**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Revision No. 392 of 2025**

**Reserved on : 16.07.2025**

**Date of Decision: 28.07.2025**

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V (a juvenile) ....Petitioner

Versus

State of H.P. .... Respondent

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*Coram*

**Hon'ble Mr Justice Rakesh Kainthla, Judge.**

**Whether approved for reporting? [1] Yes**

For the petitioner : Mr. Harish Sharma, Advocate.

For the respondent : Mr. Ajit Sharma, Deputy Advocate General.

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**Rakesh Kainthla, Judge**

The present revision is directed against the judgment dated 10.06.2024 passed by learned Sessions Judge, Shimla (learned appellate Court), vide which the order passed by learned Juvenile Justice Board (JJB), Shimla was upheld. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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2. Briefly stated, the facts giving rise to the present petition are that the police presented a challan against the petitioner for the commission of an offence punishable under Section 376 of the Indian Penal Code (in short "IPC") and Section 4 of Protection of Children from Sexual Offences (POCSO)Act. It was asserted that the victim was aged 7 years on the date of the incident. Victim's father went to see off his guests on 12.02.2021. The victim and her sister accompanied him. The victim told him that she was going to the house of the petitioner to play with him. She returned after some time. Victim's mother called her husband at about 2:30 pm and told him that the victim had pain in her stomach. Inquiries were made from the victim, and she disclosed that the petitioner took her to a cowshed and raped her. The police registered the FIR and conducted the investigation. The petitioner was found to be aged 16 years one month and 23 days at the time of the incident. Hence, the charge-sheet was filed before the JJB.

3. The JJB carried out the preliminary assessment as required under Section 15 of the Juvenile Justice Care and Protection of Children Act, 2015 (JJ Act). The petitioner was

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sent for examination by a Medical Board. The Medical Board carried out the assessment and found that the petitioner's IQ was 92 and he was able to understand the consequences of his acts. The Board also interacted with the petitioner and recorded the statement of the witnesses. The Board concluded that, as per the opinion of the Medical Board and the nature of the offence and social investigation report, there was nothing to suggest that the petitioner suffered from any mental or physical incapacity to commit the crime. The nature of the offence suggested that the petitioner knew the consequences of his act. The statement of the victim showed that the offence was committed in a calculated manner, and the petitioner had sufficient mental and physical capacity to commit the crime. Therefore, the matter was submitted to the Children's Court for trying the petitioner as an adult.

4. Being aggrieved by the order passed by learned JJB, the petitioner filed an appeal which was decided by learned Sessions Judge, Shimla (learned Appellate Court). Learned Appellate Court concluded that the Board had interacted with the petitioner. The report of the Medical

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Board showed that the petitioner had sufficient intellect. The statement of the victim showed that the petitioner had committed repeated sexual assault upon her and threatened her not to disclose the incident to any person. All these circumstances showed that the petitioner was able to understand the consequences of the act committed by him, and he was to be tried as an adult. Hence, the appeal was dismissed.

5. Being aggrieved by the judgments passed by learned Courts below, the petitioner has filed the present petition asserting that the preliminary assessment was not concluded within three months as provided under Section 14(3) of the JJ Act, which vitiated the entire inquiry. The offence was committed on 12.02.2021, and the petitioner was examined on 24.02.2022 by the Medical Board after more than one year of the commission of the offence. This defeated the object and mandate of Sections 14 and 15 of the JJ Act. The Medical Board had only assessed the mental status of the child and not the physical capacity. The petitioner was subjected to an interview in a standard form questionnaire, and no medical tests were conducted. The

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documents of the case were not supplied to the Medical Board. Learned Courts below ignored the mandate of the JJ Act while ordering that the petitioner be tried as an adult; therefore, it was prayed that the present revision be allowed and the judgments passed by learned Courts below be set aside.

6. I have heard Mr. Harish Sharma, learned counsel for the petitioner and Mr. Ajit Sharma, learned Deputy Advocate General, for the respondent/State.

7. Mr. Harish Sharma, learned counsel, for the petitioner, submitted that the inquiry was not completed within three months as provided under Section 14(3) of the JJ Act. The documents of the case were not supplied to the Medical Board, and this vitiated its conclusion. The Medical Board had given its opinion regarding the petitioner's mental capacity. There was no evidence regarding the petitioner's physical capacity. Learned Courts below erred in ordering that the petitioner be tried as an adult. This defeated the beneficial provisions of the JJ Act; therefore, he prayed that the present revision be allowed and the judgments passed by learned Courts below be set aside.

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8. Mr. Ajit Sharma, learned Deputy Advocate General, for the respondent-State, submitted that the period of three months provided under Section 14(3) of the JJ Act is not mandatory. Learned Courts below had rightly held that the petitioner had sufficient mental and physical capacity to know the nature and consequences of his acts. There is no infirmity in the judgments passed by learned Courts below; hence, he prayed that the present revision be dismissed.

9. I have given considerable thought to the submissions made at the bar and have gone through the record carefully.

10. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that the revisional court does not exercise an appellate jurisdiction and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207: -

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High

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Court in criminal revision against conviction is not supposed to exercise jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality, or propriety of any finding, sentence, or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

11. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

> **14.** The power and jurisdiction of the Higher Court under Section 397CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.
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> **15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)
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> > "*12.* Section 397 of the Code vests the court with the power to call for and examine the records of

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an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with the law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

*13.* Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much-advanced stage in the proceedings under CrPC."

**16.** This Court in the aforesaid judgment in *Amit Kapoor case* [***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri)***

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*986*] has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228CrPC is sought for as under : (***Amit Kapoor case [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***], SCC pp. 482-83, para 27)

> "27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code, and the fine line of jurisdictional distinction, it will now be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but inherently impossible to state such principles with precision. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be.
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> 27.1. Though there are no limits to the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly the charge framed in terms of Section 228 of the Code, should be exercised very sparingly and with circumspection, and that too in the rarest of rare cases.
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> 27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion,

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and where the basic ingredients of a criminal offence are not satisfied, then the Court may interfere.

*27.3.* The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

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*27.9.* Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

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*27.13.* Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records, but is an opinion formed prima facie."

**17.** The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistencies in the statement of witnesses, and it is not legally permissible. The High Courts ought to be cognizant of the fact that the trial court was dealing with an application for discharge.

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12. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

> **14.** The power and jurisdiction of the Higher Court under Section 397CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.
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> **15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)
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discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

*13.* Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much-advanced stage in the proceedings under CrPC."

**16.** This Court in the aforesaid judgment in *Amit Kapoor case* [***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***] has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228CrPC is sought for as under : (***Amit Kapoor case [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***], SCC pp. 482-83, para 27)

"27. Having discussed the scope of jurisdiction under these two provisions, i.e. Section 397 and Section 482 of the Code, and the fine line of jurisdictional distinction, it will now be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but inherently impossible to state such principles with precision. At best and upon objective

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analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

*27.1.* Though there are no limits to the powers of the Court under Section 482 of the Code but the more power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code, should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

*27.2.* The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion, and where the basic ingredients of a criminal offence are not satisfied, then the Court may interfere.

*27.3.* The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

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> *27.13.* Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records, but is an opinion formed prima facie."

> **17.** The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistencies in the statement of witnesses, and it is not legally permissible. The High Courts ought to be cognizant of the fact that the trial court was dealing with an application for discharge.

13. It was held in ***Kishan Rao v. Shankargouda*, *(2018) 8 SCC 165: (2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651*** that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed on page 169:

> "**12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the ground for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275]***, while considering the scope of the revisional jurisdiction of the High Court, this Court

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has laid down the following: (SCC pp. 454-55, para 5)

> "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."

**13.** Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material; the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

> "*14*. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."

> **14.** In the above case, also conviction of the accused was recorded, and the High Court set aside [***Dattatray Gulabrao Phalke v. Sanjaysinh Ramrao Chavan, 2013 SCC OnLine Bom 1753]*** the order of conviction by substituting its view. This Court set aside the High Court's order holding that the High Court exceeded its jurisdiction in substituting its views, and that too without any legal basis.

14. This position was reiterated in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13,*** wherein it was observed at page 205:

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> "**16.** It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
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> **17.** As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457]***, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative."

15. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

16. It was submitted that the Juvenile Justice Board failed to complete the inquiry within three months, and this vitiated the inquiry. This submission is not acceptable. It was laid down by Hon'ble Supreme Court, in ***X (Juvenile) v. State of Karnataka, (2024) 8 SCC 473: (2024) 3 SCC (Cri) 736: 2024 SCC OnLine SC 798,*** that the period for completion of preliminary assessment under Section 12(3) is not mandatory but directory. It was observed at page 497:

> **22.** Section 14(2) of the Act provides that the inquiry as envisaged under Section 14(1) thereof shall be completed within a period of four months from the date of first production of the child before the Board. The time is extendable by the Board for a

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maximum period of two months, for the reasons to be recorded. The consequences of non-conclusion of any such inquiry have been provided in Section 14(4) of the Act, only with reference to petty offences. The aforesaid sub-section provides that if inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated. Proviso to the aforesaid sub-section provides that in case the Board requires further extension of time for completion of inquiry into serious and heinous offences, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

**23.** Meaning thereby that as far as inquiry of CCL, as envisaged under Section 14(1) of the Act, by the Board for heinous offences is concerned, there is no deadline after which either the inquiry cannot be proceeded further or has to be terminated.

**24.** Now, coming to the issue at hand. It is not in dispute that CCL has allegedly committed heinous offences. The argument is with reference to the period provided for the conclusion of preliminary assessment under Section 15 of the Act and passing of an order under Section 15(2) or 18(3) of the Act, namely, as to whether the matter is to be enquired into by the Board or is to be transferred to the Children's Court for trial of CCL as an adult.

**25.** We may add here that apparently, the placement of Section 18(3) does not seem to be appropriate. Sub-sections (1) and (2) of Section 18 deal with final orders to be passed by the Board on inquiry against CCL, whereas sub-section (3) envisages passing of an order by the Board as to whether the trial of CCL is to be conducted by the Children's Court in terms of preliminary assessment, as envisaged in Section 15 thereof. Passing of such an order could very well

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be placed in Section 15 itself after sub-section (2) thereof.

**26.** The inquiry as envisaged in Section 15(1) of the Act enables the Board to take assistance from experienced psychologists or psychosocial workers, or other experts. The proviso has nexus with the object sought to be achieved. The Act deals with CCL. The preliminary assessment as envisaged in Section 15 has large ramifications, namely, as to whether inquiry against CCL is to be conducted by the Board, where the final punishment, which could be inflicted, is lighter or the trial is to be conducted by the Children's Court treating CCL as an adult, where the punishment could be stringent.

**27.** As noticed earlier, the preliminary assessment into the heinous offence by the Board in terms of Section 15(1) of the Act has to be concluded within a period of three months in terms of Section 14(3) of the Act. The Act as such does not provide for any extension of time and also does not lay down the consequence of non-completion of inquiry within the time permissible. In the absence thereof, the provision prescribing a time limit of completion of the inquiry cannot be held to be mandatory. The intention of the legislature with reference to serious or heinous offences is also available from the language of Section 14 of the Act, which itself provides for further extension of time for completion of inquiry by the Board to be granted by the Chief Judicial Magistrate or Chief Metropolitan Magistrate for the reasons to be recorded in writing. It is in addition to two months' extension, which the Board itself can grant.

**28.** As in the process of preliminary inquiry there is involvement of many persons, namely, the investigating officer, the experts whose opinion is to be obtained, and thereafter the proceedings before the Board, where for different reasons any of the party may be able to delay the proceedings, in

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> our opinion the time so provided in Section 14(3) cannot be held to be mandatory, as no consequences of failure have been provided as is there in case of enquiry into petty offences in terms of Section 14(4) of the Act. If we see the facts of the case at hand, the investigating officer had taken about two months' time in getting the report from NIMHANS.
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> **29.** Where consequences for default for a prescribed period in a statute are not mentioned, the same cannot be held to be mandatory. For this purpose, reference can be made to the following decisions of this Court.
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> xxxxxxx
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> **36.** Hence, we are of the opinion that the time provided in Section 14(2) of the Act to conduct an inquiry is not mandatory but directory. The time so provided in Section 14(3) can be extended by the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, for the reasons to be recorded in writing."

17. Therefore, in view of the binding precedent of the Hon'ble Supreme Court, the time period of three months is directory and not mandatory, and the submission that the proceedings are vitiated due to non-completion of the inquiry within three months vitiated the inquiry cannot be accepted.

18. Section 15 of the JJ Act provides for the preliminary assessment of a child who has completed the age of 16 years and has committed a heinous offence. It reads that the Board shall conduct the preliminary

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assessment regarding the mental and physical capacity of the child to commit the crime, his ability to understand the consequences of the offence and the circumstances in which the crime was allegedly committed. Therefore, the Board is required to see the physical capacity and mental capacity and circumstances in which the offence was committed.

19. The JJB held that the report of the Medical Board showed that the petitioner had an IQ of 92. It was laid down by the Hon'ble Supreme Court in ***Barun Chandra Thakur v. Bholu, 2022 SCC OnLine SC 870,*** that intelligence is one of the factors to determine the mental capacity of the juvenile. It was observed:

> **"70.** A child with average intelligence/IQ will have the intellectual knowledge of the consequences of his actions. But whether or not he can control himself or his actions will depend on his level of emotional competence. For example, risky driving may result in an accident. But if emotional competence is not high, the urge for thrill-seeking may get the better of his intellectual understanding.
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> **71.** Children may be geared towards more instant gratification and may not be able to deeply understand the long-term consequences of their actions. They are also more likely to be influenced by emotion rather than reason. Research shows that young people do know the risks to themselves.

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> Despite this knowledge, adolescents engage in riskier behaviour than adults (such as drug and alcohol use, unsafe sexual activity, dangerous driving and/or delinquent behaviour). While they do consider risks cognitively (by weighing up the potential risks and rewards of a particular act), their decisions/actions may be more heavily influenced by social (e.g. peer influences) and/or emotional (e.g. impulsive) tendencies. In addition, the lack of experience coupled with the child's limited ability to deeply understand the long-term consequences of their actions can lead to impulsive/reckless decision making."

20. Therefore, the JJB was justified in relying upon the report of the Medical Board regarding the IQ of the petitioner.

21. The JJB relied upon the MLC of the petitioner, in which it was specifically mentioned that there is nothing to suggest that the petitioner was unable to perform sexual intercourse, and held that the report of the Medical Board and the Medical Certificate showed the mental and physical status of the petitioner. It also relied upon the social investigation report to hold that there was nothing to show that the petitioner suffered from any mental illness or parental neglect; rather, he had access to all the basic necessities, and he was living in a healthy family

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environment. These were the relevant considerations to determine the physical and mental status of the petitioner.

22. The victim made the statements under Sections 161 and 164 of Cr. P.C. that the petitioner had taken her to the cow shed and raped her. He brought her to his house and gave her water, and again raped her. He cleaned her blood and threatened that he would not play with her in case the incident was reported to any person. The conduct of the petitioner of repeatedly raping the victim, cleaning the blood and threatening her not to reveal the incident to any person, showed that the petitioner was aware of the consequences of his act. He wanted to conceal the commission of the act, which is why he had cleaned the blood and threatened the victim. Hence, the findings recorded by the JJB cannot be said to be bad. These findings are sustainable based on the material on record.

23. As per the prosecution, the petitioner had raped the victim. It was laid down by Madhya Pradesh High Court in ***Sunil vs. The State of Madhya Pradesh (25.06.2021 - MPHC): MANU/MP/0616/2021*** that an offence of rape

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cannot be committed unless the person has the specific knowledge of the same. It was observed:

> 12. The petitioner, though aged 15 years only, has committed a heinous offence of rape on a minor girl aged around 10 years and 4 months, which left her bleeding so profusely that her blood transfusion was also required, and as per her statement, the petitioner also committed the same act around 3 days ago as well. The conduct of the petitioner clearly reveals that he committed the aforesaid offence with full consciousness, and it cannot be said that it was committed in ignorance. *This Court is unable to agree with the observation made by the Probationary Officer that an offence of rape can be committed due to ignorance. An offence of rape, being carnal in nature, cannot be committed unless a person has the specific knowledge of the same...*"(Emphasis supplied)

24. It was submitted that the case history was not submitted to the Medical Board, and the Medical Board was unable to decide the matter regarding the capacity. This submission is only stated to be rejected because the Medical Board was to assess the mental capacity of the petitioner, which it had assessed and found the petitioner's IQ to be 92. The petitioner was found to have sufficient understanding by the Medical Board. JJ Board interacted with the petitioner and also went through the case file. JJ Board was to determine the mental and physical capacity of the petitioner to commit the crime; therefore, the mere fact

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that the documents were not forwarded to the Medical Board cannot lead to an inference that the report issued by the Medical Board was bad.

25. No other point was urged.

26. Therefore, there is no infirmity in the judgments passed by learned Courts below, and no interference is required with them while exercising the revisional jurisdiction; hence, the present petition fails, and the same is dismissed.

27. The observations made hereinbefore shall remain confined to the disposal of the present petition and will have no bearing, whatsoever, on the merits of the case.

**(Rakesh Kainthla)**
**Judge**

**28th July, 2025**
(Ritu)