Surendra Kumar Vs. State of Rajasthan

Surendra Kumar Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/768591

Court : Rajasthan

Decided On : May-26-2008

Reported in : 2009CriLJ568; RLW2008(4)Raj2984

Judge : Mohammad Rafiq, J.

Appellant : Surendra Kumar

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Shri. Gajanand Yadav

Disposition : Petition allowed

Judgement :

Mohammad Rafiq, J.

1. This revision petition has been filed against the order dated 17.8.2007 passed by Additional District and Sessions Judge (Fast Track) No. 3, Jhun-jhunu, Camp at Khetri whereby the application of the petitioner for determination of' his status as juvenile under Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 has been rejected.

2. Factual matrix of the case is that a first information report for offence under Section 365, 394,302 and 201 IPC was lodged against the petitioner with Police Station, Khetri. Petitioner applied for grant of bail pending trial under Section 439

Cr.P.C. which was rejected by the Additional Chief Judicial Magistrate, Khetri. Petitioner thereupon moved the Court of Additional Sessions Judge (Fast Track) No. 2, Jhunjhunu Headquarter Khetri on the premises that his date of birth being 26.6.1989, on the date of incident, which is 26.4.2007, his age was 17 years and 10 months. This was contested by the prosecution which made an application for enquiry into the question of age of the petitioner. The Court by its order dated 13.6.2007 directed for Constitution of Medical Board for determination of the age of the petitioner. The Court also allowed the parties to adduce the evidence. The accused petitioner produced Ashok Kumar, Head Master of the Government Primary School Ismilepur as AW-1 and Ratni, mother of the petitioner as AW-2, apart from producing his date of birth certificate from the said school as Ex. A1, the copy of admission register as Ex. A2 and copy of the admission form as Ex.C.1 (A). The prosecution produced Dr. Mani Ram as NAW-1, Dr. Karan Singh as NAW-2, Radhey Shyam as NAW-3 and also produced the report of the Medical Board as NA-1, X-ray plates as NA-2 to 5 and certified copy of the voter list as NA-6. The learned Additional Sessions Judge by the impugned order dated 17.8.2007 held that age of the petitioner as on the date of incident was more than 18 years-and therefore he was not a juvenile in the meaning of Section 2(k) of the Act. Aggrieved thereby, the petitioner has now preferred the present revision petition before this Court.

3. I have heard Shri Gajanand Yadav, learned Counsel for the petitioner, Shri B.S. Chhaba, learned Public Prosecutor and Shri M.K. Kaushik, learned Counsel for the complainant.

4. Shri Gajanand Yadav, learned Counsel for the petitioner while assailing the order passed by the Court below has argued that it has erred in law in no; accepting the date of birth certificate issued by the school as relevant evidence under Section 35 of the Evidence Act for determination of the age of the petitioner. The certificate could not be discarded so lightly and only because the headmaster of the time when the petitioner was admitted to the school was not produced. The present headmaster of the school, namely-AW-1 Ashok Kumar, had appeared before the Court as a witness and proved the veracity of the S.R. register as also the certificate which was issued on the basis of the school records, Shri Ashok

Kumar had categorically stated that the date of birth of the petitioner as 26.6.1989 was entered in the school records on the basis of affidavit of his father, but non production of that affidavit could not be the basis for completely ignoring the school certificate. Learned Counsel for the petitioner submitted that the Court below has misread the statement of AW-2 Ratni Devi. She had clearly stated that her marriage was solemnized in the year 1981 and she gave birth to two female children with the gap of three years each and two years and after the birth of the second female child the petitioner was born and thereafter four more female children were born to her after interval of every two years. Her youngest daughter Manju was born in 1995. The Court has however misinterpreted the statement of petitioner's mother when she said that her youngest daughter is aged about 10 years on the date of recording of statement on 11.6.07. The Court wrongly held that AW-2 Ratni Devi has not given correct facts because if the age of the petitioner is accepted as 18 years and when he was married how possibly he could have 12 months old daughter because his marriage was performed three years ago. The learned Court below in taking this view also supported its finding by observing that the age of the petitioner's wife has been admitted by his mother about 17-18 years. The Court on that basis held that if the age is calculated on the basis of birth of her children as disclosed by AW-2 Ratni Devi, the petitioner appears to have been born in the year 1988 and therefore on the date of incident, his age would be more than 19 years. Learned counsel for the petitioner further argued that the Court below has ignored this simple statement made by Ratni Devi that the first two of her daughters were born at the interval of three years and two years thereafter, petitioner was born. These three taken together would become 8 years and when the marriage was solemnized in 1981, obviously the birth of the petitioner had taken place on 20.6.1989 and if it is calculated for that date, the age of the petitioner when the statement of Ratni Devi was recorded would be less than 18 years.

5. Shri Gajanand Yadav, the learned Counsel argued that marriage of the children at the age of 16 years in rural areas is not an uncommon thing and if one year thereafter, a daughter was born to the wife of the petitioner, that was also not an unusual thing. Those factors however could not be relied on by the learned Court below to hold that petitioner was more than 19 years when the incident took place

on 26.4.2007. Learned Counsel thus submitted that apart from misreading and misinterpreting the statement of mother of the petitioner, the learned court below has given undue importance to the report of the Medical board which opined that age of the petitioner was about 20 to 22 years and also the voters list wherein his age was recorded as 19 years. In fact, the court below held that if the age as given in the voter list is accepted, the petitioner would be 22 years on the date of incident. Learned counsel further argued that though the impugned order was passed by the Court below when the Juvenile Justice (Care and Protection) Rules, 2007 was not yet enforced, but this rule having been published in official gazette would immediately come into force from the date of its publication on 26.4.2007. It was argued that Rule 12 of the Rules prescribed procedure for determination of juvenile and according to Sub-rule (3) thereof, the school certificate of matriculation or equivalent has been given the highest importance as compared to any other document and in the absence therefore, the date of birth certificate from the school and further in the absence thereof, the birth certificate given by Municipal Corporation or competent authority or panchayat as per Sub-rule (3) of Clause (a). Clause (b) of Sub-rule (3) of Rule 12 however clearly provides that in absence of any of the above referred to three documents in Clause (a), the medical opinion can be sought from the duly constituted Board. Learned counsel argued that opinion of the Medical Board was required to be obtained when the documents referred to in the three clauses of Sub-section (3)(a) of Section 12 were not available. Even if the rules have been enforced later than the passing of the impugned order, this Court in revision petition now can make a fresh determination in view of the procedure prescribed under the rules; Learned Counsel relied on the judgment of Supreme Court in Desh Raj v. Bodh Raj 2008 II AD (SC) 105, Umesh Chandra v. State of Rajasthan : [1982]3SCR583 , the judgment of Rajasthan High Court Mohd. Idris v. State of Rajasthan 2007(2) RCC 580 : 2007(2) RLW 913, Jawari Lai Bhati v. State of Rajasthan 2006(3) R.Cr.D. 289 (Raj.), Nahar Singh v. State of Raj. and Anr. 2002 WLC (Raj.) UC 85, Kailash Singh v. Ramveer Singh and Anr. 2008(1) WLC 607 and Allahabad High Court in Mayank Rajput v. State of U.P. 1998 Cr.L.J. 2797.

6. On the other hand, Shri B.S. Chhaba, learned Public Prosecutor and Shri M.K. Kaushik, learned Counsel for the complainant and opposed the revision petition

and argued that the impugned order does not suffer from any legal infirmity. The learned Additional Sessions Judge has correctly examined and analyzed the evidence, both oral and documentary. It was argued that not only from the statement of the mother of the petitioner Ratni Devi, but otherwise also, there was ample evidence to prove that the petitioner was more than 18 years of age when the accident took place. Proof of the fact that he was less than 18 years was not adduced because Shri Ashok Kumar, AW-1 who was produced in evidence clearly stated that he was not headmaster when the petitioner was admitted to the school. The S.R. register had overwriting on it. Father of the petitioner on whose request, he was admitted to school was not produced in evidence. The affidavit alleged to have been given in the school by him was also not produced. It was argued that the Rules of 2007 would not apply to a case where the Court has already upon enquiry held that the petitioner was not juvenile. In any case, the Rule 1(2) of the Rules clearly provides that they shall come into force on the date of their publication in the official gazette and the rules, which have been published in official gazette on 26.10.2007, would have only prospective application. It was argued that the voters list published in 2004 had indicated the age of the petitioner as 19 years whereas the Medical Board in its opinion has opined that age of the petitioner must be between 20 to 22 years. In the face of this, it cannot be accepted that the petitioner was a juvenile on the date of incident. Shri M.K. Kaushik in support of his documents relied on the judgment of this Court in Khem Chand v. State of Raj. and Anr. S.B. Cr. Revision Petition No. 363/07 decided on 28.2.08, Bajrang @ Brijlal v. State of Raj. 2005 (2) Cr.L.R. (Raj.) 1673, Richpal @ Malia v. State of Raj. 2003 WLC (Raj.) UC 388 and Calcutta High Court in Nazir Hossain Haider v. State 1998 Cri.L.J. 1720. Shri M.K. Kaushik argued that the division bench of this Court in Smt. Tara Devi v. Smt. Sudesh Chaudhary has held that the entry in the school register, regarding date of birth and date of birth certificate issued by the school on that basis, can be merely proved as such documents and they do not by themselves prove the contents of such documents. Mere proof of the documents would not tantamount to proof of all their contents and on that basis, the correctness of the date of birth stated therein.

7. I have given my earnest consideration to the rival submissions and perused the material on record and also studied the cited judgments respectfully.

8. Careful study of the impugned order would make it appear that the learned Additional Sessions Judge has heavily relied on the contradictions in the statement of petitioner's mother Ratni Devi, who was examined as AW-2, in which she has given out as to what was the age difference in her seven children. She stated that she was married in 1981 and her last daughter Manju was born in the year 1995. From the statement, the learned court below by making some guess work, inferred that the petitioner appears to have been born in the year 1989 and accordingly calculated his age to be more than 19 years on the date of incident. Having done so, the court then supported its finding from the report of the Medical Board and also from the voters list. The Court has however discarded the birth certificate obtained from the school as also the S.R. Register and the admission form primarily for the reason that the father of the petitioner on whose affidavit he was admitted has not been produced, nor the copy of the affidavit was produced on the basis of which his date of birth was entered in his school records. The Supreme Court in Desh Raj, supra, while considering the election dispute held that an entry in any public or other official book or register on record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of his duty specifically enjoined by law of the country in which such book or register is kept, is itself a relevant fact. It was held that having regard to the provisions of Section 35 of the Evidence Act, entries in school admission register in regard to age, caste etc. have always been considered as relevant and admissible. The S.R. Register and the admission form could be proved by evidence of the then Headmaster on the date the petitioner was admitted and also the present headmaster of the Govt. Primary School, Ismilepur where the petitioner was admitted because he was a public servant and performing the duties specifically enjoyed by law in the school where such book/register was maintained. The question therefore arises whether the birth certificate issued by the school could be completely ignored by inferring from the statement of the mother of the petitioner that since the petitioner was married and had female child of about 12 months in age and accordingly finding a difference of one year from the date claimed by him and holding that instead of 1989, the petitioner must have been born in 1988. The Supreme Court in Umesh Chandra v. State of Raj. (supra), while dealing with the somewhat similar controversy has

observed as under:

The High Court seems to think that the admission forms as also the School's register (Ext. D-3) both of which were, according to the evidence, maintained in due course of business, were not admissible in evidence because they were not kept or made by any public officer. Under Sec. 35 of the Evidence Act, all that is necessary is that the document should be maintained regularly by a person whose duty is to maintain the document and there is no legal requirement that the document should be maintained by a public officer only.

9. The coordinate bench of this Court in Mohd. Idris, supra held that authentic School record should be preferred over the medical evidence which has variation on either side. In Jawari Lal Bhati, supra, again a coordinate bench of this Court held that the Court is required to apply its mind only to probative value of evidence. A school certificate showing date of birth of accused, need not be put to test of technical certificates. In Nahar Singh, supra, also this Court preferred the school certificate over medical report having age fluctuation of two years on either side.

10. The Allahabad High Court in Mayank Rajput, supra, while relying on Umesh Chandra, supra held that entry made in the high school certificate is presumed to be correct and burden lies on the person who disputes its correctness to prove it otherwise. It was held that entry of the age in the electoral (voters list) cannot be proved as conclusive piece of evidence.

11. In Kailash Singh, supra it was held by this Court that medical evidence can be considered only after rejecting school record regularly maintained. School record cannot be doubted and therefore the date of birth recorded therein has to be accepted as correct.

Contrarily, the judgments which have been cited from the side of the prosecution, appear to have taken a somewhat different view of the matter. In Khem Charid, supra, the order by which the trial Court held the accused as delinquent was set aside because the Court found that no enquiry as required by Section 7A of the Act was made and school certificate, which was not even part of the record, was

relied on to hold him juvenile.

12. In Bajrang, @ Brijlal, supra the Court relying on the voters list and ration card and statement of the father of the accused, wherein he stated that date of birth was filled up by the teacher in the application form at the time of admission, did not accept the age in the school certificate as correct.

13. In Richpal @ Malia, supra also the school certificate was disbelieved because the admission form containing the date of birth of the accused was not Submitted by the parents of the juvenile, but by a third person.

14. In Tara Devi, supra, a division bench of this-Court was dealing with an election dispute wherein the question that was raised was as to what was the age of the elected candidate on the date of election. It was held that entires in the school record made by the Head master in the discharge of his official duties can be regarded as piece of circumstantial evidence only within the meaning of Section 114 and not a direct evidence of date of birth. Though delivered in the context of election dispute, that judgment, with respect, does not appear to have noticed the Supreme Court judgment in Umesh Chandra at all. It appears that the attention of the Court was not drawn towards the Supreme Court judgment in Umesh Chandra and in any case those observations on which reliance has been placed by the learned Counsel appearing for the complainant, were made in the context of the observations of the Supreme Court mentioned in the relevant para of judgment of Supreme Court in Birad Mai Singhvi v. Anand Purohit : AIR 1988 SC1796 extract of which was taken form page 1806 and was reproduced in para 37 of the division bench judgment in Tara Devi. The Supreme Court made the observations after it expressed the view that if the entry in the scholar's register regarding date of birth is made on the basis of information given by the parents, the entry would have evidentiary value but if it is given by a stranger or by someone also who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. It is in that context that the Supreme Court in the very next sentence observed that merely because the documents were proved does not mean that the contents of documents were also proved. Here in the present case, the mother of the petitioner has clearly stated that the date of petitioner's birth was

26th May in the last of the month of Jeth of Vikram Samvat. She also mentioned the year as 1989 which proves approximately the same date of birth i.e. 26.6.1989 disclosed in the school certificate as correct. Besides, the admission form in the present case has been submitted by the father of the petitioner and not by a third person. It has been proved by Headmaster of the school who has appeared as witnesses. Such school certificate could not be completely brushed aside.

15. It is matter of common knowledge that the age of the voters in the voter list/electoral roll is entered on the basis of enquiries that are made by the Government employees temporarily put on duty with the Election Commission of India. It is also a common knowledge that there is a general tendency to somewhat exaggerate the age of the minors when electoral rolls are prepared and elections are round the corner. The voters lists are most of the time full of discrepancies not only in regard to age but also about the names and sometimes even of gender and certain other particulars. Entries in the electoral roll especially with regard to the age mentioned therein therefore cannot be treated as conclusive piece of evidence. They can be however considered along with other evidence merely for the purpose of corroboration and such entries cannot be certainly given precedence over the birth certificate issued by a Government School based on the public record maintained, by it regularly in due discharge of the official duties. The Headmaster of the school Ashok Kumar has been examined as AW-1 in enquiry conducted by the Court below. He has categorically stated that he was working as Headmaster of the Govt. Primary School, Ismilepur and that the birth certificate Ex. A-l has been issued by him, which contains his signatures. He also stated that such certificate has been issued by him on the basis of the records maintained in school. He also brought the original of the S.R. register on the basis of entries contained therein, the birth certificate was issued. The original of the S.R. Register, Ex. 2 contained the name of the petitioner at S. No. 92, according to which the date of birth of the petitioner was 26.6.1989. The Headmaster also proved the admission form Ex. A.2, in which entry of date of birth of the petitioner was made on the basis of affidavit of the petitioner's father in the year 1994.

16. The question which calls for determination by this Court is whether the Rules of 2007 having been published in the gazette on 26.10.2007 now at this stage can

be applied to the present case when already determination in the enquiry held under Section 7A has been made by learned Additional Sessions Judge vide impugned order dated 17.8.2007. Section 7A of the Act provides for the procedure when claim of juvenility is raised before the Court, which for the facility of reference is reproduced hereunder:

7A. Procedure to be followed when claim of juvenility is raised before any Court.-

Wherever a claim of juvenility is raised before any court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to, determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the Court finds a person to be a juvenile on the date of commission of the offence under Sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.

17. As would be evident from the above, when a claim of juvenility is made before any Court and the Court is of the opinion that an accused person was juvenile on the date of commission of the offence, the Court is required to make an inquiry and take such evidence as may be necessary so as to determine the age of such person and record its finding. The proviso to Sub-section (1) of Section 7A provides that a claim of juvenility may be raised before any Court and it shall be recognized at any stage even after final disposal of the case and such claim shall be determined in terms of the provisions of the said Act and the rules made therefore, even if the juvenile has ceased to be so, on or before the date of

commencement of the Act. It would thus be clear that the claim of juvenility may not only be made before the trial Court but even after the final disposal of the case before the appellate or any higher Court. This provision however makes-it clear that such claim shall be determined in terms of the provisions contained in the Act and the Rules made thereunder. The Rules of 2007 were not in force when the enquiry and determination was made by the Court below. The order which is passed by the Court is subject matter of challenge in the present revision petition before this Court. Whether this Court while deciding the claim of the petitioner for juvenility can also rely on the rules in aid of its findings referred to above is the question that needs answer. The Full Bench of Goa, Daman and Diu High Court in Data Xiva Naique Desai and Anr. v. State AIR 1967 Goa, Daman and Diu 4 while dealing with somewhat similar question held as under:

8. xxxxxxxxxxxxxxxxxxxxxxxxxxxxx

The law of Evidence is an adjective law and, as such, has retrospective effect. It is well settled that an appellate Court is entitled to take into consideration any change in law. In this appeal we can rely on the provisions of this Act. It would apply to the proceedings pending in the Courts on the day it came into force. In all criminal trials, where the accused pleads not guilty, the general rule, which is part of the Common Law of England, is that the prosecution must prove the guilt of the accused beyond all reasonable doubt.

18 The Supreme Court in Shiv Shakti Cooperative Housing Society, Nagpur v. Swaraj Developers and Ors. : [2003]3SCR762 while dealing with the question whether the amended provisions of Section 115 especially the proviso effective after amendment by Act of 1946 of 1999 w.e.f 1st July, 2002 would also apply to the pending proceedings held in para 32 of the report as follows:

xxxxxxxxxxxxxxxxxxxxxxxxxxxxx

The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is a different

stipulation.

19. The Constitutional Bench of Supreme Court in Pratap Singh v. State of Jharkhand : 2005 CriLJ3091 while primarily-dealing with the question as to on what basis, the age of juvenile should be determined; whether on the date of commission of the offence or on the date when the offender is produced before the competent court, held that the model rules then framed by the Central Government could not be applied for giving effect to the purpose of the Act as the Central Government does not have any authority to make any rules. Subsequently, however, it appears that Parliament by Juvenile Justice (Amendment) Act No. 33/06 has introduced various amendments and thereafter added a proviso to Section 68. Section 68 inter alia provides as under:

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

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

(2) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(3) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(4) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

20. In view of above, it would be evident that though the main provision provides that the State Government may by notification, make rules to carry out the purpose of the said Act, but by virtue of the proviso, the rules framed by the Central Government regarding any of the matter with-respect to which the State Government may make rules under this Section, shall apply to the State till the rules in that respect is made by the State .Government.

21. The Central Government in the Rules of 2007 has in Rule 12 provided the procedure to be followed for determination of the age, which is reproduced as under:

12. Procedure to be followed in determination of age-(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in Rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents', if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board, or, as the case may be, the Committee by seeking evidence by obtaining-

(a)(i) the matriculation or equivalent certificates, if available and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence where of;

(iii) the birth certificate given by a corporation or a municipal authority or a Panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of Clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, given benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record as finding in respect of his age and either of the evidence specified in any of Clause (a)(i), (ii), (iii) or in the absence whereof, Clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) XXXXXXXXXXXXXXXXXXXXX

(5) xxxxxxxxxxxxxxxxxxxxxxxxxx

(6) xxxxxxxxxxxxxxxxxxxxxxxxx

22. Apart from the fact that the conclusion arrived at by the Court below, independent of the above referred Rules, is liable to be reversed in view of the findings recorded and discussion made above, Rule 12, supra, also can be relied on by this Court in aid of those findings even at the stage of consideration of the revision petition preferred by the juvenile. This is so because Section 7A of the Act provides that claim of juvenility can be made by the juvenile not only before the trial Court, but at any stage thereafter even after final disposal of the case and such claim has to be determined in terms of the provisions contained in the Act and the Rules made thereunder. The Rules of 2007 having been framed in exercise of the powers conferred by proviso to Section 68, are therefore very much on the rule book when the present matter has fallen for consideration of this Curt. This is a rule of procedure and a rule of procedure prescribing the manner in which the age of the delinquent has to be determined. A rule of procedure has to apply to all proceedings that are pending on the date on which it is enforced.

23. The Supreme Court in Gurbachan Singh v. Satpal Singh and Ors. : 1990 CriLJ562 was dealing with a question whether under Section 113A of the Evidence Act having been endrafted into the Evidence Act w.e.f. 26.12.1983, the presumption on the strength of such newly inserted provision in regard to the cases of dowry death could be raised where the incident of death had taken place prior to the date of insertion of the aforesaid provision by way of amendment. The Supreme Court in para 36 to 40 held as under:

36. The provisions of the said Section do not create any new offence and as such it does not create any substantial right but it is merely a matter of procedure of evidence and as such it is retrospective and will be applicable to this case. It is profitable to refer in this connection to Halsbury's Laws of England, (Fourth Edition), Volume 44 page 570 wherein it has been stated that:

That general rule is that all statutes, other than those which are merely declaratory or which relate only to matters of procedure or of evidence, are prima facie prospective and, retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature....

37. It has also been stated in the said volume of Halsbury's Law of England at page 574 that:

The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament.

In Blyth v. Blyth 1966 AC 643 and the wife left the husband in 1954 and lived with the co-respondent until August, 1955, when she broke off the association. In 1958 the husband and wife met by chance and sexual intercourse took place. In December, 1962, the husband sought a divorce on the ground of his wife's adultery. During the pendency of the application Section 1 of the Matrimonial Causes Act, 1963 came into force on July 31, 1963 which provided that any presumption of condonation which arises from the continuance or resumption of material intercourse may be rebutted on the part of a husband, as well as on the part of a wife, by evidence sufficient to negative the necessary intent. The question arose whether this provision which came into force on July 31, 1963 can be applied in the instant case. It was held that the husband's evidence was admissible in that S. 1 of the Act of 1963 only altered the law as to the admissibility of evidence and the effect which the courts are to give to evidence, so that the rule against giving retrospective effect to Acts of Parliament did not apply.

39. In Herridge v. Herridge (1966) 1 All ER 93 similar question arose. It was held that Section 2(1) of the Act of 1963 was a procedural provision, for it dealt with the adducing of evidence in relation to an allegation of condonation in any trial after July 31, 1963; accordingly the sub-section was applicable, even though the evidence related to events before that date, and the resumption of cohabitation in the present case did not amount, by reason of Section 2(1) to condonation.

40. On a conspectus of these decisions this argument on behalf of the appellant falls and as such the presumption arising under S. 113-A of the Evidence Act has been rightly taken into consideration by the trial Court.

24. The Rules of 2007, even though have been enforced by their publication in the Gazette of India on 26.10.2007, they would apply to all cases wherever the claim of juvenility is made which may have been pending on the date of its insertion. Such claim of juvenility has to be dealt with and decided by the Court concerned as per the procedure contained in Rule 12. The Rules of 207 shall continue to occupy the field till they are suitably replaced by appropriately framed another set of rules by the State Government.

25. As would be evident from above, Sub-rule (3) of Rule 12 provides that in every case concerning a child or juvenile in conflict with law, the age determination enquiry shall be conducted by the Court on evidence by obtaining (i) the matriculation or equivalent certificate if available; in the absence thereof (ii) the date of birth certificate other than the school first attended and in the absence whereof (iii) the birth certificate given by a Corporation, or Municipal Authority or a Panchayat. It is thereafter that Clause (b) of Sub-section (3) of Section 3 provides that only in the absence of any of the three documents referred to above, medical opinion will be sought from a duly constituted Medical Board which will declare the age of the juvenile child. In the present case, therefore, In addition to the fact that the conclusion arrived at by the learned Court below, are liable to be reversed on merits, as per the rules aforesaid also, the date of birth certificate Issued by the school being an evidence falling In Clause (a)(ii) If Sub-Rule 3 of Rule 12, supra, there would be no occasion for referring the matter to the Medical Board for its opinion. The petitioner even otherwise, Is liable to be treated as Juvenile in the

meaning of Section 2(k).

26. In view of what has been discussed above, the revision petition deserves to be allowed and is hereby allowed. The impugned order dated 17.8:2007 is set aside and the petitioners is held to be juvenile entitled to all such benefits as are available to him under the Act of 2000.