Mustafa Kha Jabbar Kha Vs State Of Mah. Thr. Pso Ps Arni Tq.Arni Dist.Yavatmal And Another

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Nov. 18, 2024

Acts Referred: Indian Penal Code, 1860 â€" Section 34, 354(D), 376(3), 376(DA), 504, 506
Protection of Children From Sexual Offences Act, 2012 â€" Section 6, 8, 10, 12
Juvenile Justice (Care and Protection of Children) Act, 2015 â€" Section 14, 14(2), 14(3), 15, 19(1), 19(1)(i), 101(2)

Hon'ble Judges: G. A. Sanap, J

Bench: Single Bench

Advocate: Parvez W. Mirza, A.R. Chutke, R.M. Daga

Final Decision: Dismissed

Judgement

G. A. Sanap, J

01]. Heard finally by the consent of the learned advocates for the parties.

02] ADMIT.

03] In this revision application, challenge is to the judgment and order dated 30th November, 2023, passed by the learned Additional Sessions Judge,

Darwha (Special Judge), whereby the learned Judge dismissed the appeal filed by the applicant under Section 101(2) of the Juvenile Justice (Care and

Protection of Children) Act, 2015 (for short, Ã¢â‚¬Å“J.J. ActÃ¢â‚¬) and confirmed the order dated 2nd August, 2023, passed by the Juvenile Justice Board,

Yavatmal (for short, Ã¢â‚¬Å“J.J.B.Ã¢â‚¬). The J.J.B., Yavatmal, by order dated 2nd August, 2023, allowed the application made by the informant, who is the

father of the victim-girl, to try the Child in Conflict with Law Nos.1 and 5 (for short, Ã¢â‚¬Å“the CCLsÃ¢â‚¬â€‹) as an adult.

04] This revision application has been filed by CCL No.1. CCL No.5 has not challenged the order passed by the learned Additional Sessions Judge,

Darwha. The victim-girl, on the date of the commission of the offence, was 14 years old. The CCLs, on the date of the commission of the offence,

were between 16 and 18 years of age. The informant is the father of the victim-girl. A crime bearing No.737/2018 at Arni Police Station for the

offences punishable under Sections 376(3), 376(DA), 354(D), 504, 506 read with Section 34 of the Indian Penal Code (for short, Ã¢â‚¬Å“IPCÃ¢â‚¬) and also

under Sections 6, 8, 10, and 12 of the Protection of Children From Sexual Offences Act, 2012 (for short, Ã¢â‚¬Å“POCSOÃ¢â‚¬ ActÃ¢â‚¬) was registered

against the CCLs as well as some major accused. The CCLs were apprehended in the crime. They were granted bail by the J.J.B., Yavatmal.

05] The facts leading to this revision application need brief narration. The crime committed by the CCLs is a heinous crime. The J.J.B. initially did not

carry out the inquiry under Section 14 and the preliminary assessment into heinous offences as provided under Section 15 of the J.J. Act. The J.J.B.

ordered them to be dealt with as per the provisions of the J.J. Act before the J.J.B. The informant, the father of the victim, made an application at

Exh.52 before the J.J.B. on 3rd December, 2018 and requested the J.J.B. to conduct the inquiry and order the trial of the CCLs as an adult. The

J.J.B. issued notices to the CCLs. The J.J.B. called the Special Investigation Report (SIR) of CCLs through the Probation Officer. The J.J.B.

referred them for the examination by the Psychiatrist. The J.J.B., on receipt of the SIR and the report of the Psychiatrist, vide order dated 1st April,

2019, allowed the application and granted the prayer to try the CCLs as an adult with the remaining accused in the crime. CCL No.5 had not

challenged the said order of J.J.B. CCL No.1, by filing an appeal in the Court of Additional Sessions Judge/ChildrenÃ¢â‚¬â„¢s Court at Darwha, had

challenged the said order. The learned Judge dismissed the said appeal. In order to complete further narration, which led to the passing of the

impugned order, it is necessary to state that the order passed by the learned Additional Sessions Judge, Darwha, dated 13th January, 2020, was

assailed by CCL No.1 by filing a Criminal Revision Application No.32/2020 in this Court. The revision application was allowed vide order dated 28th

June, 2023, and the matter was remitted back to the J.J.B. for deciding it afresh in accordance with law and particularly the directions issued by this

Court.

06] The J.J.B. conducted the inquiry and preliminary assessment in terms of Sections 14 and 15 of the J.J. Act. The J.J.B. provided the relevant

materials to the CCLs as well as to the prosecution. They were granted an opportunity of hearing. Similarly, the CCLs were granted liberty to adduce

the evidence. The CCLs did not adduce evidence and preferred to argue the matter on the basis of the available materials. The J.J.B., vide order

dated 2nd August, 2023, allowed the application at Exh.52 and ordered the trial of the CCLs as an adult with the remaining accused in the crime. CCL

Nos.1 and 5 filed the appeal in the Court of Additional Sessions Judge/ChildrenÃ¢â‚¬â„¢s Court, Darwha. The learned Additional Sessions Judge, vide

order dated 30th November, 2023, dismissed the appeal. CCL No.1 alone has challenged this order by filing this revision application.

07] I have heard Mr. Parvez W. Mirza, learned advocate for the applicant/CCL No.1, Mr. A.R. Chutke, learned APP for non-applicant No.1/State

and Mr. R.M. Daga, learned advocate for the informant/non-applicant No.2. Perused the record and proceedings.

08] Learned advocate Mr. Mirza, appearing for CCL No. 1, submitted that the order passed by the J.J.B. to try the CCLs as an adult is in gross

violation of the provisions of the J.J. Act and the Rules framed under the said Act. Learned advocate submitted that the inquiry was not conducted

within the timeline provided under Sections 14 and 15 of the J.J. Act. The subsequent inquiry and the order to try the CCLs as an adult has been

vitiated. The J.J.B. did not conduct a proper inquiry. There was no concrete material before the J.J.B. to conduct preliminary assessment with regard

to the mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which the

offence was committed by the CCLs. Learned advocate submitted that the SIR submitted by the Probation Officer is not cogent, concrete, and

reliable. Similarly, the Psychiatrist, who had examined the CCLs, did not record a concrete opinion as to the ability of the CCLs to understand the

consequences of the offence and the circumstances in which the offence was committed. Learned advocate submitted that in this case there was

non-compliance of Section 19(1), Clause (i) of the J.J. Act. No order has been passed by the ChildrenÃ¢â‚¬â„¢s Court to proceed with the trial against the

CCLs as an adult. Learned advocate submitted that the report of the Psychiatrist is not conclusive. The form of the SIR provided under the Juvenile

Justice (Care and Protection of Children) Model Rules, 2016 (for short Ã¢â‚¬Å“Model Rules, 2016Ã¢â‚¬) was not used. The J.J.B. has not considered the

relevant facts and has come to a wrong conclusion. There is no material on record to establish prima facie that the CCLs possessed mental and

physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which the offence was

committed. Learned advocate submitted that the heinous nature of crime per se could not be the justification to try the CCLs as an adult. In order to

seek support to his submissions, learned advocate has placed heavy reliance on the decisions of the HonÃ¢â‚¬â„¢ble Apex Court in the cases of Child in

Conflict with Law through his mother Vs. State of Karnataka [AIR 2024 SC 319]1 and Ajeet Gurjar Vs. State of Madhya Pradesh [AIR

OnLine 2023 SC 1188] and the decision rendered by the Co-ordinate Bench of this Court at the Principal Seat at Bombay inM umtaz Ahmed Nasir

Khan Vs. The State of Maharashtra & Anr. [Criminal Appeal No.1153/2018, decided on 15th July, 2019] .Relying upon these decisions,

learned advocate submitted that the order passed by the J.J.B. and confirmed in appeal by the Sessions Court deserve to be set aside.

09] Learned APP submitted that, on receipt of the application from the father of the victim at Exh.52 dated 3rd December, 2018, the notices had been

issued to the CCLs. Learned APP pointed out that the CCLs appeared before the J.J.B. on 22nd March, 2019. They were referred by the J.J.B. to

the Psychiatrist, Government Hospital, Yavatmal, for the assessment of their mental and physical capacity and the ability to understand the

consequences of the alleged offence. The J.J.B. directed the Probation Officer to conduct the necessary inquiry. Learned APP submitted that the

report submitted by the Probation Officer on 22nd March, 2019, recorded a candid opinion about the CCLs. Learned APP submitted that this Court,

while deciding Criminal Revision Application No.32/2020, has held that there was procedural error on the part of the J.J.B. in not conducting the

inquiry as contemplated under Sections 14 and 15 of the J.J. Act. This Court has recorded a finding that the J.J.B. was called upon by the informant

by making an application to conduct the inquiry and try the CCLs as an adult. This Court has recognized the right of the informant to take care of such

a procedural aspect by making an application, if it has not been taken care of by the J.J.B. Learned APP took me through the contents of the SIR and

the report of the Psychiatrist and submitted that it is sufficient to conclude that the CCLs were mentally and physically capable to commit the offence.

They possessed the ability to understand the consequences of the offence and the circumstances in which the alleged offence was committed.

Learned APP submitted that CCL No.1 was the kingpin in this case. He prevailed upon the victim and initially committed sexual intercourse with her.

He roped in CCL No.5 and allowed him to sexually abuse the victim. It is pointed out that CCL No.1 involved other major accused in this series of

instances of penetrative sexual assault on the victim. Learned APP submitted that CCL No.1 was instrumental in administering sedatives through

chocolates and once by injection to the victim-girl. The victim-girl was threatened of dire consequences by CCL No.1. The CCLs had videorecorded

the sexual act with the victim, and the victim was threatened to circulate the same in public in case the incident was either reported to the police or

disclosed to her father. Learned APP submitted that, considering the repetitive penetrative sexual assault on the victim by CCL No.1 and with his help

by the remaining accused coupled with the findings recorded in the SIR and the report of the Psychiatrist, the requirements of Section 15 of the J.J.

Act have been fully satisfied during the course of the inquiry to order his trial as an adult.

10] Learned APP took me through the decision relied upon by the learned advocate for CCL No.1 in the case ofC hild in Conflict with Law

through his mother Vs. State of Karnataka (supra) and submitted that the HonÃ¢â‚¬â„¢ble Apex Court has held that the provision with regard to the

timeline to try the juvenile as an adult is not mandatory. Learned APP, by relying upon this judgment, further submitted that the Additional Sessions

Court and the ChildrenÃ¢â‚¬â„¢s Court is one and the same, and therefore the submission that there was non-compliance of Section 19(1)(i) cannot be

accepted. Learned APP, relying upon this judgment, submitted that once the appeal was decided by the Special Court, which is also a ChildrenÃ¢â‚¬â„¢s

Court, then there is no need to again invoke Section 19(1)(i) of the J.J. Act. Learned APP, in short, supported the judgment and order passed by the

J.J.B. as well as by the learned Additional Sessions Judge (Special Judge), Darwha.

11] Learned advocate Mr. R.M. Daga appearing for the informant/non-applicant No.2 adopted the submissions advanced by the learned APP for the

State.

12] At the outset, it is necessary to mention some of the undisputed facts. CCL No.1, on the date of the commission of the offence, was about 17

years old. The offences committed by the CCLs are the heinous offences. Section 14 of the J.J. Act mandates an inquiry by the J.J.B. regarding a

child in conflict with the law on the production of the child before the Board. Section 14(2) of the J.J. Act prescribes the timeline. Section 15 of the

J.J. Act provides for the preliminary assessment of the CCL involved in the heinous offences by the J.J.B. Section 15 of the J.J. Act is applicable in

case of CCL who is above the age of 16 years. The preliminary assessment provided under Section 15 is mandatory while conducting the preliminary

assessment into heinous offences by the J.J.B. The J.J.B. has to consider the mental and physical capacity to commit such offence, ability to

understand the consequences of the offence, and the circumstances in which the alleged offence was committed. Explanation to Section 15 provides

that the preliminary assessment is not a trial, but it is to assess the capacity of such a child to commit and understand the consequences of the alleged

offence. Once the J.J.B. comes to a conclusion that there is a need for trial of a child as an adult, the Board has to pass an order and transfer the trial

of the case to the ChildrenÃ¢â‚¬â„¢s Court having jurisdiction to try such offences. It is to be noted that in this context Section 19(1)(i) of the J.J. Act and

Rule 13 of the Model Rules, 2016 are applicable. Before proceeding to appreciate the submissions touching the applicability of Section 19(1)(i) and

Rule 13 of the Model Rules, 2016, it would be necessary to consider the material available before the J.J.B. to order the trial of CCLs as an adult.

13] The J.J.B. is required to balance the scale and see that the injustice is not caused to the CCLs. The J.J.B., consistent with the mandate of the law,

must ensure that the benefit of the J.J. Act is not denied to the CCLs. The approach of the J.J.B., therefore, should be very careful and guarded. The

opinion or the assessment made by the J.J.B. must be based on concrete material on all material aspects provided under Section 15 of the J.J. Act.

The J.J.B. is obviously required to bear in mind the nature of the crime committed by the CCL. It is to be noted that, at the time of the commission of

the crime, the CCLs were studying. The victim was also studying in a school at Arni. CCL No.1 established acquaintance with the victim, who was 14

years old at that time. The series of instances of penetrative sexual assault by CCL No.1 and others took place between 1st November, 2017 and 14th

August, 2018. CCL No.1 developed intimacy with the victim. He gave chocolates with sedatives to the victim. CCL No.1 committed repetitive

penetrative sexual assault on the victim. CCL No.1 involved CCL No.5. With the assistance of CCL No.1, CCL No.5 as well committed penetrative

sexual assault on the victim. CCL No.1 also involved other major accused and their friends with him in this gruesome penetrative sexual assault on her

during the above period. It has come on record in the statement of the victim that the CCLs gave her chocolates mixed with sedatives. She has also

stated that the sedative substance was administered through injection on one or two occasions. It has come on record in the statement of the victim

that, after consuming the chocolates, she felt dizzy and could not see the things clearly. In this condition, she was ravished by CCL No.1. CCL No.1

several times committed sexual intercourse with her by administering sedatives in the chocolates. It has come on record in her statement that CCL

No.1 and his companions threatened to kill her father in case the incident was disclosed to him or to the police. It has come on record that the CCLs

had video recorded the incident of sexual intercourse with the victim and threatened to circulate those videos in social media, if she disclosed the

incident to her father or to the police.

14] It is evident on perusal of the order passed by the J.J.B. that the serious nature of the offence committed by CCLs has been taken into

consideration by the J.J.B. It is to be noted that, while considering the mental and physical capacity of the CCLs to commit the offence and the ability

to understand the consequences of the offence, all the above stated circumstances related to the crime could not be overlooked. The instance of

penetrative sexual assault was not a solitary instance. CCL No.1 was instrumental in initially controlling the nerves of the victim. CCL No.1 made the

victim available to CCL No.5 as well as to other major accused persons, who are facing trial before the learned Special Judge in this crime. In my

view, this act on the part of CCL No.1 could not be said to be a sign of immaturity. It displays an attitude of a person with full understanding and

ability to exploit a minor girl and derive a sadistic pleasure. CCL No.1 was not satisfied with his relations with the victim. In order to derive the

maximum sadistic pleasure of exploiting the victim, he involved CCL No.5 and other accused and made the victim available to them as well. In my

view, therefore, while assessing the ability to understand the nature of the crime and the consequences of the crime by the CCL, his overall conduct

needs to be borne in mind. If the CCL indulges in a solitary instance of sexual assault, then the consequences flowing from the same would be

different. The Court, keeping in mind the solitary instance, would be required to appreciate the ability of the CCL to understand the consequences of

the act. But, if the CCL indulges in such a crime repeatedly and exploits a minor victim, then the matter needs to be appreciated from a different

perspective.

15] Keeping the above stated facts in mind, it would be necessary to consider the other materials relied upon by the J.J.B. to order the trial of the

CCLs as an adult. Exh. 57 is the report of the Psychiatrist. It is submitted that this report of the Psychiatrist is not conclusive to reflect upon the ability

of CCL No.1 to understand the nature and consequences of the crime committed by him. In my view, this submission cannot be accepted. The

Medical Officer, at the time of the examination, found that CCL No.1 was conscious and cooperative. His attitude was guarded. The Psychiatrist

established rapport with him. His mood was Euthymic. His affect was appropriate. He gave brief answers in low volume. There were no delusions.

The Psychiatrist did not notice any perceptual abnormalities, and he was oriented to T/P/P. The CCL No.1, according to the Psychiatrist, possessed

sufficient insight. In the column of advice, the Psychiatrist noted that the CCL is psychiatrically stable. However, he found it difficult to comment

whether he has sound knowledge of the nature of the crime he is accused of. The report shows that he was psychiatrically stable. There was no

perceptual abnormality. He was fully oriented. It is to be noted that his attitude was guarded while answering the Psychiatrist. The record shows that

at the time of his examination, his approach was guarded. He had no repentance or remorse over his crime. He tried to conceal everything from the

Medical Officer. It is seen that the J.J.B. and the Appellate Court have taken this aspect into consideration to try the CCLs as an adult.

16] Perusal of this report would show that CCL No.1 possessed sufficient ability to understand the consequences of his act. The observations

recorded by the Psychiatrist clearly show that CCL No.1 was mentally and physically capable to commit the offence. He was not mentally or

physically disabled in any manner to commit the offence and understand the consequences of the offence. The Psychiatrist found that he was

psychiatrically stable. There was no abnormality. It is not out of place to mention that the ability to understand the consequences of the crime by the

CCL has to be gathered from the attending circumstances and the crime committed by the juvenile as well. If the crime committed is as serious as has

been in this case, then it would show that the person had possessed mental and physical capacity to commit the offence and the ability to understand

the consequences of the same. It is to be noted that there were no adverse circumstances as such to drove him to commit this offence. He committed

this offence with proper planning. CCL No.1 exploited the victim as well as thrown the victim to others for her exploitation. The duration of the crime

suggests that it went on for 8-10 months.

17] The SIR is at Exh.55. It is true that the Probation Officer used the old form for preparing the SIR. As per the Model Rules, 2016, the form

contains 49 columns. The form used by the Probation Officer in this case contains 42 columns. In my view, on this count, the SIR cannot be kept out

of consideration. The SIR contains the final outcome as well as the result of the inquiry conducted by the Probation Officer. Column No.1 pertains to

the particulars of the CCL and his parents and family members. He was not suffering from any mental or physical disability. He was unmarried. The

details of his family have been stated in column No.16. Column No.17 states that he had liking for his religion. His father was running a chicken shop.

The financial position was hand to mouth. CCL No.1 was not addicted to any vice. At the time of the crime, he was studying in 11th standard. He had

friendly relations with his classmates. He was enjoying the company of the same age. Similarly, he had friends older than him. Column No.37 states

that he was influenced by the companions of the same age. He was hale and hearty. He possessed satisfactory intelligence. The Probation Officer

has recorded that his overall inquiry reveals that CCL No.1 possessed a criminal mentality. He was the kingpin in this crime. In the future, he can also

commit similar crime. The report shows that his relations with the neighbours are cordial. The neighbours had informed the Probation Officer that the

CCL was involved in this offence.

18] It is to be noted that the contents of the report of the Psychiatrist and the contents of the report of the Probation Officer, in my view, cannot be

discarded. Perusal of the reports would show that CCL No.1 had no compulsion or no mental or physical disability on account of which he was driven

to commit this crime. The crime committed was his conscious decision. The crime of repetitive sexual assault committed by CCL No.1 would reflect

upon the state of mind of the CCL. He derived the sadistic pleasure by exploiting the victim himself as well as throwing the victim in the hands of the

others. In my view, therefore, the Members of the J.J.B. have rightly held that the offence committed in this case was the heinous offence. The CCL

No.1 was above 16 years of age. The preliminary assessment revealed his mental and physical capacity to commit the offence as well as the ability to

understand the consequences of the offence. The circumstances in which the offence was committed were well within the control of CCL No.1. The

Courts below have considered the available material on record and come to a just and proper conclusion. On facts, I am satisfied that the J.J.B. was

right in concluding that the report of the Psychiatrist and the SIR made out an exceptional circumstance/ground for the trial of the CCLs as an adult

with other accused.

19] This would now take me to the judgments relied upon by the learned advocate for the applicant. In the case of Child in Conflict with Law

through his mother Vs. State of Karnataka (supra), the HonÃ¢â‚¬â„¢ble Apex Court has considered whether the timeline for inquiry provided under

Section 14(3) of the J.J. Act is mandatory or directory and also noticed the anomaly in Section 101 of the J.J. Act regarding the terms used as

Ã¢â‚¬ËœChildrenÃ¢â‚¬â„¢s CourtÃ¢â‚¬â„¢ and Ã¢â‚¬ËœCourt of SessionsÃ¢â‚¬â„¢. As far as the first issue is concerned, the HonÃ¢â‚¬â„¢ble Apex Court has held that the

timeline provided in Section 14(2) of the J.J. Act to conduct inquiry is not mandatory but directory. It is held that the time so provided in Section 14(3)

can be extended by the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, for the reasons to be recorded in writing.

As far as the anomaly in Section 101 of the J.J. Act is concerned, the HonÃ¢â‚¬â„¢ble Apex Court has considered Section 15, Section 101 of the J.J. Act,

and Rule 13 of the Model Rules, 2016. It would be profitable to extract the relevant paragraphs 11 to 12.2. The extracted paragraphs are as follows:

Ã¢â‚¬Å“11. Section 101 of the Act provides for appeal against various orders as provided therein. Sub-section (1) thereof provides that any person aggrieved by an

order made by the Committee or the Board under the Act may within 30 days from the date of such order prefer an appeal to the Children's Court, with an

exception that against decision of the Committee relating to foster care and sponsorship care the appeal shall lie to the District Magistrate.

The term 'Committee' has been defined in Section 2(22) of the Act to mean 'Child Welfare Committee' constituted under Section 27 thereof.

The proviso to sub-section (1) of section 101 provides that the Court of Sessions or District Magistrate, as the case may be, may entertain the appeal after expiry

of the period of 30 days in case sufficient cause is shown for the delay in filing.

11.1 Sub-section (2) of Section 101 provides that an appeal against the order passed by the Board after making preliminary assessment under Section 15 of the

Act shall lie before the Court of Sessions. While deciding the appeal, the Court can take assistance of experienced psychologists and medical specialists, other

than those whose assistance was taken by the Board while passing the order impugned. It shows independent examination of the issue. Sub-section (4) provides

that, no second appeal will be maintainable from the order passed by the Court of Sessions. In Barun Chandra Thakur's case (supra) the provisions have been

held to be mandatory.

11.2 Some anomalies are evident in the aforesaid proviso, as pointed out by the learned counsel for the parties at the time of hearing. Their contention was that

the anomalies should also be addressed, so as to streamline the procedure in future. We also think in the same direction, keeping in view the spirit of law.

11.3 The term Court of Sessions as such has not been defined in the Act. The trial of CCL, who is of the age of 16 years or above and is involved in a heinous

offence is to be conducted by the Children's Court, treating him as an adult.

11.4 'Children's Court' has been defined in the Act in Section 2(20) to mean the Court established under the 2005 Act or a Special Court established under the

2012 Act. Where such Courts are not existing, the Court of Sessions shall have jurisdiction to try the offence under the Act. Meaning thereby the Presiding Officer

of the Children's Court and the Court of Sessions have been put in same bracket. There is no doubt with the proposition that a Sessions Judge would include an

Additional Sessions Judge as well.

11.5 Section 25 of the 2005 Act provides that for providing speedy trial of offences against children or violation of child rights, the State Government in

concurrence with the Chief Justice of the High Court by notification specify at least a Court in the State or for each district a Court of Sessions to be a Children's

Court. Meaning thereby the Special Court under the 2005 Act is at the level of the Sessions Court.

11.6 Section 101(1) of the Act deals with filing of appeals against certain orders passed by the Board or the Committee before the Children's Court, as the case

may be. The proviso to the aforesaid sub-section provides that in case there is any delay in filing the appeal, the power of condonation has been vested with the

Court of Sessions. The word 'Children's Court' is not mentioned, though appeal is maintainable before Children's Court.

11.7 Sub-section (2) of Section 101 of the Act provides for an appeal against an order passed by the Board under Section 15 of the Act. The appellate authority is

stated to be Court of Sessions.

11.8 Rule 13 of the 2016 Rules deals with the procedure in relation to Children's Court and Monitoring Authorities. Sub-rules (3) and (4) thereof which deal

with appeal filed under Section 101(2) of the Act refer the appellate authority as the 'Children's Court' though in Section 101(2) of the Act appeal is stated to be

maintainable before the Court of Sessions. From the above provision also, it is evident that the words 'Court of Sessions' and the 'Children's Court' have been

used interchangeably.

12. Section 102 of the Act provides for revisional power of the High Court. This again talks of calling for records of any proceedings in which a Committee or a

Board or Children's Court or Court has passed an order. It does not talk of exercise of revisional power against the order passed by the Sessions Court.

To put the record straight, it is added that the term 'court' has been defined in the Act in Section 2(23) to mean a civil court, which has jurisdiction in matters of

adoption and guardianship and may include the District Court, Family Court and City Civil Courts.

12.1 Similarly, sub-section (2) provides that against an order passed by the Board after preliminary assessment under Section 15 of the Act, the appeal is

maintainable before the Court of Sessions. The Board is headed by the Principal Magistrate. Here, the word Children's Court is not mentioned.

12.2 From a conjoint reading of the aforesaid provisions of the Act and the 2016 Rules, in our opinion, wherever words 'Children's Court' or the 'Sessions Court'

are mentioned both should be read in alternative. In the sense where Children's Court is available, even if the appeal is said to be maintainable before the

Sessions Court, it has to be considered by the Children's Court. Whereas where no Children's Court is available, the power is to be exercised by the Sessions

Court.Ã¢â‚¬â€‹

20] The HonÃ¢â‚¬â„¢ble Apex Court has held that wherever the words Ã¢â‚¬ËœChildrenÃ¢â‚¬â„¢s CourtÃ¢â‚¬â„¢ or Ã¢â‚¬ËœSessions CourtÃ¢â‚¬â„¢ are mentioned in the Act,

both should be read in alternative. These words are interchangeable. In this case, the submission made by the learned advocate for the applicant is

that the inquiry by the Children's Court under Section 19(1)(i) of the J.J. Act is mandatory even after the confirmation of the order of J.J.B. by the

Sessions Court to try the CCL as an adult. In my view, the law laid down by the HonÃ¢â‚¬â„¢ble Apex Court as above does not permit me to accept this

submission.

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It is to be noted that the Court of learned Additional Sessions Judge is also a Children's Court under the J.J. Act. It is to be noted that, in this case,

after the decision of the J.J.B., the CCLs are referred for trial before the learned Additional Sessions Judge, Darwha. The Court of Additional

Sessions Judge, Darwha, is also a ChildrenÃ¢â‚¬â„¢s Court. It is also a Special Court for trying the POCSO Act cases. In my view, Section 19(1)(i) of the

J.J. Act and Rule 13 of the Model Rules, 2016, have been considered by the HonÃ¢â‚¬â„¢ble Apex Court. In view of the law laid down by the

HonÃ¢â‚¬â„¢ble Apex Court, the submission made by the learned advocate for the applicant that even after the dismissal of the appeal, an inquiry as

provided under Section 19(1)(i) was mandatory cannot be accepted. This issue, in my view, is now no more res integra.

21] In the case of Ajeet Gurjar Vs. State of Madhya Pradesh (supra), it is held that if the order under Section 18(3) does not attain finality, the

ChildrenÃ¢â‚¬â„¢s Court is required to make a further inquiry. It can be seen on perusal of this decision that the order of J.J.B. was not challenged by

filing an appeal. If there is no appeal against the order of J.J.B., then on receipt of the case papers by the ChildrenÃ¢â‚¬â„¢s Court, the ChildrenÃ¢â‚¬â„¢s

Court is bound to conduct the inquiry as provided under Section 19(1)(i) and Rule 13 of the Model Rules, 2016. This position cannot be applied in case

there is an appeal and the appeal has been decided by the Sessions Court or by the ChildrenÃ¢â‚¬â„¢s Court maintaining the decision by the J.J.B.

22] In the case of Mumtaji Ahmad (supra), the Co-ordinate Bench of this Court, in the backdrop of the proved facts on the basis of the nature of the

crime, the Psychiatrist evaluation report, and the SIR, recorded a finding that it was not sufficient to come to a conclusion that the juvenile was

mentally and physically fit to commit the crime and able to understand the consequences of his act. In my view, on facts, this decision is

distinguishable. The evidence placed on record in the case on hand is sufficient to reject the submissions advanced by the learned advocate for the

applicant.

23] In view of the above, I conclude that there is no substance in the submissions advanced by the learned advocate for the applicant. The revision

application is devoid of any substance. As such, it is dismissed.