



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 242/2025

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp

-----Respondents

For Petitioner(s) : Mr. Divik Mathur
For Respondent(s) : Mr. Surenda Bishnoi, PP
Mr. R.S. Choudhary
Mr. Shaitan Singh

HON'BLE MR. JUSTICE SANDEEP SHAH
Order

Reportable

Reserved on: 18/08/2025

Pronounced on: 27/08/2025

1. The quintessential questions for adjudication in the present case are:- (i) "At what stage, the claim of juvenility can be raised by the accused juvenile?", (ii) "What shall be the yardsticks to be adopted by a Court while deciding the issue of juvenility of an accused?" and (iii) "Whether the principles of res judicata are applicable to criminal proceedings also?"

2. The present revision petition has been filed challenging the order dated 15.01.2025 passed in Sessions Case No.78/2024 (**State v. Vinod**) by the learned Special Judge, POCSO Act Cases No.2, Merta, whereby the learned trial Court has allowed the application filed by the accused-respondent-V for treating him as a juvenile and had directed him to appear before the Juvenile Justice Board and also forwarded the entire record to the Board.



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3. Succinctly stated, the facts of the case are that a written report came to submitted before the Police Station, Gotan District Nagaur by the present petitioner Ramesh Jaipal, based upon which, an FIR No.227/2024 was lodged at Police Station Gotan, District Nagaur on 30.08.2024. As per the contents of the report, it was asserted by the petitioner-complainant that his sister-S was born on 15.07.2008 and is 16 years of age. He further submitted that on 29.08.2024 the entire family slept after having dinner and her sister-S was sleeping along with her mother in her room. On 30.08.2024, at around 07:00 AM when his mother woke up, she did not find his sister-S, upon which search was conducted but she could not be found and he had a doubt that, respondent-V might have taken his sister with him and therefore, the report in question was filed. Post that the prosecutrix-S was recovered and thereafter her statement under Section 164 Cr.P.C. was recorded and based upon her statement charge-sheet was filed by the police officials, while treating the accused-respondent-V to be aged about 18 years and 6 months, for offences punishable under Sections 127(2), 137(2), 64(1), 64(2)(M) BNS and Section 5(L)/6 of the POCSO Act. The fact relevant would be that when the investigation was pending, an application dated 09.09.2024 was filed on behalf of the accused-respondent-V asserting that he is juvenile and the police has tried to show him as a major and therefore he may be tried as a juvenile. The application in question was not pressed on 18.09.2024.

4. Subsequently, another application of identical nature was filed on 25.11.2024, however, the same was not pressed on 27.11.2024 as in the meanwhile, the police officials had filed the



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charge-sheet while treating the accused-respondent-V as a major and not a juvenile. Post that, the trial of the case commenced and thereafter post-examination of all prosecution witnesses, examination of the accused-respondent-V under Section 313 Cr.P.C. was held and at that stage, a fresh application dated 18.12.2024 was filed by accused-respondent-V asserting therein that the police had wrongly filed the charge-sheet while treating him as an adult and also asserting that the document, which has been relied upon by the police officials, which is a part of the charge-sheet, does not specify the correct date of birth of the accused-respondent-V.

5. It was further asserted that the document i.e. Exhibit-P2, which was exhibited by the prosecution, did not specify the correct date and date was rectified. It was further asserted that the signature upon the document was not of the father of accused-respondent-V as he used to sign only in Hindi whereas the signature on the document was in English. It was thus asserted that the accused-respondent-V was a minor and therefore he should be treated in consonance with the provisions of Justice Juvenile Act. Post filing of the application in question, an application under Section 311 Cr.P.C. was filed for summoning the record from the Principal of Om Bal Madhyamik Vidhyalaya, Khavaspura (Pipar), District Jodhpur. In the meanwhile, on behalf of accused-respondent-V, four witnesses were examined and around 25 documents were exhibited in his defence. The learned Trial Court after conducting an enquiry, by way of the order impugned held the accused-respondent-V to be a juvenile. Being



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aggrieved against the same, the present revision petition has been filed.

Arguments of learned counsel for the Petitioner:-

6. Learned counsel for the petitioner at the very outset submitted that entertaining the third application, after the first two applications were dismissed as not pressed, was not at all permissible for the learned trial Court. He asserted that a specific ground in this regard was taken, however, the same has not been dealt with by the learned trial Court. As per the learned counsel for the petitioner the first application filed by the accused-respondent-V was for declaring him as a juvenile was dismissed on 18.09.2024 as not pressed and thereafter the second application was also dismissed on 17.11.2024 as not pressed. Thus, the third application for the same relief was not maintainable and was barred by principles of res judicata.

7. Learned counsel for the petitioner further submitted that, even otherwise, the trial was at the verge of conclusion, and it was at that stage the application in question was filed. He thus asserted that after completion of the trial, the stage had gone to claim juvenality and the claim of the juvenility was to be taken at the inception itself and not at such a belated stage. He further submitted that a bare perusal of the Exhibit-P1 and Exhibit-P2 will reveal that the date of birth in the school register of accused-respondent-V while he was studying at the Government Primary School, Bhramanada, Ghodawat, Tehsil Pipar, District Jodhpur was specified as 07.02.2006 and, therefore it was clear that as on the date of incident i.e. on 29.08.2024, he was not a juvenile and had completed the age of 18 years and was an adult. He thus





submitted that the claim of juvenility was not available to be taken by the accused-respondent-V.

8. He further submitted that the learned trial Court without considering the provisions of Section 35 of the Evidence Act, 1872 has proceeded to treat the matriculation certificate and the Aadhar card as relevant for determining the age of the accused-respondent-V. He thus asserted that based on the matriculation certificate, the age could not have been treated as conclusive, especially when the basis on which the age was recorded in the matriculation certificate itself was not clear and disputed.

9. To buttress his submission the counsel for the petitioner placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of "**S.C. Garg v. State of Uttar Pradesh**" 2025 SCC Online SC 791 to assert that the application was barred by principles of res judicata and further on the judgment passed by the Hon'ble Apex Court in the case of "**Vinod Katara v. State of UP**" (2023) 15 SCC 210 to assert that the procedure as provided under the Act for determining the age of the accused-respondent-V was not followed by the learned trial Court. He thus asserted that the order impugned deserves to be set aside and the accused-respondent-V was required to be tried as an adult only by the learned trial Court and not to treat him as a juvenile.

Arguments of learned counsel for the Respondent:-

10. Per contra, learned counsel for the accused-respondent-V supported the order impugned and stated that at the inception the application for treating the accused-respondent-V as juvenile was filed, however, since the investigation was going on by the police





officials, therefore, the same was withdrawn on 18.09.2024 and thereafter the application was filed but by that time on 27.11.2024 itself the charge-sheet was filed by the police officials and, therefore, the application filed by the accused-respondent-V for treating him as juvenile on 25.11.2024 was withdrawn on 27.11.2024 (i.e. the date of filing of the charge-sheet by the police officials before the trial Court). He thus submitted that at this stage the new documents which were part of the charge-sheet, came to the knowledge of the petitioner and the same were subsequently exhibited during the course of trial. It was post exhibiting of the documents with regard to the age of accused-respondent-V a the fresh cause of action, based on a new set of facts, came to surface in favour of the accused-respondent-V and, therefore, the application in question for treating the accused-respondent-V as juvenile was filed.

11. He further asserted that a perusal of the provisions of Section 9 of the Juvenile Justice (Protection of Children) Act, 2015 itself will reveal that as far as the claim of juvenility is concerned, the same can be raised at any stage of proceedings and even after the final disposal of the case, whereas in the present case, the claim was filed by the accused-respondent-V prior to the conclusion of trial and thus the order impugned has rightly been passed by the trial Court.

12. As regards the age certificate produced by the prosecution, the learned counsel submitted that the documents were not even proved as the same was not produced by the prosecution and further the documents bore signature of father of the accused-respondent-V in English, whereas, the father of the accused-





respondent-V never used to sign in English and used to sign in Hindi only. He thus asserted that the documents submitted by the prosecution were forged and rather series of documents were submitted by the accused-respondent-V including his matriculation certificate, Aadhar card, transfer certificate, school register and SR forms, which clearly fortify the fact that he was juvenile on the date of the incident and his date of birth is 06.03.2009 and not 07.02.2006, as tried to be asserted by the prosecution. He therefore submitted that the trial Court has rightly undertaken the enquiry and passed the order impugned while treating the accused-respondent-V as a juvenile. He thus prayed for the dismissal of the revision petition.

Analysis:-

13. Having considered the arguments raised by both the side and having perused the record, the first question which needs to be adjudicated is **"At what stage the claim of juvenility can be raised by the accused?"** To answer the said question, the provisions of Section 9 of the Act of 2015 will be relevant which, provides as under:-

"9. Procedure to be followed by a Magistrate who has not been empowered under this Act.-(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act, is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board that the person is a child, or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of the commission of the offence, the said court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be: Provided that such a claim may be raised before any court



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and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder, even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders, and the sentence, if any, passed by the court, shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period, in a place of safety."

This coupled with Section 3 (i)(ix)(xvi) of the Act of 2015, which provides as under:-

"3.(i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

(ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or a person acting on behalf of the child, or by a Board or a Committee, and any non-exercise of a fundamental right shall not amount to waiver.

(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias, and the right to review, by all persons or bodies acting in a judicial capacity under this Act."

14. Perusal of the above will clearly reveal that the very purpose of the Act would be frustrated if the child in conflict with the law is not permitted to raise the ground of juvenility at the fag end of the trial or even subsequent thereto. Rather such argument would be in teeth of the provisions of Section 3(i)(ix)(xvi) as also in direct conflict with Section 9 of the Act of 2015, which specifically provides that the claim of juvenility can be raised even after disposal of the case. Rather the judgment passed by the Apex Court, as relied upon by the learned counsel for the petitioner, also supports the stand of the accused-respondent-V to emphasise that the claim of juvenility can be raised even at the appellate stage and even before the Supreme Court, even after dismissal of SLP, irrespective of the fact that the same was not raised earlier.



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Hon'ble Apex Court in the case of **"Vinod Katara v. State of UP"**

2023 15 SCC 210 has held as under:-

"8. It may not be out of the place to state at this stage that till this Court dismissed the Special Leave Petition vide the order dated 16.08.2016, the writ applicant herein had not raised the question of him being a juvenile on the date of the commission of the alleged offence on 10.09.1982.

"Determination of plea of juvenility at a belated stage:

55. Ideally, there should not be any dispute as to the age of a person if the birth is registered in accordance with law and date of birth is entered in the school records on the basis of genuine record of birth. However, in India, the factors like poverty, illiteracy, ignorance, indifference and inadequacy of the system often lead to there being no documentary proof of a person's age. Therefore, in those cases where the plea of juvenility is raised at a belated stage, often certain medical tests are resorted to forage determination in absence of the documents enumerated in Section 94 of the Act 2015. The rule allowing plea of juvenility to be raised at a considerably belated stage has its rationale in the contemporary child rights jurisprudence which requires the stakeholders to act in the best interest of the child.

59. What needs to be kept in mind is the main object and purpose of the Juvenile Justice Act. The focus of this legislation is on the juvenile's reformation and rehabilitation so that he also may have an opportunity to enjoy as other children. In *Pratap Singh (supra)*, this Court, elaborating on the objects and purpose of the Juvenile Justice Act, made the following observations:-

"77. ...The said Act is not only a beneficent legislation, but also a remedial one. The Act aims at grant of care, protection and rehabilitation of a juvenile vis-a-vis the adult criminals. Having regard to Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, it must also be borne in mind that the moral and psychological components of criminal responsibility were also one of the factors in defining a juvenile. The first objective, therefore, is the promotion of the well-being of the juvenile and the second objective to bring about the principle of proportionality whereby and whereunder the proportionality of the reaction to the circumstances of both the offender and the offence including the victim should be safeguarded..."

15. In another case of **"Karan Alias Fatiya v. State of Madhya Pradesh"** (2023) 5 SCC 504, the Supreme Court again has emphasised that the age of juvenility can be taken at any stage whatsoever be it, appellate stage or even at the stage of SLP, and has observed as under:-

"14. A perusal of the aforesaid section firstly gives a right to a person alleged to have committed an offence to claim that he is a child on the date of commission of offence and if such a claim is raised, the Court concerned shall make an enquiry, take such evidence as may be necessary other than the affidavit to



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determine the age of such person. The proviso to sub-section (2) further makes it clear that such a claim can be raised before any Court and the same could be recognised at any stage even after the case has been finally decided. The claim so made would be determined in accordance with the provisions of the 2015 Act and the rules made thereunder even if such person has seized to be a child whether on or before the commencement of 2015 Act. The law provides full coverage to a person who is established to be a child on the date of the offence to avail the benefits admissible to a child under the 2015 Act even if the case has been finally decided and also such person has attained majority. Further, sub-section (3) provides that if it is found in the enquiry that such person was a child on the date of commission of such offence then the Court is required to forward the child to the Juvenile Justice Board (in short "JJB") for passing appropriate orders and further if any sentence has been imposed by the Court, the same shall be deemed to have no effect. In view of the above statutory provisions and in view of the findings recorded, the appellant having been held to be a child on the date of commission of the offence, the sentence imposed has to be made ineffective."

16. Recently, the Hon'ble Apex Court in the case of "**State of Madhya Pradesh v. Ramji Lal Sharma and Anr.**" (2025) 5 SCC 697, while dealing with the identical questions has held as under:-

"17. Although the application has been filed subsequent to the conviction ordered by this Court, we have regard to the judgment of this Court as noted above and in judgment dated 17.01.2004 in Criminal Appeal No.64 of 2012, titled as Pramila v. State of Chhattisgarh, that an application for claiming juvenility may be made even after the judgment and order of conviction and sentence has been granted against a person which has attained finality."



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17. This Court has again emphasised that the claim of juvenility can be raised even before the Hon'ble Apex Court for the first time even after conviction of the accused. Furthermore, the preamble of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides as under:-

"An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto."

18. Thus, the very purpose of the provisions of the Act would stand frustrated if the claim of juvenility is not permitted to be



raised even at a belated stage. Taking guidance from the judgment passed by the Hon'ble Apex Court and the provisions of the Act, it is clear that in the present case, the application for juvenility was filed much prior to the conclusion of the trial and obviously prior to the disposal of the case. In view of the specific language of sub-Section (2) of Section 9 of the Act of 2015, the accused-respondent-V was within his domain to file the application even at the fagend of the trial and the same was required to be adjudicated on merit, as rightly done by the trial Court, and by not being swayed away by the stage of the trial at which the application was filed. It is thus held that the claim of juvenility can be raised at any stage of the trial or even at the appellate stage, as also before the Supreme Court in SLP, for the very first time.

19. The second issue/question to be adjudicated upon in the present case **"What shall be the yardstick to be adopted by the Court while deciding the issue of juvenility of an accused?"** As regards the scope of enquiry and the procedure of enquiry for determining the age of juvenile is concerned, under the Juvenile Justice (Care and Protection of Children) Act, 2015, a specific provision was made under Section 9, which provides as under:-



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"9. Procedure to be followed by a Magistrate who has not been empowered under this Act.-(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as maybe necessary (but not an affidavit) to determine the age of



such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

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

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."

20. Thus it is clear that under the present Act, the provision has been made under Section 9 which empowers even the Court to determine the age of juvenility, if the trial is pending before it. Section 9 of the Act of 2015 has already been quoted (supra). However, under the Act of 2015 itself one more provision has been provided with regard to presumption and determination of each under Section 94 which reads as under:-

"94. Presumption and Determination of Age-(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the enquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."





21. A perusal of both provisions together will reveal that in a case pending trial, if an application is filed by a juvenile before a Court claiming juvenility or if the Court itself is of the opinion that the person was juvenile on the date of the commission of the offence, the Court is under a duty to make an enquiry, take such evidence as may be necessary (but not on affidavit) to determine the age of such person. This coupled with Section 94 of the Act of 2015 sets out the yardstick giving priority to the documents which can be safely relied upon during the course of the enquiry for determining the age of the juvenile. The birth certificate from the school or the matriculation certificate from the concerned Examination Board will be given first priority and thereafter the birth certificate given by a corporation or a municipal authority or a panchayat have been given the second priority. It is only in case of non-availability of the above two documents that the birth can be determined based upon an ossification test or any other latest medical age determination test can be conducted.

22. Broadly speaking the criteria has been specified under the Act itself while emphasizing what documents are to be given priority and which might be relevant for determining the age of the juvenile. It is further clear from the provisions of the Act of 2015 that the enquiry has to be undertaken as provided under the Act itself and not an enquiry to be undertaken by the trial Court like a regular trial or an enquiry under the provisions of Criminal Procedure Code (B.N.S.S. now). As regards the scope of enquiry, while dealing with the provisions of the old Act of 2000, the Hon'ble Apex Court in the case of "**Ashwani Kumar Saxena v. State of Madhya Pradesh**" (2012) 9 SCC 750 has emphasized



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the same fact that the enquiry to be done has to be as provided under the old Juvenile Justice Act, 2000 itself, not an enquiry as provided under the Code of Criminal Procedure. The Hon'ble Apex Court has provided as under:-

"32. "Age determination enquiry" contemplated under section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the above mentioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) or Rule 12 that no further enquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.

34. Age determination enquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the Juvenile Justice Board or the Committee need to go for medical report for age determination.

35. We have come across several cases in which trial courts have examined a large number of witnesses on either side including the conduct of ossification test and calling for odontology report, even in cases, where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal authority or a panchayat are made available. We have also come across cases where even the courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted.



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36. We notice that none of the above mentioned principles have been followed by the courts below in the instant case. The court examined the question of juvenility of the appellant as if it was conducting a criminal trial or enquiry under the Code. Notice was issued on the application filed by the juvenile and in response to that State as well as the widow of the victim filed objection to the application. The father of the appellant was cross examined as PW 1 and was permitted to produce several documents including the mark sheet of class five marked as exhibit P-1, mark sheet of class eight marked as exhibit P-2, mark sheet of Intermediate Education Board, MP, marked as exhibit P-3, horoscope prepared by Daya Ram Pandey marked as exhibit P-4. Further, the mother of the appellant was examined as PW 4, Transfer Certificate was produced on the side of the appellant which was marked as exhibit P-6. Noticing that the parents of the appellant were attempting to show a lesser age of the child so as to escape from the criminal case, the Court took steps to conduct ossification test. Dr. R.P. Gupta was examined as PW-2 who had submitted the report. Dr. S.K. Sharma was examined as PW-3. Placing considerable reliance on the report submitted after conducting ossification test, the application was dismissed by the trial court."

23. The Hon'ble Apex Court has thus clearly held that the enquiry should not be a roving enquiry to go behind each and every certificate to examine the correctness of those documents which are kept during the normal course of business and has further clarified that only in cases where these documents or certificate are rather found to be fabricated or manipulated, the Court, Juvenile Justice Board or the Committee need to go for medical report for age determination.

24. In "**Rishipal Singh Solanki v. State of Uttar Pradesh and Ors.**" (2022) 8 SCC 602, the Hon'ble Apex Court while dealing with the provisions of Section 94 of the Act of 2015 has held as under:-

"33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the court or the JJ Board.

33.2.1. When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9



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of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

33.2.2. If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

33.2.3. When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an enquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an enquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an enquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an enquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7. This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the court should ensure



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that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and authentic as per the provisions of the Evidence Act viz. Section 35 and other provisions.

33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015."

25. It is thus clear that the Hon'ble Apex Court has held that degree of proof required in a proceeding before the Juvenile Justice Board, when an application is filed seeking a claim of juvenility when trial is before the criminal court concerned, is higher than when an enquiry is made by a Court before which the case regarding the commission of offence is pending and further held that the documents provided under Section 94 of the Act of 2015 shall be sufficient for prima facie satisfaction of the Court and on the basis of aforesaid documents, a presumption of juvenility may be raised. It was further clarified that presumption is not conclusive proof of the age of juvenility and same may be rebutted by contra evidence led in by the opposite party. It was however clarified that the Court should not take a hyper-technical approach when evidence is adduced on behalf of the accused in support of the juvenility and if two views are possible, the Court should lean in favour of holding the accused as juvenile in borderline cases. It was further clarified that any document which is in consonance with public document, such as matriculation certificate, the same could be accepted by the Court provided that



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public document is credible and authentic as per the provisions of Evidence Act viz Section 35 and other provisions.

26. Identically the Hon'ble Apex Court in the case of "**Vinod Katara v. State of U.P**" (2023) 15 SCC 210 after dealing with various judgments on the issue in hand has held as under:-

"51. What is discernible from the dictum laid down in Ashwani Kumar Saxena (supra) is that, in deciding whether an accused is juvenile or not, a hyper technical approach should not be adopted. While appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile, if two views are possible on the same evidence, the Court should lean in favour of holding the accused to be juvenile in borderline cases. The inquiry contemplated is not a roving inquiry. The Court can accept as evidence something more than an affidavit i.e. documents, certificates etc. as evidence in proof of age. A mere opinion by a person as to the accused looking one or two years older than the age claimed by him (as the opinion of the head master in the present case) or the fact that the accused told his age to be more than what he alleges in the case while being arrested by the police officer would not hold much water. It is the documentary evidence placed on record that plays a major role in determining the age of a juvenile in conflict of law. And, it is only in the cases where the documents or certificates placed on record by the accused in support of his claim of juvenility are found to be fabricated or manipulated, that the Court, the Juvenile Justice Board or the Committee need to go for medical test for age determination.

"52. Clause (a) of Rule 12(3) of the 2007 Rules contains a hierarchical ordering, evident from the use of the language "in the absence whereof". This indicates that where a matriculation or equivalent certificate is available, the documents adverted to in sub-clauses (ii) and (iii) cannot be relied upon. The matriculation certificate, in other words, is given precedence. It is in the absence of a matriculation certificate that the date of birth certificate of the school first attended, can be relied upon. It is in the absence of both the matriculation and the birth certificates of the first school attended that a birth certificate issued by the corporation, municipal authority or panchayat could be obtained."

27. A careful analysis of the provisions of Sections 9 and 94 of the Act of 2015 and the judgments referred to supra will reveal that even the Court can undertake an enquiry but the standard of enquiry need not be like a trial wherein, the juvenility has to be proved beyond all reasonable doubt and rather if two views are possible during the course of enquiry, the Court should lean in favour of holding the accused to be juvenile in borderline cases.



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Further, if documentary evidence, as provided under Section 94 of the Act of 2015 is placed on record, then the same is to be considered relevant unless the same are shown to be fabricated or manipulated and, if so called documents are available, then there is no requirement for the Court, the board or the committee to go for medical test for age determination. The question is thus answered accordingly.

Analysis of documents available on record:-

28. For the purpose of showing that the accused-respondent-V was not a juvenile, the prosecution has tried to exhibit 3 documents i.e. Exhibits-1 to 3, the first one being the certificate given by the Principal of Government Primary School, Bhramanada, Ghodawat, Tehsil Pipar, District Jodhpur dated 31.08.2024 to certify that as per the SR register, the age of the accused-respondent-V as shown on 01.07.2011, was 07.02.2006. They have also placed on record the SR register as Exhibit-P2, which shows the name of the respondent and his brother and has also placed on record the application form as Exhibit-P3, wherein also, the date of birth of the accused-respondent-V has been shown as 07.02.2006. To prove the document, the prosecution has examined the principal as PW-1, who as per her own statement, has admitted that she was not Principal at the relevant time and neither working in the school in question and further admitted that along with Exhibit-P3, other documents with regard to the date of birth have not been placed on record.

29. It is thus clear that the documents in question have not at all been proved and PW-1 was not even present there at the time of submission of the documents. Thus, the requirement of Section



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35 of the Evidence Act has not at all been proved. One more relevant fact will be that the signature upon Exhibit-3, shown to be of father of the accused-respondent-V, is in English whereas, he has specifically stated that he signs in Hindi only and upon the same point there is no cross-examination by the prosecution when father of the accused-respondent-V appeared in the witness-box as DW-1, Sumer Ram. He has rather exhibited his PAN card and other documents to prove that he signs in hindi only. On the contrary, the documents and the witnesses produced by the accused-respondent-V will reveal that not one but catena of documents have been produced all dating back to the year 2012, 2013 and 2016, to fortify the fact that the date of the birth of the respondent is 06.03.2009. The transfer certificate, the admission form of three different schools, the scholar register, the matriculation certificate of the accused-respondent-V, the Adhaar card of the respondent etc. clearly shows that the age specified therein was 06.03.2009.

30. Needless to emphasize that at the relevant time, the father of the accused-respondent-V would not be under an assumption that few years down the line, his son might be implicated in a case wherein he will have to show his son as a juvenile. In other words, long back, the date of birth of accused-respondent-V was shown as 06.03.2009 only and during the course of his cross-examination, the father of the accused-respondent-V had further clarified that in the initial form, the date of birth of the accused-respondent-V was shown as 07.03.2006 and in the same document the date of birth of his elder son, Vikram was shown as 07.12.2005 and therefore he got the same corrected date as there



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could not have been two months' gap between the birth of two children. The evidence of DW-1 - Sumer Ram was further fortified by the evidence of DW-2 - Savita Parihar, the Principal of Saheed Nimbaram Dudi, Government Senior Secondary School, Salwa Kalan, Mandore. DW-3 - Mr. Jitendra Pareek, Principal of Sarvodaya Shikshan Sansthan, Gagrana, District Nagaur and DW-4 - Mr. Ganpatram, the Manager of Om Bal Madhyamik Vidyalaya, Khvaspura, Teshil Pipar, who have fortified the fact of date of birth of the respondent being 06.03.2009 and further fortify the documents in this regard.

31. It is thus clear that the matriculation certificate, the Adhaar card and other school documents including the scholar register etc. have been sufficiently proved by the respondent as per provisions of Section 35 of the Indian Evidence Act also and there has been no issue raised by the petitioner with regard to the documents being fabricated or forged. That being so, as per the judgment passed by the Hon'ble Apex Court, as referred to supra, it is clear that matriculation certificate by itself would be a sufficient proof to determine the age of accused-respondent-V as there is no averment with regard to the document in question being fraudulent or forged.

32. It is thus clear that the adjudication done by learned trial Court with regard to deciding the juvenility of the accused-respondent-V is based on cogent and material evidence and while placing much reliance upon the Adhaar card and the matriculation certificate, which by itself is a public document and acceptable as per Section 94 of Act of 2015, there is no averment with regard to the same being forged or fabricated.



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33. The third question for adjudication in the present case is **"Whether the principles of res judicata are applicable to criminal proceedings also?"**- Having adjudicated upon the validity of the order impugned, the next issue which requires adjudication is the issue of applicability of res judicata to the criminal proceedings. Learned counsel for the petitioner has rightly pointed out that the issue in hand was raised, however, the said has not been decided or adjudicated upon by the learned trial Court. However, whether that issue by itself can change the course of adjudication will be relevant and therefore the same is being dealt with separately. As far as the applicability of principles as enshrined under Section 11 of the CPC with regard to res judicata, would apply to criminal cases or not came up for consideration before the Hon'ble Apex Court wayback in the year 1995 and the Hon'ble Apex Court in the case of **"Pritam Singh and Anr. v. State of Punjab"** (1995) 2 SCC 446 while observing that just like civil proceedings the issue of res judicata would be governing the criminal proceedings also and had held as under:-



"15.4 In regard to the recovery of Ext. P-14 the learned Additional Sessions Judge had not put any reliance on the acquittal of the accused by the learned Additional Sessions Judge, Faridkot, of the offence under the Arms Act, observing that any expression of opinion contained in the judgment was not only binding on him but was irrelevant under the Evidence Act, 1872. On a perusal of the evidence led by the prosecution in this behalf he had held that the recovery of Ex. P-14 was proved against the accused and considered that as connecting Pritam Singh Lohara with the incident. The High Court, on the other hand, relied upon the observations of Lord MacDermott at AC p. 479 in Sambasivam v. Public Prosecutor:

"The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim 'res judicata pro veritate accipitur' is no less applicable to criminal than to civil proceedings. Here,



the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial".

34. Subsequently, in the case of "**Devendra v. State of Uttar Pradesh**" (2009) 7 SCC 495, the issue of filing of successive petition under Section 482 Cr.P.C. came up for consideration before the Hon'ble Supreme Court and the Hon'ble Apex Court held that the issue of res judicata would not be applicable to criminal proceedings looking to the nature of the case, relevant of which reads as under:-

"25. Mr. Das, furthermore, would contend that the order of the High Court dated 17-10-2005 would operate as res judicata. With respect, we cannot subscribe to the said view. The principle of res judicata has no application in a criminal proceeding. The principles of res judicata as adumbrated in Section 11 of the Code of Civil Procedure or the general principles thereof will have no application in a case of this nature."

26. The High Court has refused to quash a first information report as a different standard therefor was required to be applied. However, when materials are collected and a charge-sheet is filed on the basis whereof the Magistrate takes cognizance of the offence, the same would give rise to a new cause of action. An order taking cognizance of an offence on the basis of a charge-sheet filed by the investigating officer and/or directing issuance of summons on a complaint petition, indisputably, would attract the provisions of Section 482 of the Code of Criminal Procedure if a case has been made out for invocation thereof."

35. Thereafter, recently in the case of "**Muskan Enterprises and Anr. v. State of Punjab and Anr.**" 2024 SCC Online SC 4107, the Hon'ble Apex Court had an occasion to deal with the same issue and it held that simply because earlier petition was withdrawn without liberty to file fresh would not operate as res judicata and that there is a distinction between criminal proceedings and civil proceedings as well as the provisions of Section 482 Cr.P.C. and 11 CPC operate in a different field and, therefore, held that the principle of res judicata would not apply



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with the same rigour to criminal proceedings. The Hon'ble Apex Court has held as under:-

"13. Having considered the materials on record as well as the rival claims, we are of the considered view that the High Court was unjustified in dismissing the subsequent petition on the ground that the appellants had withdrawn the earlier petition without obtaining leave to file afresh and, therefore, the petition under consideration was not maintainable.

14. The procedural laws governing criminal proceedings and civil proceedings in our country are quite dissimilar, though the rule of audi alteram partem and a procedure that is both fair and reasonable to both/all parties for rendering justice are at the heart of both the Cr.P.C. and the Civil Procedure Code, 1908. The principle of res judicata, traceable in Section 11 of the CPC, does neither apply to criminal proceedings nor is there any provision in the Cr.P.C. akin to Order XXIII Rule 1(3), CPC. While Section 114 of the CPC read with Order XLVII thereof empowers the civil courts to exercise the power of review, Section 362, Cr.P.C. bars a review. A close reading of Sections 482, Cr.P.C. and 115, CPC would also reflect that the purposes sought to be achieved by exercising the high courts' inherent powers, which the respective procedural laws save, are also at variance. Prudence and propriety in the decision-making process, thus, make it imperative for the high courts to not confuse the procedural laws governing criminal and civil proceedings.

15. The legal position as to whether a second petition under Section 482, Cr.P.C. would be maintainable or not is no longer res integra. We may notice a few decisions of this Court on the point."

36. Recently, in the case of "**S.C. Garg v. State of Uttar Pradesh and Anr.**" 2025 SCC Online SC 791 (relied upon by the learned counsel for the petitioner), the Hon'ble Apex Court held that principle of res judicata would apply equally to criminal proceedings also. However, the Hon'ble Apex Court further clarified that the observation made in the case of Muskan Enterprises (supra) was in a different context when the 482 Cr.P.C. was decided without adjudication on merit as not pressed and thereafter second petition was preferred and, therefore, there was no question of applying the principle of res judicata. The Hon'ble Apex Court has held as under:-

"13. The question as to the applicability of principle of res judicata in criminal matters have been considered by this



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Court in several decisions. In the matters of *Pritam Singh vs. The State of Punjab*, *Bhagat Ram vs. State of Rajasthan* & *The State of Rajasthan vs. Tarachand Jain*, this Court has consistently laid down the principle that the principle of *res judicata* is equally applicable in criminal matters. However, in two later decisions, namely, *Devendra vs. State of Uttar Pradesh* and *Muskan Enterprises Vs. The State of Punjab* in which one of us was a member (Justice Prashant Kumar Mishra), this Court observed in the context of maintainability of second petition under Section 482 Cr.P.C. that principle of *res judicata* has no application in a criminal matter. Considering divergence of opinion, it would be appropriate for us to have deeper examination and reading of the law laid down by this Court in the earlier decisions.

14. In *Pritam Singh (supra)*, a three Judge Bench of this Court speaking through Natwarlal Harilal Bhagwati, J. placing reliance on *Sambasivam vs. Public Prosecutor, Federal of Malaya*, decided by a Bench of Five Judges of the Judicial Committee, opined that maxim *res judicata* is no less applicable to criminal than to civil proceedings. In the said matter, accused *Pritam Singh* was earlier tried for an offence under the Arms Act basing recovery of a weapon from him. In the said case *Pritam Singh* was acquitted. In a subsequent trial, the same recovery was again sought to be used by the prosecution as one of the circumstances in an offence of murder. In these set of facts, this Court recorded the following findings as to the applicability of principle of *res judicata* in criminal matters:

"15. In regard to the recovery of Ex. P-14 the learned Additional Sessions Judge had not put any reliance on the acquittal of the accused by the learned Additional Sessions Judge, Faridkot, of the offence under the Arms Act, observing that any expression of opinion contained in the judgment was not only not binding on him but was irrelevant under the Indian Evidence Act.

On a perusal of the evidence led by the prosecution in this behalf he had held that the recovery of Ex. P-14 was proved against the accused and considered that as connecting *Pritam Singh Lohara* with the incident. The High Court, on the other hand, relied upon the observations of Lord MacDermott at p.479 in *Sambasivam v. Public Prosecutor, Federal of Malaya*, 1950 A.C. 458(A):-

"The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication.

The maxim '*res judicata pro veritate accipitur*' is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial."

17. We shall now have a look at the subsequent matters *Devendra (supra)* and *Muskan Enterprises (Supra)* wherein it is held that principle of *res judicata* is not applicable in criminal proceedings. In *Devendra (supra)* was a case where after dismissal of first petition under Section 482 Cr.P.C. seeking quashing of the FIR, the appellants therein preferred another application under Section 482 Cr.P.C., after the Magistrate





took cognizance of the matter, which was dismissed by the High Court. In this Court, it was argued by the opposite party that the first order of the High Court dismissing the petition under Section 482 Cr.P.C. would operate as *res judicata*. Negating the said argument, a two Judge Bench of this Court held in para 25 as under:

"25. Mr. Das, furthermore, would contend that the order of the High Court dated 17-10-2005 would operate as *res judicata*. With respect, we cannot subscribe to the said view. The principle of *res judicata* has no application in a criminal proceeding. The principles of *res judicata* as adumbrated in Section 11 of the Code of Civil Procedure or the general principles thereof will have no application in a case of this nature."

18. In *Muskan Enterprises (supra)*, similar was the position. The first petition under Section 482 Cr.P.C. was dismissed as withdrawn without liberty obtained to apply afresh, the High Court dismissed the second petition under Section 482 Cr.P.C. as not maintainable. Referring to *Devendra (supra)*, a two Judge Bench of this Court of which one of us was a member (*Prashant Kumar Mishra, J.*) observed thus in para 17:

"17. That the principle of *res judicata* has no application in a criminal proceeding was reiterated by this Court in *Devendra vs. State of U.P.*"

19. Reading three earlier decisions *vis-a-vis* the two later decisions parallelly, we do not think that considering the context and the stage of the proceedings in which the matters stood and agitated before this Court, there is any diversion in the applicability of the principle of *res judicata*. While three earlier decisions in *Pritam Singh (Supra)*, *Bhagat Ram (supra)* and *Tarachand Jain (supra)* were decided basis acquittal in previous trial, the subsequent decision in *Devendra (supra)* and *Muskan Enterprises (supra)* have been decided at the stage of quashing petition under Section 482 Cr.P.C., thus, in both the matters, there was no final adjudication of merits. While in *Devendra (supra)*, the first petition was for quashing of the FIR and the second petition was preferred after the Magistrate took cognizance of the matter; in *Muskan (supra)*, the first petition was dismissed as withdrawn whereas the second petition was held not maintainable due to earlier withdrawal without any liberty. Thus, these two cases are totally distinguishable.

In addition, it is important to bear that *Sambasivam (supra)* was decided by Five Judges of the Judicial Committee and *Pritam Singh (supra)* was decided by a three Judge Bench, whereas all subsequent decisions have been rendered by the two Judges Bench. Therefore, *Pritam Singh (supra)* is binding insofar as the issue concerning the applicability of principle of *res judicata* in a criminal proceeding is concerned."

37. Thus, it is clear that the Hon'ble Apex Court itself has not overruled the judgment in "**Muskan Enterprises and Anr. v. State of Punjab and Anr.**" and has rather clarified that the observation made was in typical facts and circumstances of the case in hand. As far as *res judicata* is concerned, the Hon'ble Apex Court recently in the case of "**Thirunagalingam v. Lingeswaran**"



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& Anr." passed in SLP (C) No.17575 of 2023 (2025 INSC 672), in paragraph 30, has held as under:-

"30. In the present appeal, the Respondents seek to raise the very same reason to condone the delay as were previously canvassed, without placing any fresh or additional material to distinguish the current reason from the one already discussed and dismissed. This Court is of the considered view that such a repetition of grounds already scrutinized and held untenable amounts to an abuse of the process of law. Although the applications for condonation of delay are filed under different provisions of the law but the said provisions provide for concurrent remedies through different mechanisms and if the application filed under one provision has already been dismissed by a court of competent jurisdiction, by applying its judicial mind and held that the reasons for delay were not sufficient, a subsequent application filed under different provision, reiterating the same contentions or grounds of delay, cannot be entertained."

38. Taking guidance from the abovementioned judgments, it is clear that principles of res judicata would apply in criminal proceedings also, however, whether the present case would be covered by the principles of res judicata or not, is an issue to be decided. The Hon'ble Apex Court in the case of **"Thirunagalingam v. Lingeswaran & Anr."** referred to supra, clearly observed that if any fresh or additional material is placed post deciding of the earlier application or fresh facts are brought on record then the principles of res judicata wouldn't apply.

39. The Hon'ble Apex Court rather in the case of **"Abuzar Hossain v. State of West Bengal"** (2012) 10 SCC 489 while observing even after the claim of juvenility was not pressed before the trial Court then the same can be raised for the first time before the Hon'ble Apex Court, has held as under:-

"39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court."



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40. In the present case, the earlier applications were filed prior to filing of the charge-sheet by the police officials and the first application was withdrawn at the inception, whereas the second application claiming juvenility was withdrawn on the same date when the charge-sheet was presented before the Court by the police officials, which is clear from the perusal of the record of the case. Thereafter, the documents i.e. P1 to P3 were exhibited and at that stage the use of the documents for the purpose of determining the question of juvenility was used by prosecution and exhibited later on.

41. The respondent came to know about the use of the documents and those new facts by itself give rise to a fresh cause of action and based upon the new facts the question of juvenility could have been raised by the respondent. Thus, it is clear that post exhibiting of the documents and examining of PW-1 - Smt.Pinku, a new set of facts were brought on record. Therefore, the respondent was within his rights to file a fresh application raising the issue of juvenility. Although, no liberty was sought while not pressing the earlier application, which was filed prior to filing of the charge-sheet by the police officials. Thus, the issue of res judicata wouldn't arise and wouldn't be an impediment in adjudication of the fresh issue. Though, ideally the trial Court should have addressed this issue also however, since it is a pure issue of law, it is adjudicated by this Court without remanding the matter to the learned trial Court.

42. The upshot of the above is that the revision petition is bereft of merit and is hereby dismissed while upholding the order dated 15.01.2025 passed by the learned Special Judge, POCSO Act



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