

The Case of Pratap Singh

The Supreme Court Of India

Pratap Singh v. State of Jharkhand and Anr

Decided On: 2nd February, 2005.

Hon'ble Judges: N. Santosh Hegde, S.N. Variava, B.P. Singh H.K. Sema and S.B. Sinha, JJ.

JUDGMENT

H.K. Sema, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 10.9.2001 passed by the High Court of Jharkhand at Ranchi in Criminal Revision No. 98 of 2001.

3. Briefly stated the facts giving rise to the filing of the present appeal are as follows:-

First Information Report was lodged before the police in Bokaro city registered as P.S. case No. 1799 dated 1.1.1999 for the offence under Sections 364A, 302/201 IPC read with Section 120B IPC to the effect that on 31.12.1998 the appellant was alleged as one of the conspirators to have caused the death of the deceased by poisoning. On the basis of the FIR the appellant was arrested and produced before the C.J.M. Chas on 22.11.1999. On production, the learned CJM assessed the age of the appellant to be around 18 years old. On 28.2.2000, a petition was filed on behalf of the appellant claiming that he was a minor on the date of occurrence i.e. 31.12.1998, whereupon the learned CJM transmitted the case to the Juvenile Court. The appellant was produced in the Juvenile Court on 3.3.2000. On his production the Juvenile Court assessed the age of the appellant by appearance to be between 15 and 16 years and directed the Civil Surgeon to constitute a Medical Board for the purpose of assessing the age of the appellant by scientific examination and submit a report. No such Medical Board was constituted. Thus, the learned ACJM asked the parties to adduce evidence and on examining the school leaving certificate and mark sheet of Central Board of Secondary Education came to the finding that the appellant was below 16 years of age as on 31.12.1998 taking the date of birth of the appellant as 18.12.1983 recorded in the aforesaid certificate. The appellant was then released on bail.

4. Aggrieved thereby the informant filed an appeal before the 1st Additional Sessions Judge, who after referring to the judgment of this Court rendered in *Arnit Das v. State of Bihar*, (2000) 5 SCC 488 disposed of the appeal on 19.2.2001 holding that the Juvenile Court had erred in not taking note of the fact that the date of production before the Juvenile Court was the date relevant for deciding whether the appellant was juvenile or not for the purpose of trial and directed a fresh inquiry to assess the age of the appellant. Aggrieved thereby the appellant moved the High Court by filing Criminal Revision Petition.

The High Court while disposing of the Revision has followed the decision rendered by this Court in *Arnit Das* (supra) and held that reckoning date is the date of production of the accused before the Court and not the date of the occurrence of the offence.

5. The High Court held that for determining the age of juvenile, the provisions of 1986 Act would apply and not 2000 Act. The High Court, however, took the view that the date of birth, as recorded in the school and the school certificate, should be the best evidence for fixing the age of the appellant. High Court was also of the view that any other evidence in proof of age would be of much inferior quality. As the enquiry is pending, we need not delve into this question.

6. Having noticed the conflicting views in *Arnit Das v. State of Bihar* MANU/SC/0376/2000: AIR 2000 SC 2264; 2000 Cri LJ 2971; JT 2000 (6) SC 320; (2000) 5 SCC 488 and *Umesh Chandra v. State of Rajasthan* MANU/SC/0125/1982: AIR 1982 SC 1057; 1982 (1) SCALE 335; (1982) 3 SCR 583; (1982) 2 SCC 202, this matter has been referred to the Constitution Bench by an order dated 7.2.2003.

It reads:

“The High Court in its impugned judgment has relied on a two-Judge bench decision of this Court in Arnit Das v. State of Bihar, 2000(5) SCC 488. The submission of the learned counsel for the petitioner is that in Arnit Das (supra), the decision of this Court in Umesh Chandra v. State of Rajasthan, 1982(2) SCC 202, was not considered. The point arising is one of the frequent recurrence and view of the law taken in this case is likely to have a bearing on the new Act, that is, Juvenile Justice (Care and Protection) Act, 2000 also, the matter deserves to be heard by the Constitution Bench of this Court. Be placed before the Hon. Chief Justice of India, soliciting directions.”

This is how the matter has been placed before us.

The dual questions which require authoritative decision are:

- (a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as Juvenile offender or the date when he is produced in the Court/competent authority.
- (b) Whether the Act of 2000 will be applicable in the case a proceeding initiated under 1986 Act and pending when the Act of 2000 was enforced with effect from 1.4.2001.

Question (a)

Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as Juvenile offender or the date when he is produced in the Court/competent authority.

7. Mr. Mishra submits that the decision in Umesh Chandra (supra) rendered by a three-Judge Bench of this Court has laid down the correct law and a two-Judge Bench decision in Arnit Das (supra) cannot be said to have laid down a correct law. Mr. Mishra also submits that the decision in Arnit Das (supra) has not noticed the decision of a three-Judge Bench in Umesh Chandra (supra). Mr. Mishra also referred to the aims and objects of the Juvenile Justice Act, 1986 (hereinafter referred to as the 1986 Act) and submits that the whole object is to reform and rehabilitate the juvenile for the offence he is alleged to have committed and if the date of offence is not taken as reckoning the age of the juvenile, the purpose of the Act itself would be defeated. In this connection, he has referred to Sections 18, 20, 26 and 32 of the Act. Per contra Mr. Sharan refers to the aims and objects of the Act and various Sections of the Act and particularly emphasized the word *is* employed in Section 32 of the Act and submits that cumulative reading of the provisions as well as of the scheme of the Act would show that the reckoning date for determining the date of juvenile would come into play only when a juvenile appears or is brought before the authority/court and not the date of an offence.

8. We may at this stage notice the preamble as well as object of the 1986 Act:

“An Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles.

[...]

2. *In this context the proposed legislation aims at achieving the following objectives: -*

- (i) *to lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up. This is being ensured by establishing Juvenile Welfare Boards and Juvenile Courts;*
- (ii) *to provide for a specialized approach towards the prevention and treatment of juvenile delinquency in its full range in keeping with the developmental needs of the child found in any situation of social maladjustment;”*

[...]

9. Thus, the whole object of the Act is to provide for the care, protection, treatment development and rehabilitation of neglected delinquent juveniles. It is a beneficial legislation

aimed at to make available the benefit of the Act to the neglected or delinquent juveniles. It is settled law that the interpretation of the Statute of beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intendment of the legislation.

10. We may also, at this stage, notice the definition of delinquent juvenile. Sub-section (e) of Section 2 of the 1986 Act defines the delinquent juvenile as:

(a) "*delinquent juvenile*" means a juvenile who has been found to have committed an offence;"

[...]

12. Section 32 of the 1986 Act deals with the presumption and determination of age, which reads:

"32. Presumption and determination of age.

(1) *Where it appears to a competent authority that a person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile, the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a juvenile or not, stating his age as nearly as may be.*

(2) *No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile, and the age recorded by the competent authority to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person."*

13. Mr. Sharan stressed heavily on the word *is* used in two places of the Section and contended that the word *is* suggests that for determination of age of juvenile the date of production would be reckoning date as the inquiry with regard to his age begins from the date he is brought before the Court and not otherwise. We are unable to countenance this submission. We have already noticed that the definition of delinquent juvenile means a juvenile who has been found to have committed an offence. The word *is* employed in Section 32 is referable to a juvenile who is said to have committed an offence on the date of the occurrence.

[...]

18. A conjoint reading of the Sections, preamble, aims and objects of the Act leaves no matter of doubt that the legislature intended to provide protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication thereof.

Interpretation of Sections 3 and 26 of the Act are no more res-integra. Sections 3 and 26 of the 1986 Act as quoted above are in pari materia with Sections 3 and 26 of the Rajasthan Children Act 1970 (Raj. Act 16 of 1970). A three-Judge bench of this Court in Umesh Chandra (supra) after considering the preamble, aims and objects and Sections 3 and 26 of the Rajasthan Act, held that the Act being a piece of social legislation is meant for the protection of infants who commit criminal offences and, therefore, such provisions should be liberally and meaningfully construed so as to advance the object of the Act. This Court then said in paragraph 28 at 210 SCC:

"28. As regards the general applicability of the Act, we are clearly of the view that the relevant date for the applicability of the Act is the date on which the offence takes place. Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing mens rea as in the case of an adult This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place. It is quite possible that by the time the case comes up for trial, growing in age being an involuntary factor, the child may have ceased to be a child. Therefore, Sections 3 and 26 became necessary. Both the sections clearly point in the direction of the relevant date for the applicability of the Act as the date of occurrence. We are clearly of the view that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial."

19. As already noticed the decision rendered by a three-Judge bench of this Court in Umesh Chandra (supra) was not noticed by a two-Judge bench of this Court in Arnit Das (supra). We are clearly of the view that the law laid down in Umesh Chandra (supra) is the correct law and that the decision rendered by a two-Judge bench of this Court in Arnit Das (supra) cannot be said to have laid down a good law. We, accordingly, hold that the law laid down by a three-Judge bench of this Court in Umesh Chandra (supra) is the correct law.

Question (b):

Whether the Act of 2000 will be applicable in the case a proceeding is initiated under 1986 Act and pending when the Act of 2000 was enforced with effect from 1.4.2001.

20. On this point we have heard Mr. P.S. Mishra, learned senior counsel for the appellant, Ms. Maharukh Adenwala, counsel for the intervener and Mr. Amarendra Sharan, learned ASG for the State of Jharkhand. In fact counsel for the intervener has adopted the arguments of Mr. Mishra. Mr. Mishra would submit that any proceeding against any person pending under the 1986 Act would be covered by the 2000 Act and would extend the benefit of being a juvenile as defined under the 2000 Act if at the time of the commission of the offence he was below the age of 18 years. To buttress his point counsel heavily relied upon the provisions contained in Section 20 of the Act and Rules 61 and 62 framed by the Central Government. Per contra Mr. Sharan counsel for the respondent would contend that the 1986 Act has been repealed by Section 69(1) of the 2000 Act and, therefore, the provisions of 2000 Act would not be extended to a case/inquiry initiated and pending under the provisions of 1986 Act the Act of 2000 being not retrospective.

21. To answer the aforesaid question, it would be necessary to make a quick survey of the definitions and Sections of 2000 Act relevant for the purpose of disposing of the case at hand.

22. As stated hereinabove the whole object of the Acts is to provide for the care, protection, treatment development and rehabilitation of juveniles. The Acts being benevolent legislations, an interpretation must be given which would advance the cause of the legislation i.e. to give benefit to the juveniles

[...]

24. Sub-section (2) postulates that anything done or any action taken under the 1986 Act shall be deemed to have been done or taken under the corresponding provisions of the 2000 Act. Thus, although the 1986 Act was repealed by the 2000 Act, anything done or any action taken under the 1986 Act is saved by Sub-section (2), as if the action has been taken under the provisions of the 2000 Act.

[...]

Even where an inquiry has been initiated and the juvenile ceases to be a juvenile i.e. crosses the age of 18 years, the inquiry must be continued and orders made in respect of such person as if such person had continued to be a juvenile.

29. Similarly, under Section 64 where a juvenile is undergoing a sentence of imprisonment at the commencement of the 2000 Act he would, in lieu of undergoing such sentence, be sent to a special home or be kept in a fit institution. These provisions show that even in cases where a mere inquiry has commenced or even where a juvenile has been sentenced the provisions of the 2000 Act would apply. Therefore, Section 20 is to be appreciated in the context of the aforesaid provisions.

30. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with non-obstante clause. The sentence "*Notwithstanding anything contained in this Act all proceedings in respect of a juvenile pending in any Court in any area on date of which this Act came into force*" has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act is relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term "*any court*" would include even ordinary criminal courts. If the person was a "juvenile" under the 1986 Act the proceedings would not be pending in

criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or girl had crossed 18 years.

[...]

31. In this connection it is pertinent to note that Section 16 of the 2000 Act is identical to Section 22 of the 1986 Act. Similarly Section 15 of the 2000 Act is in pari materia with Section 21 of the 1986 Act.

Thus, such an interpretation does not offend Article 20(1) of the Constitution of India and the juvenile is not subjected to any penalty greater than that which might have been inflicted on him under the 1986 Act.

32. Mr. Mishra placed reliance on Rules 61 and 62 framed by the Central Government. According to him, particularly Rule 62 of the Rules covers the pending cases and the appellant is entitled to the benefit of Rule 62. Rule 62 reads:

“62. Pending Cases.-(1) No juvenile in conflict with law or a child shall be denied the benefits of the Act and the rules made thereunder.

(2) All pending cases which have not received a finality shall be dealt with and disposed of in terms of the provisions of the Act and the rules made thereunder.

(3) Any juvenile in conflict with law, or a child shall be given the benefits under Sub-rule (1), and

it is hereby clarified that such benefits shall be made available not only to those accused who was juvenile or a child at the time of commission of an offence, but also to those who ceased to be a juvenile or a child during the pendency of any enquiry or trial.

(4) While computing the period of detention of stay of a juvenile in conflict with law or of a child, all such period which the juvenile or the child has already spent in custody, detention or stay shall be counted as part of the period of stay or detention contained in the final order of the competent authority.”

33. This Rule also indicates that the intention of the Legislature was that the provisions of the 2000 Act were to apply to pending cases provided, on 1.4.2001 i.e. the date on which the 2000 Act came into force, the person was a “juvenile” within the meaning of the term as defined in the 2000 Act i.e. he/she had not crossed 18 years of age.

[...]

35. We, therefore, hold that the provisions of 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences committed under the 1986 Act provided that the person had not completed 18 years of age as on 1.4.2001.

36. The net result is:

(a) The reckoning date for the determination of the age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court.

(b) The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1.4.2001.

37. The appeal stands disposed of in the above terms.

SEPARATE CONCURRING JUDGMENT: S.B. Sinha, J.

INTRODUCTION:

38. Juvenile Justice Act in its present form has been enacted in discharge of the obligation of our country to follow the United National Standard Minimum Rules for the Administration of Juvenile Justice, 1985 also known as Beijing Rules (the Rules).

THE RULES:

39. Part I of the said Rules provides for the general principles which are said to be of fundamental perspectives referring to comprehensive social policy in general and aiming at promoting juvenile welfare to the greatest possible extent, which would minimize the necessity of intervention by the juvenile justice system and, in turn will reduce the harm that was caused by any intervention. The important role that a constructive social policy for

juvenile is to play has been pointed out in Rules 1.1 to 1.13 inter alia in the matter of prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of the national development process of each country, within a comprehensive framework of social justice from all juveniles, and, thus, at the same time, contributing to the protection of the young and maintenance of a peaceful order in the society. While Rule 1.6 refers to the necessity of the juvenile justice system being systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services including their methods, approaches and attitudes. Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other State. Rule 2.1 provides for application of the rules without distinction of any kind. Rule 2.2 provides for the definitions which are as follows:

“(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.”

40. Rule 2.3 inter alia provides for making a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

“(a) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(b) To meet the needs of society;

(c) To implement the following rules thoroughly and fairly.”

41. The age of a juvenile is to be determined by the Member Countries having regard to its legal system, thus fully respecting the economic, social political, cultural and legal systems.

[...]

45. Rule 17 provides for guiding principles in adjudication and disposition which reads as under:

“17.1 The disposition of the competent authority shall be guided by the following principles:

(a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to THE CIRCUMSTANCES AND THE NEEDS OF THE juvenile as well as to the needs of the society;

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

(d) The well-being of the juvenile shall be the guiding factor to consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be - subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.”

46. It has been pointed out that the main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

(a) Rehabilitation versus just result;

(b) Assistance versus regression and punishment;

(c) Reaction according to the singular merits of an individual case (sic) reaction according to the protection of society in general;

(d) General deterrence versus individual incapacitation.

[...]

INTERNATIONAL LAW:

63. The Juvenile Justice Act specially refers to international law. The relevant provisions of the Rules are incorporated therein. The international treaties, covenants and conventions although may not be a part of our municipal law, the same can be referred to and followed by the courts having regard to the fact that India is a party to the said treaties. A right to a speedy trial is not a new right. It is embedded in our Constitution in terms of Articles 14 and 21 thereof. The international treaties recognize the same. It is now trite that any violation of human rights would be looked down upon. Some provisions of the international law although may not be a part of our municipal law but the courts are not hesitant in referring thereto so as to find new rights in the context of the Constitution. Constitution of India and other ongoing statutes have been read consistently with the rules of international law. Constitution is a source of, and not an exercise of legislative power. The principles of International Law whenever applicable operate as a statutory implication but the Legislature in the instant case held itself bound thereby and, thus, did not legislate in disregard of the constitutional provisions or the international law as also in the context of Articles 20 and 21 of the Constitution of India. The law has to be understood, therefore, in accordance with the international law. Part III of our Constitution protects substantive as well as procedural rights. Implications which arise therefrom must effectively be protected by the judiciary. A contextual meaning to the statute is required to be assigned having regard to the Constitutional as well as International Law operating in the field.

64. [See *Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I and Anr.* MANU/SC/0951/2003: JT 2003 (9) SC 218: (2004) 9 SCC 512]

65. In *Regina (Daly) v. Secretary of State for the Home Department* [2001] 2 AC 532, Lord Steyn observed that in the law context is everything in the following terms:

“28. The differences in approach between the traditional grounds of review and the proportionality approach may therefore sometimes yield different results. It is therefore important that cases involving Convention rights must be analysed in the correct way. This does not mean that there has been a shift to merits review. On the contrary, as Professor Jowell [2000] PL 671, 681 has pointed out the respective roles of judges and administrators are fundamentally distinct and will remain so.

To this extent the general tenor of the observations in Mahmood [2001] 1 WLR 840 are correct. And Laws LJ rightly emphasized in Mahmood at p 847, para 18, “that the intensity of review in a public law case will depend on the subject matter in hand”. That is so even in cases involving Convention rights. In law context is everything.”

66. Constitution of India and the Juvenile Justice Legislations must necessarily be understood in the context of present days scenario and having regard to the international treaties and conventions. Our Constitution takes note of the institutions of the world community which had been created. Some legal instruments that have declared, the human rights and fundamental freedoms of humanity had been adopted but over the time even New rights had been found, in several countries, as for example. South Africa (*S. v. Makwanyane* , 1995 (3) SA 391), Canada (Reference re Public Service Employee Relations Act (Alberta), [1987] 1 SCR 313 at 348), Germany (Presumption of Innocence and the European Convention on Human Rights, (1987) BverfGE 74, 358), New Zealand (*Tavita v. Minister of Immigration*, [1994] 2 NZLR 257 at 266), United Kingdom (*Pratt v. Attorney-General for Jamaica* , [1994] 2 AC 1) and United States (*Atkins v. Virginia* , (2002) 536 US 304 and *Lawrence v. Texas* , (2003) 539 US 558). New ideas had occupied the human mind, as regard protection of Human Rights. (See *Hamdi v. Rumsfeld*, (2004) 72 USLW 4607, *Russel v. Bush*, (2004) 72 USLW 4596 and *Rumsfeld v. Padila*, (2004) 72 USLW 4584).

67. Now, the Constitution speaks not only to the people of India who made it and accepted it for their governance but also to the international community as the basic law of the Indian nation which is a member of that community”. Inevitably, its meaning is influenced by the legal context in which it must operate.

68. The legal instruments that have declared legal rights and fundamental freedoms, founded in the nations of human dignity and Charter of United Nations were not known earlier which

is manifest today. [Charter of the United Nations, signed at San Francisco on 26.6.1945. Preamble]. Political, social and economic development can throw light on the meaning of Constitution.

69. In *Lawrence* (supra), Kennedy J., for the Supreme Court, after references to international human rights law, concluded:

“Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew lines can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.”

70. The questions, therefore, in our opinion, should be determined having regard to the aforementioned principles.

[...]

QUESTIONS:

[...]

RE.: QUESTION NO. 1:

[...]

81. In *Dilip Saha v. State of West Bengal* MANU/UP/0128/1978: AIR 1978 Calcutta 529 a Full Bench of the Calcutta High Court in arriving at the conclusion that the date of reckoning shall be the one on which the offence has been committed referred to Article 20 of Constitution of India in the following terms;

“22. If we interpret Section 28 to mean that it prohibits a joint trial of a child and an adult only when the child is a ‘child.’ at the time of trial that interpretation would go against. The provisions of Article 20(1) of the Constitution which prescribes that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”

82. We, with respect, agree with the said observation.

83. The statute, it is well known, must be construed in such a manner so as to make it effective and operative on the principle of *Ut res magis valeat quam pereat*. The courts lean strongly against any constructions which tend to reduce a statute to a futility. When two meanings, one making the statute absolutely vague, wholly intractable and absolutely meaningless and the other leading to certainty and meaningful are given, in such an event the latter should be followed. [See *Tinsukhia Electric Supply Co. Ltd. v. State of Assam and Ors.* MANU/SC/0027/1990: AIR 1990 SC 123: (1989) 3 SCC 709 [See *Andhra Bank v. B. Satyanarayana and Ors.* MANU/SC/0119/2004: AIR 2004 SC 4007: JT 2004(2) SC312: 2004 II ILJ 5 SC: 2004 (2) SCALE 446: 2004 (2) SLJ 227 (SC): (2004) 2 UPLBEC 2109: (2004) 2 SCC 657] and *Indian Handicrafts Emporium and Ors. v. Union of India and Ors.* MANU/SC/0640/2003: AIR 2003 SC 240: 2003 (5) ALD 39 (SC): 106 (2003) DLT 350 (SC): JT 2003 (7) SC 446: (2003) 7 SCC 589: (2003) 7 SCC 589].

84. The submission of the learned Addl. Solicitor General that this Court in *Umesh Chandra* (supra) has wrongly applied the test of imputing mens rea in holding that Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age cannot be said to be mature as in the case of adult, may have some substance but the said statement of law must be read and understood in the context of Rule 4.1 of the Rules. So read, the Act would be understood in its proper perspective.

85. The question raised in paragraph 17 of *Arnit Das* (supra) is not apposite. A hypothetical question would only lead to a hypothetical answer. The court in an appropriate case is not powerless to pass an order as is contemplated under the statute if the situation so demands but only because a person is produced before the Court after he attains majority either on his own volition or by reason of machinations adopted by the investigating agency, the same would not be determinative of the fact that the said person is to be differently dealt with. Law

favours strict adherence of the procedures subject to just exceptions. The Court in Arnit Das (supra) observed:

“16...The Preamble speaks for the Act making provisions for the things post-delinquency. Several expressions employed in the Statement of Objects and Reasons vocally support this view. The Act aims at laying down a uniform juvenile justice system in the country avoiding lodging in jail or police lock-up of the child; and providing for prevention and treatment of juvenile delinquency, for care, protection, etc. post-juvenility. In short the field sought to be covered by the Act is not the one which had led to juvenile delinquency but the field when a juvenile having committed a delinquency is placed for being taken care of post-delinquency.”

86. With great respect, we cannot agree to the said statement of law. It is incorrect to say that the preamble speaks of the things of post-delinquency only. The Act not only refers to the obligations of the country to re-enact the existing law relating to juveniles bearing in the mind, the standards prescribed in various conventions but also all other international instruments. It states that the said Act was enacted inter alia to consolidate and amend the law relating to juveniles. Once the law relates to delinquent juveniles or juveniles in conflict with law, the same would mean both pre and post-delinquency.

87. The definition of ‘Juvenile’ under the 1986 Act, of course refers to a person who has been found to have committed offence but the same has been clarified in the 2000 Act. The provisions of 1986 Act, as noticed hereinbefore, sought to protect not only those juveniles who have been found to have committed an offence but also those who had been charged therefore. In terms of Section 3 of the 1986 Act as well as 2000 Act when an enquiry has been initiated even if the juvenile has ceased to be so as he has crossed the age of 16 and 18 as the case may be, the same must be continued in respect of such person as if he had continued to be a juvenile. Section 3 of the 1986 Act therefore cannot be given effect to if it is held that the same only applied to post delinquency of the juvenile.

88. The field covered by the Act includes a situation leading to juvenile delinquency vis-à-vis commission of an offence. In such an event he is to be provided the post delinquency care and for the said purpose the date when delinquency took place would be the relevant date. It must, therefore, be held that the relevant date for determining the age of the juvenile would be one on which the offence has been committed and not when he is produced in court proceeding which was initiated under the 1986 Act.

[...]

MODEL RULES:

[...]

115. The Court, therefore, must determine the age of the appellant herein keeping in view our aforementioned findings that the relevant date for reckoning the age of the juvenile would be the date of occurrence and not the date on which he was produced before the Board.

116. The upshot of the aforementioned discussions is:

(i) In terms of the 1986 Act, the age of the offender must be reckoned from the date when the alleged offence was committed;

(ii) The 2002 Act will have a limited application in the cases pending under the 1986 Act;

(iii) The model rules framed by the Central Government having no legal force cannot be given effect to.

(iv) The court, thus, would be entitled to apply the ordinary rules of evidence for the purpose of determining the age of the juvenile taking into consideration the provisions of Section 35 of the Indian Evidence Act.

117. Subject to the aforementioned, I, with respect, agree with the conclusions arrived at by Brother Sema, J.