clause (c) of Section 2 of the Bal Adhiniyam defines a 'child' to mean a boy or a girl below the age of 16 years. Clause (f) defines 'delinquent child' to mean a 'child' who has be'n found to have committed an of-v fence. 'Offence' has been 'defined in Clause (1) to mean an

offence punishable under any law for the time being in force, These three definitions read together clearly indicate that a 'child', who has been found to have committed any offence under any law for the time being in force is governed by the provisions of the Bal Adhiniyam unless there is an exception expressly made for that class of cases in the Bal Adhiniyam or the context requires otherwise. Clause (i) of Section 2 of the Bal Adhiniyam defines 'Juvenile Court' to mean a court constituted under Section 4 of the Bal Adhiniyam and where no such Court has been constituted for the area the Court empowered under Sub-section (2) of Section 6. Section 4 provides for constitution of the Juvenile Courts by notification issued by the State Government for the area specified and Section 6 lays down the power of the Juvenile Courts, Sub-section (1) of Section 6 expressly provides that the duly constituted Juvenile Court for the area shall have exclusive power to deal with the delinquent children. Till constitution of a Juvenile Court for the area, it is provided by Sub-section (2) of Section 6 that the powers conferred on the Juvenile Court shall be exercised in that area by a Magistrate First Class. The words used in Sub-section (1) of Section 6 are explicit and empower the Juvenile Court for the area to exercise exclusive jurisdiction in respect of the delinquent children notwithstanding anything contained in any other law for the time being in force subject only to an otherwise provision expressly made in the Bal Adhiniyam itself, Sub-section (2) of Section 6 read along with Sub-section (1) thereof, as it ought to be, makes it clear that on enforcement of the Bal Adhiniyam until constitution of a Juvenile Court for the area, it is the Magistrate First Class for the area, who is conferred with all powers of the Juvenile Court by or under the Act, with the result that till constitution of the Juvenile Court for that area. It necessarily follows, that on enforcement of the Bal Adhiniyam the duly constituted Juvenile Court for the area and till constitution of the Juvenile Court the Magistrate first Class for the area, has exclusive jurisdiction to deal with a 'delinquent child' which expression means a child who has been found to have committed any offence as a result of enquiry according to that Act; notwithstanding any other law to the contrary and subject only to an express contrary provision in the Bal Adhiniyam itself. The enquiry, therefore, has to be whether there is any express contrary provision in the Bal Adhiniyam excluding from the jurisdiction of the Juvenile Court a delinquent child charged with the offence of murder, Sub-section (3) of Section 6

further provides that the powers conferred on the Juvenile Court may also be exercised by the High Court and the Court of Session when the proceedings come before them in. appeal, revision or otherwise. Section 7 provides that when a child is brought before any Magistrate not empowered as a Juvenile Court, he shall send the child to the Court having jurisdiction over the child. This provision also indicates the exclusive jurisdiction of the Juvenile Court to deal with a child for whom provision has been made in the Bal Adhiniyam.

Section 19 of the Bal Adhiniyam then provides for an enquiry by the Juvenile Court in relation to a child charged with an offence appearing or produced before it. The words used in section 19 do not admit of any exception even by implication and the words u.;ed being explicit clearly indicate that the child, who has been charged with any offence is covered by this section. As already indicated, in order to oust the jurisdiction of the Juvenile Court, it is necessary that there ought to be an express provision to that effect in the Bal Adhiniyam is specifically stated in Sub-section (1) of Section 6. The procedure, for the enquiry required to be held by the Juvenile Court, as provided in Section 39 of the Act, is, as far as may be that for trials in summons cases as laid down in the Code of Criminal Procedure, 1898. Section 27 provides that the sittings of the Juvenile Courts are to be in the manner prescribed and the Madhya Pradesh Bal Niyam 1971 are the rules framed for that purpose under Section 68 of the Bal Adhiniyam. It is not necessary to deal with these rules at length and it is sufficient to state that the rules provide for the sittings of the Juvenile Courts in such a manner that the ordinary courts but in surroundings where the child would feel more relaxed so that his confidence can be gained for understanding the truth and the peculiar problems of the child himself, which may have led to the charges against him. After the enquiry has been made and the Juvenile Court is satisfied of the truth of the accusation against the child, then Section 20 provides for the various orders, one of which may be passed by the Juvenile Court, notwithstanding any other law to the contrary. Section 22 takes care to provide expressly what orders should not be passed against the child and this provision is made only as a matter of abundant caution. The type of orders which a Juvenile Court is empowered to make on being satisfied about the truth of the accusation as a result of the enquiry, indicate that the object is not punitive but ;:, correctional. ' This is obviously;an view iof

theobtefit of the enactment that, an effort ought to be made to rehabilitate/ the delinquent child and not to punish him for his act because at that tender; age the child cannot be fastened with full responsibility of his act.

There are some more provisions made in the Bal Adhiniyam in furtherance of object of the enactment. Section 24 provides that notwithstanding Section 239 of the Code of Criminal Procedure, 1898 or any other law for the time being in, force, no child shall be tried jointly with an adult even though the offence may have been committed by the child along with such an adult, 'From this provision which uses the expression 'any offence' it follows that even though the adult has to be dealt with for the offence according to the ordinary procedure prescribed by the Code of Criminal Procedure, 1898, yet the child has to be tried separately in accordance with the provisions of the Bal Adhiniyam and for that purpose their trials have to be separated. Section 26 makes a provision in respect of pending cases to the effect that even though the trial would continue according to the law applicable when the trial commenced notwithstanding the enforcement of the Bal Adhinivam, yet the sentence to be passed on the Child has to be in accordance with the provision of the Bal Adhiniyam. Provision is made in the Bal Adhiniyam even in respect of the children undergoing sentence at the commencement of the Act, as laid down in Section 61 which requires suitable orders to be made for the remaining period of sentence keeping in view the provisions of the Bal Adhiniyam.

Section 67 of the Bal Adhiniyam expressly provides that Sections 29-B and 399 of the Code of Criminal Procedure, 1598 and the reformatory Schools Act 1897 shall cease to apply to any area in which the Bal Adhinivain has been brought into force. The, intention to expressly override Section 29-B of the Code of Criminal procedure, 1898 is manifest.

9. The analysis of the provision's of the Bal Adhiniyam as a whole and particularly of the above ; provisions which alone appear to be relevant in the content; leave no room' for any doubt that a; child who is Charged with any of-fence, whatsoever, is required to be dealt' with in accordance with the provisions of the Bal Adhiniyam, by the Juvenile Court on enforcement of that enactment and the only orders which1 can be made in respect of such a child who is found to have committed the

offence after the requisite enquiry, are as provided in Section 20 of the Bal Adhiniyam. It is equally clear that on enforcement of the Act and till constitution of the juvenile Court in accordance with Section 4 of the Bal Adhiniyam. it is the Magistrate First1 Class for the area, who is deemed to be the Juvenile Court -for the purpose of the enactment There being no contrary provision in the Bal Adhiniyam, the jurisdiction of the Juvenile Court or the' Magistrate First Glass who is deemed to be the Juvenile Courts till constitution of the Juvenile Court, is exclusive-and it ex-tends to all cases in which a child is the of fender irrespective; of ' the gravity of the offence with which he is charged. This conclusion is irresistible in the ab-sense of any express provision in the Bal' Adhiniyam engrafting an exception to the saihe and a repeated assertion in the provisions of the Bal Adhiniyam that the provisions therein override any other law for the time being in force, particularly the Code of Criminal Procedure, 1898.

10. The learned Advocate General expressed the doubt that serious offences like murder and those punishable with death or imprisonment for life are outside the ambit of the Bal Adhiniyam. Section 29-B of the Code of Criminal Procedure, 1898 itself provides for specially empowered Magistrates to try children below the age of 15 years for any offence other than those punishable with death or imprisonment for life. It is clear that this provision itself enables the specially empowered Magistrates to try children below the age of 15 years for offences which would otherwise be triable by a Court of Session and the only exception made therein is with respect to offences punishable with death or imprisonment for life. Section 67 of the Bal Adhiniyam which expressly excludes the application of Section 29-B of the Code of Criminal Procedure, 1893 has the effect of removing the only embargo contained in Section 29B of the Code in respect of offences punishable with death or imprisonment for life. Thus, Section 67 of the Bal Adhiniyam itself negatives this doubt and the other provisions of the Bal Adhiniyam which we have already considered also lead to the same conclusion. The Bal Adhiniyam being enacted by the State Legislature, admittedly, within its legislative competence and having received the assent of the President, by virtue of Article 254(2) of the Constitution of India, it prevails over the Code of Criminal Procedure, 1898, an earlier Central enactment, to the extent of repugnancy.

11. In In re, Anthony AIR 1960 Mad 308 : (1960 Cri LJ 927) a similar argument was' advanced in relation to the Madras Children Act (4 of 1920) but the same was repelled. In the. Madras Act also, the procedure prescribed was for trial of such cases according to the procedure relating to- the trial of summons cases under the Code of Criminal Procedure, 1898. by the Magistrates. Such a procedure was held to be valid. The Madras High Court , in this connection held as follows:

This juxtaposition of Section 1(2), Criminal Procedure Code, 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 juyeniles, accused of any offence whatsoever. Hence, Section 29-B does not take away the power of the State Legislature to enact a measure tike the Madras Children Act (Act IV of 1920), The power of the Juvenile Court to try all juvenile offenders for any offence, including niufder, 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 192.Q) and that, having regard to the juxtaposition of Section 1(2). Criminal Procedure Code, and Section 6 Criminal Procedure .Code, Section 29-B Criminal Procedure Code does not, by any necessary implication, take away the power of a Juvenile Court established by law to try, a Juvenile offender even for ah offence punishable with death or imprisonment for life.

The ratio of the Madras decision is clearlv available also to us in the present case.

12. The Bombay Children Act (13 of 1924) had a. similar object but the provisions contained therein did not have the desired effect of conferring exclusive jurisdiction on Juvenile Courts alone. The provisions of that enactment came up for consideration before a Division Bench of the Bombay High Court in Damodar Gopal Vi Emperor AIR 1942 Bom 341 : (44 Cri LJ 126). Beaumont Section 4 who delivered the judgment of the Division Bench reached that conclusion with considerable regret after analysing the relevant provision of that enactment and expressly stated that the avowed object of the enactment had not been achieved

by the express enacting provisions contained therein. However, that conclusion was reached in view of the fact that the express provisions contained therein clearly* provided for a concurrent jurisdiction in the ordinary courts along with the Juvenile courts. Relevant portions from that judgment are as follows:

Under Section 5 it is provided that the powers conferred on Courts by this Act, shall be exercised only by (a) the High Court; (b) a Court of Session; (c) a District Magistrate; (d) a Sub-divisional Magistrate: (e) a salaried Presidency Magistrate; (f) any Juvenile Court constituted under Section 46: and (g) any Magistrate of the first class. So that under that section the powers can be exercised by salaried Presidency Magistrates as well as by any Juvenile Court. The object of that section seems to be to exclude from the exercise of powers under the Act all Courts other than those specified, and not to confer jurisdiction, and I am inclined to think that, notwithstanding that section it would be open to Government to confer jurisdiction on the Juvenile Court to the exclusion of other Courts named. But, so far as that section goes, it indicates that the jurisdiction could be exercised both by Presidency Magistrates and by the Juvenile Court...

That section does not in terms say that the jurisdiction of the Presidency Magistrates is confined to the trial before a Juvenile Court is established. But the strongest indication that the two Courts may function side by side is to be found in Section 51, which provides that an appeal from an order made by a Court under various sections of the Act shall lie, if passed by a Juvenile Court, in the City of Bombay, to the Chief Presidency Magistrate and, if passed bv a Court of Session or a Presidency Magistrate, to the High Court. That section seems to me to indicate clearly that you may have an order made under the provisions of the Act either by a Juvenile Court or by a Presidency Magistrate. Reading the Bombay Children Act as a whole, I think, one must say that the Jurisdiction of the Children's Court is not exclusive; the other Presidency Magistrates can try cases in which children are concerned. I reach that conclusion with a certain amount of regret, because I cannot help feeling that one object of the Bombay Children Act was to provide a special Court for the trial of a child, or a special procedure where there was no special Court, and it is, I think, a defect in the Act that prosecuting authorities may send children up before one of the ordinary courts in a place

where a Juvenile Court is available, and that the ordinary Court is not then bound under the Act to try the case by the special procedure...

Such express provisions in the Bombay Children Act, 1924 which led to the above conclusion do not find place in the Bal Adhiniyam of our State.

13. The defect in the enacting provisions of the Bombay Children Act, 1924 which defeated the main object of the enactment were later an removed while enacting the Bombay Children Act, 1948 (No. LXXI of 1948). The relevant provisions of the Bombay Children Act, 1948 may be noticed before referring to certain authorities in which they have been construed. These provisions of the Bombay Children Act, 1948 are as follows:

Section 6. (1) The provisions of the Reformatory Schools Act, 1897. and of Sections 29-B and 399 of the Code of Criminal Procedure, 1898, shall cease to apply to any area in which Parts II to XI of this Act have been brought into operation.

(2) Any youthful offender detained in a reformatory school in any area in pursuance of an order made under the Reformatory Schools Act, 1897. who continues to be detained therein on the date on which that act ceases to apply to such area shall, as from that date, be deemed to have been detained under an order made under this Act as if he had been originally ordered to be detained in a certified school and the reformatory school in which he is detained shall be deemed to be a certified school established under this Act and the provisions of this Act shall, so far as may be, apply in respect of such offender, accordingly-

(3) The Women's and Children's Institutions (Licensing) Act, 1956, shall not apply to any industrial school established, any industrial school or education institution certified, any place declared as a remand home, any institution or association recognised as approved place or fit person, institution, or any voluntary home recognised, under this Act.

Section 8. 'The powers conferred upon- a Juvenile Court under this Act shall, subject to the provisions thereof, be also exercisable by the following Courts,

whether trying anv case originally, or on appeal or in revision, as the case may be-

(a) the High Court.

(b) a Court of Session.

(c) a salaried Presidency Magis- trate.

(f) a salaried Magistrate of the First class.

Section 9. 'Save as otherwise provided in this Act,-

(1) where a Juvenile Court has been established for any local area, such court shall try all cases in which a child is charged with the commission of an offence and shall deal with and dispose of all other proceedings under this Act, but shall not have power to try anv case in which an adult is charged with an offence under Part Vl of this Act.

(2) Where a Juvenile Court has not been established for any local area, no court other than courts empowered under Section 8 to exercise the powers of a Juvenile Court shall have power to try any case in which a child is charged with the commission of an offence or to deal with or dispose of any other proceeding under this Act.

Section 10. '(1) Notwithstanding anything contained in Section 239 of the Code of Criminal Procedure, 1898, or any other law for the time being in force, no child shall be charged with or tried for any offence together with an adult, if a Juvenile Court has been established for the area where the trial of such case is to take place.

(2) If a child is accused of an offence for which under Section 239 of the Code of Criminal Procedure, 1898, or any other law for the time being in force, such child and the adult could, but for the provisions of Sub-section (11 have been tried together the court taking cognizance of the offence shall direct separate trials of the child and the adult, if a Juvenile Court has been establish : AIR1957 Bom13 ed for the local area, the child shall be tried by the Juvenile Court and the adult shall be tried separately by a court having jurisdiction to try the offence.

Section 11. 'A Juvenile Court and in a case in which a child is not beinp tried jointly with an adult, a Magistrate empowered under Section 8 to exercise the powers of a Juvenile Court shall, as far as practicable and subject to the provisions of this Act, follow the procedure provided by the Code of Criminal Procedure, 1898, for summary trials in summons case in which an appeal lies.

Section 13. 'In the trial of a case in which a child is being tried together with an adult in accordance with the provisions of this Act, if the Magistrate trying the case comes to the conclusion that the case is a fit one for committal to the Court of Session, he shall separate the case in respect of the child from that in respect of the adult and shall direct the adult alone to be committed to the Court of Session for trial and shall proceed with the trial of the case in respect of the child notwithstanding anything in the Code of Criminal Procedure, 1898, or any other law for the time being in force.

Section 24. 'Except as expressly provided under this Act or the rules made thereunder, the procedure to be followed in the trial of cases and the conduct of proceedings under this Act shall be in accordance with the provisions of the Code of Criminal Procedure, 1898.

14. In State v. Bansilal : AIR1957 Bom13 a Division Bench of the Bombay High Court was called upon to decide whether a child charged with the offence under Section 302 of the Indian Penal Code was governed by the provisions of the Bombay Children Act, 1948. J. C. Shah J. (as he then was) delivering the judgment of the Division Bench held that the child had to be tried by the Juvenile Court and while reaching that conclusion he held as follows--

By Section 9, Bombay Children Act, a Juvenile Court is the only Court competent to try cases in which a child is charged with the commission of an offence and no other Court has jurisdiction to try the child....

* * * * *Bansilal Chhotalal being a child within the meaning of the Bombay Children Act, the learned Magistrate had no jurisdiction to commit him to the Court of Session for trial. He should have proceeded to try the case as a Juvenile Court under the Bombay Children Act, 1948.

The learned Magistrate having failed to do so and having committed the case against accused 1 to the Court of Session, the order of committal passed against Bansilal Chhotalal the child, is quashed. We further direct that the said accused Bansilal Chhotalal be tried by the Juvenile Court....

The same Act came up for consideration before P. N. Bhagwati J. (as he then was) of the Gujarat High Court in State v. Madhubharti 1961-2 Cri LJ 227 (Guj) when the child was charged inter alia with the offence of murder. In that case there was no Juvenile Court established for the local area in question at the relevant time and the question was whether the provisions of the Bombay Children Act, 1948 were applicable. The learned Judge held the provisions of the Bombay Children Act, 1948 to be applicable and the reasoning for that conclusion was as follows:.I must see what are the powers conferred upon a Juvenile Court under the Act. Those powers are to be found in Section 9(1) and that section declares that a juvenile court shall try all cases in which a child is charged with the commission of an offence and shall deal with and dispose of all other proceedings under the Act. The Juvenile Court is empowered to try all cases in which a child is charged with the commission of an offence and no exception is made in respect of offences, which are exclusively triable by the Court of Session. It must be noted that the Act is a special enactment which deals exclusively with the custody, protection, treatment and rehabilitation of children and youthful offenders and the trial of youthful offenders in the State of Bombay. Now it is a well-settled rule of construction that where a general law and a special law operate upon the same field and there is conflict between the two, it is the special law which must prevail as against the general law. Apart from that it is expressly enacted in Section 24 that the procedure to be followed in the trial of cases and the conduct of proceedings under the Act shall be in accordance with the provisions of the Code of Criminal Procedure 1898, except as expressly provided under the Act or the rules made thereunder. If, therefore there is an express provision of the Act, and it is in conflict with the general provisions of the Code of Criminal Procedure the express provisions of the Act must prevail and exclude the operation of the General provisions of the Code of Criminal Procedure. This being the legal position, it is clear that when Section 8 read with Section 9 in express terms provides that a Magistrate of the First Class shall be entitled to try all cases in

which a child is charged with the commission of an offence irrespective of what the nature of the offence is, I must give effect to that provision and not cut down the meaning and effect of the plain language of the enactment by taking out of the ambit and operation of the enactment offences which are exclusively triable by the Court of Session The language of Sections 8 and 9 is clear and unambiguous and does not leave the meaning in dubio and to hold that a Magistrate of the First Class has no jurisdiction to try a case where a child is accused of an offence exclusively triable by the Court of Session under the general provisions of the Code of Criminal Procedure would be to introduce in the section words of limitation or exception which are not there and to put a meaning on the Sections which the language cannot by any canon of construction bear....I am, therefore, of the opinion that the view expressed by the learned Sessions Judee is correct and that a Magistrate of the First Class is competent to try a case against, an accused who is a child within the meaning of the Act, even though the offence may be one exclusively triable by the Court of Session. The decision of the Mysore High Court referred to in the order of the learned Sessions Judge appears to have overlooked the provisions of Sections 8 and 9 and as pointed out by the learned Sessions Judge, the High f ourt in that case seems to have been influenced by the contention urged by the Additional Assistant Advocate General that the Act does not anywhere provide that a Magistrate exercising the powers of a Juvenile Court would be competent to try cases, which under the Code of Criminal Procedure are exclusively triable by the Court of Session. This contention is obviously unsound and is contrary to the express provisions of Sections 8 and 9. I cannot, therefore, accept the reasoning of the judgment in that case and respectfully decline to follow the same.

No doubt Bhagwati J. (as he then was) also relied on provisions contained in Section 13 of the Bombay Children Act 1948 as an additional reason for reaching that conclusion. However, this additional reason relied on by Bhagwati J. is not sufficient to distinguish that case. In the first place the conclusion reached was also independent of Section 13 of the Bombay Act as is evident from the above extract and reliance was placed on Section 13 only to re-enforce that conclusion. Secondly, a provision like Section 13 contained in the Bombay Act was not necessary in the Bal Adhiniyam of our State on account of the fact that by virtue of

Sub-section (2) of Section 6 of the Bal Adhiniyam the Magistrate First Class for the area was deemed to be the Juvenile Court till constitution of a Juvenile Court for the area. In the Bombay Act, Section 10 is the corresponding provision for Section 24 of the Bal Adhiniyam, which provides for sepa-ratinc the trial where a child along with an adult is charged jointly for the same offence, a Juvenile Court having been established for the area. Section 13 of the Bombay Act was enacted to provide for separation of the trial of a child instead of trying him jointly with an adult where no Juvenile Court had been established for the area. Such a measure was adopted on account of the fact that there is no provision in the Bombay Act corresponding to Sub-section (2) of Section 6 of the Bal Adhiniyam. In the Bal Adhinivam Sub-section (2) of Section 6 having been enacted so that the Magistrate First Class was deemed to be the Juvenile Court for the area till constitution of the Juvenile Court in accordance with Section 4 of Cri. L. J. the Bal Adhiniyam, a provision like Section 13 contained in the Bombay Act was not necessary in the Bal Adhiniyam of this State. The case before Bhagwati J. was one where no Juvenile Court having been constituted. Section 13 had to be relied on. With respect we are in full agreement with the view taken by the aforesaid Division Bench of the Bombay High Court and by Bhagwati J. fas he then was.)

15. A contrary view has, however been taken by a Division Bench of the Mysore High Court in the State of Mysore v. Mallappa Basagouda AIR I960 Mys 71 : 1960 Cri LJ 493. It is, however, clear that the Mysore High Court did not take into account all the relevant provisions contained in the Bombay Children Act, 1948 on account of which it was led into taking the contrary view. Bhagwati J. in the Gujarat case has considered the Mysore judgment and dissented therefrom, giving cogent reasons for the dissent. With respect, we are also unable to follow the Mysore decision for the same reasons.

16. Thus, it will be seen that the view we have taken also finds support from the view taken by the Bombay and Gujarat High Courts while construing similar provisions in a similar situation.

17. No doubt at first sight it does appear unusual that such serious offences should be made triable by a Magistrate First Class when they are ordinarily to be

tried exclusively by a Court of Session. However, when the main purpose and object of such an enactment is kept in view, which is in consonance with the modern trend of legislation in this sphere, such misgivings are removed. The main purpose of such an enactment, the utility of which has been accepted in modern times in several countries, is to treat youthful offenders not as criminals but as delinquents and to provide for hearing and disposal of complaints against them in a manner so as to save them from future criminal conduct and with a view to rehabilitate them and guide them to the path of rectitude thereby helping them to become useful citizens of the society and for that purpose to enable making of all suitable orders, instead of punishing them by inflicting the ordinary sentence provided for such an offence. One of the essential differences between a criminal Court and a Juvenile Court, is that a criminal Court is concerned with punishing the criminals while a juvenile Court is required to resort to correctional methods for rehabilitating the juvenile delinquents. While dealing with the difference in these two types of courts, in Sutherland and Cressey on 'Principles of Criminology' (Sixth Edition) at page 400 after summarising the position it is stated as follows:..Nevertheless, there is characteristically, a significant difference between them. The expected reaction of the Criminal Court personnel to crime is punitive-they seek, with some exceptions, to implement a punitive reaction to an offence. In contrast, the expected reaction of the juvenile court personnel is that of treatment - they seek, with some exceptions, to implement a treatment reaction to the offender. The ideal of the juvenile courts is that the personnel fare not looking outwardly at the act but, scrutinizing it as a symptom are looking forward to what the child is to become.

It is for this reason that Sub-section (3) of Section 5 of the Bal Adhiniyam requires special knowledge of child psychology and child welfare as a qualification for appointment to the iuvenila Court.

18. When the appeal first came ud for hearing, the Division Bench before which it was listed requested the learned Advocate General to appear on behalf of the State and Shri P. K. Saxena to appear as amicus curiae, in view of the seemingly obscure provisions of the Bal Adhiniyam and the impact which this decision is likely to have since such a question has been raised for the first time in this Court.

We are thankful to all the lawyers who appeared and rendered valuable assistance to us.

19. As a result of the discussion aforesaid, it must be held that the entire proceedings against the appellant before the Magistrate First Class and in the Court of Session, including the resultant conviction and sentence must ba quashed as being without jurisdiction.

20. It is no doubt true that the appellant being 14 years of age when produced before the Magistrate First Class in 1970 must have now attained the age of 16 years. However, for such a situation Section 3 has been enacted in the Bal Adhiniyam. According to Section 3 of the Bal Adhiniyam, an inquiry once initiated against & child shall continue to be governed by the provisions of the Bal Adhiniyam as if such person had continued to be a child, even though during the course of such an inquiry he ceases to be a child. This pro-* vision itself provides that such a consequence would ensue notwithstanding anything contained in this Act or any other law for the time being in force. In view of this provision, the appellant, though he has ceased to be a child according to the definition of that expression in the Act, shall continue to be governed by the provisions of the Bal Adhiniyam and the inquiry has to be completed and the final order made in accordance with the provisions of the Bal Adhiniyam.

21. This appeal is, therefore, allowed and the order of commitment as well as the conviction and sentence of the appellant are set aside. The appellant shall now be produced forthwith before the Juvenile Court for the area for being dealt with in accordance with the provisions of the Bal Adhiniyam. It is unfortunate that the appellant has already served out a part of the sentence extending to a little over three years by the time this appeal could be heard. It is expected that the Juvenile Court will bear in mind this fact while passing the final order in the case.

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