

**The State Vs. Shriniwas and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/756835](http://sooperkanoon.com/756835)

**Court :** Rajasthan

**Decided On :** Feb-26-1973

**Reported in :** 1973(6)WLN174

**Judge :** S.N. Modi, J.

**Appeal No. :** S.B. Criminal Reference No. 249 of 1972

**Appellant :** The State

**Respondent :** Shriniwas and ors.

**Judgement :**

**S.N. Modi, J.**

1. This criminal reference by the Sessions Judge, Ajmer, arises in the following circumstances.

2. The Munsif Magistrate, Ajmer, West, committed Sarwanlal, Motilal, Shriniwas. Chaturbhuj and Kailash to take trial for various offences including the offence under Section 302/34 IPC An application was moved on behalf of the accused Kailash in the Court of the Sessions Judge, Ajmer, contending that as he was a child below 16 years of age, he cannot be tried along with other accused under the Rajasthan Children Act, 1970 (Act No. 16 of 1970), hereinafter referred to as the Act. The application was opposed on behalf of the State on the ground that

Kailash was not a child within the meaning of the Act as his age was more than 16 years. The parties were then asked to lead evidence regarding the age of Kailash. Several witnesses were examined on behalf of Kailash and the learned Sessions Judge on the evidence produced before him arrived at the conclusion that the age of Kailash was less than 16 years. The learned Sessions Judge thereafter considered the provisions of the Act and made this reference with the recommendation that the committal proceedings against Kailash be quashed and the learned Magistrate be directed to proceed against him in accordance with the provisions of the Act and the rules made thereunder.

3. The finding of the learned Sessions Judge that Kailash is below the age of 16 is based on cogent evidence and I see no good ground to interfere with that finding of fact.

4. The Act came into force in the district of Ajmer, to which area this case relates, with effect from 17.8.71 as notified in the Rajasthan Rajpatra, Part IV (B) of 29 7.71. Section 2(d) of the Act defines 'child' meaning a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. Section 2(f) defines 'delinquent child' meaning a child who has been found to have committed an offence. Section 2(e) defines 'children's court' meaning a court constituted under Section 5 of the Act. Section 2(b) defines 'Board' meaning a Child Welfare Board constituted under Section 4 of the Act. Section 7(1) of the Act lays down that where a children's court or a Board has been constituted for any area, such Board or Court shall have power to deal exclusively with all proceedings under the Act relating to neglected children or delinquent children. Section 7(2) lays down that where no Board or Children's Court has been constituted, the powers conferred on the Board or the Children's Court shall be exercised only by the following, namely, (a) the District Magistrate; or (b) the Sub Divisional Magistrate; or (c) any Magistrate of the first class. Section 24 prohibits joint trial of a child and other person not a child. It runs as under:

Section 24. No joint trial of child and person not a child. (1) Notwithstanding anything contained in Section 239 of the Code of Criminal Procedure, 1898 (Central Act 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 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, 1898 (Central Act No.6 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 the other person.

The foregoing provisions of the Act make it clear that the only court competent to try cases in which a child is charged with commission of an offence is the children's court or the Board. It is further clear that a child cannot be charged and tried along with a person who is not a child. Now, Kailash accused being a child within the meaning of the Act, neither committal proceedings could be taken against him along with other accused nor he could be charged and committed for trial along with the other accused. The order of committal made against Kailash is therefore illegal. I am told that no Children's Court has been constituted for the district of Ajmer. If that is so, the Learned Munsif Magistrate who exercises the powers of a First Class Magistrate was competent to act as a Children's Court under Section 7(2) of the Act and proceed against accused Kailash in accordance with the provisions of the Act. The learned Magistrate having failed to do so and having committed the case against Kailash to the Court of Session, the order of committal passed against Kailash is liable to be quashed.

5. I accordingly accept the reference and quash the order of committal passed against Kailash. I further direct that the proceedings against accused Kailash shall be taken by a Children's Court if so constituted. If no Children's Court has been constituted for the area, the Munsif Magistrate, Ajmer (West), shall proceed against accused Kailash acting as a Children's Court in accordance with the provisions of the Act and the rules framed thereunder.