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other alternative but to set aside the impugned order dated 26.5.2003 and remand the matter to the Advance Ruling Authority to pass a fresh order in accordance with law, keeping in view the settled legal principles enunciated by the Apex Court in the case of **HINDUSTAN SHIPYARD LIMITED vs STATE OF ANDHRA PRADESH** and the observations made by us in the course of our order.

18. Accordingly, the following:

**ORDER**

I. Appeal is partly allowed.

II. The impugned order passed by the Advance Ruling Authority in No. AR.CLR.CR.73/02-03 dated 26.5.2003 is set aside.

III. The matter is remanded back to the Advance Ruling Authority to reconsider the application filed by the appellant company in accordance with law.

III. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.

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**ILR 2005 KAR 1572**

**S.R. BANNURMATH AND A.C. KABBIN, JJ**

**State of Karnataka vs Harshad\***

**(A) CRIMINAL PROCEDURE CODE, 1973 – SECTIONS 27, 395 AND 209 – INDIAN PENAL CODE, 1860 – SECTIONS 143, 147, 148, 302 R/W 149 IPC – JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – SECTION 4 AND 6 – CRIMINAL PROCEDURE CODE, 1973 – SECTION 209 – COMMITTAL PROCEEDINGS UNDER – ‘WHETHER THE SESSIONS COURT AT DAVANGERE WILL HAVE JURISDICTION TO DEAL WITH A JUVENILE IN A CASE COMMITTED TO IT**

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\* Cri. R.C.No. 4/2004, dated 11<sup>th</sup> February 2005

**UNDER SECTION 209 CR.P.C. BY THE JUVENILE JUSTICE BOARD SHIMOGA – HELD –** In view of the fact that a Juvenile Justice Board has already been constituted by Notification No. MME 94 MBB 2003 dated 25.7.2003 to have jurisdiction over Davangere District also, it is that Board which has the exclusive power of dealing with the trial of Juveniles in conflict with law and to that extent, the jurisdiction of any Court including that of the Sessions or Fast Track Court is barred.

**(B) JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – SECTION 6(1) –** Whether Section 27 Cr.P.C. r/w pronouncement of the Judgment in the case of Krishna vs State of Karnataka – ILR 2000 KAR 2542 has over riding effect over Section 6 of the Juvenile Justice (Care and Protection of Children) Act, 2000 or Vice Versa? **HELD –** Section 27 of the Cr.P.C. has no inconsistency with Section 6 of the Juvenile Justice (Care and Protection of Children) Act, 2000 – The Words “Notwithstanding anything contained in any other law for the time bearing in force”, used in Section 6(1) of the Juvenile Justice (Care and Protection of Children) Act and pronouncement of the Supreme Court in Sheela Barse and another vs Union of India and Others (AIR 1986 SC 1773) and Raghubir vs State of Haryana (AIR 1981 SC 2037), the decision of Karnataka High Court in Krishna’s case is no more good law.

**HELD:**

*It is to be noted that the Juvenile Justice Board as per the new Act shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the First Class along with two social workers forming a Bench and every such Bench shall have the powers of a Court conferred by the Code of Criminal Procedure. In conformity with the direction issued under Section 4(1) of the Act No.56/2000, the State of Karnataka has issued Notification bearing No.MME 94 MBB 2003 dated 25-7-2003 and has constituted five Juvenile Justice Boards. It is submitted by the learned State Public Prosecutor that formation of three more Juvenile Justice Boards, for the areas other than those for which*

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*Juvenile Justice Boards have already been constituted, are under consideration. So far as the present case is concerned, as the offences in question had been committed within the jurisdiction of Davangere, the Juvenile Justice Board at Shimoga is the authority concerned.* (Para 5)

*As such, in Court's view, it is only the Board constituted under The Juvenile Justice (Care and Protection of Children) Act, 2000 which alone is empowered to deal with the offences said to have been committed by the juvenile.* (Para 6)

*Considering all these aspects, as there is legislative mandate as well as mandate of the Hon'ble Supreme Court, in Court's view, when a juvenile has been charged with an offence or offences, it is the Juvenile Justice Board which has the power of trying the said juvenile in conflict with law in accordance with the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000.* (Para 7)

### CASES REFERRED:

### AT PARAS

1. 1999(1) Crimes 287 –  
*Sunita vs State (U.T. Chandigarh)* (Ref) 3
2. 2001 Supreme Today, 378 – (do) 3
3. ILR 2000 KAR 2542 – *Krishna vs State of Karnataka* (do) 3
4. AIR 1986 SC 1773 –  
*Sheela Barse & Anr. vs Union of India & Ors.* (Foll) 5
5. AIR 1981 SC 2037 – *Raghibir vs State of Haryana* (do) 6

Sri H.S. Chandramouli, State Public Prosecutor for complainant  
Smt. A.N. Shanthala, Advocate for Respondent

### ORDER

**Bannurmath, J**

This reference has been made by the learned Addl. Sessions Judge, Fast Track Court - I, Davangere in S.C.No.29/2004 seeking decision of this Court on a question of law as well as interpretation of certain provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as Act No.56/2000) vis-a'-vis Section 27 of the Cr.P.C. in view of the difficulty that

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has arisen to apply in view of the principles mentioned in the decision of a Division Bench of this Court in the case of Krishna vs State of Karnataka reported in ILR 2000 Kar 2542.

The respondent- Harshad, a juvenile has been charge-sheeted along with others for offences under Sections 143, 147, 148, 302 r/w. 149 of the IPC. In the Charge-sheet filed by the CPI, Davangere, the respondent-juvenile has been ranked as accused No.9. As he was found to be juvenile, his case was separated from S.C.No.6/2003 and given a new number S.C.29/2004. Thereafter, the learned Chief Judicial Magistrate, Davangere took cognizance of the offences and registered a case against the respondent-Juvenile as Juvenile Case No. 11/2003 and forwarded the same to the Juvenile Justice Board at Shimoga, constituted as per notification issued by the State Government dated 25-7-2003 under the provisions of the Act No. 56/2000. The Juvenile Justice Board sitting at Shimoga, presumably thinking that the offences were triable by a Court of Sessions committed the case to the Sessions Court, Davangere as per its order dated 19-3-2004 and thereafter, the same was renumbered as S.C.No.29/2004 on the file of the District and Sessions Court, Davangere. After establishment of Fast Track Court, the same has been transferred to the Fast Track Court wherein it is pending.

3. The Presiding Officer of the Fast Track Court, noticing that as the Juvenile Justice Board had already been constituted and in fact as it had taken up the case, but had committed the respondent to take his trial only in view of one of the offences exclusively triable by a Court of Sessions, directed the State as well as the respondent and his counsel to submit their views in this regard with an intention to find out the exact legal position. Both the sides relied upon the following pronouncements:

- (1) SUNITA vs STATE (U.T.CHANDIGARH)<sup>1</sup>
- (2) 2001 Supreme Today, 378<sup>2</sup>
- (3) KRISHNA vs STATE OF KARNATAKA<sup>3</sup>

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1. 1999(1) Crimes 287

2. 2001 Supreme Today, 378

3. ILR 2000 KAR 2542

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After going through various pronouncements, as the learned Judge opined that it is the Juvenile Justice Board which is empowered to try the case of the Juvenile, but, finding it difficult to over-come the pronouncement of this Court in the case of *Krishna vs State of Karnataka*, supra, has referred the following questions for consideration to this Court.

(1) Whether the Sessions Court at Davangere will have jurisdiction to deal with a juvenile in a case committed to it under Section 209 Cr.P.C by the Juvenile Justice Board Shimoga?

OR

Whether the Sessions Court can try the case committed to it, by a Magistrate or Board other than jurisdictional Magistrate?

(2) Whether Section 27 Cr.P.C. r/w. pronouncement of the Division Bench of this Court in the case of *KRISHNA v. STATE OF KARNATAKA* reported in ILR 2000 Kar. 2542 has overriding effect over Section 6 of the Juvenile Justice (Care and Protection of Children) Act, 2000 or vice versa ?

OR

Which Court/Board has to deal with a Juvenile in respect of offences punishable with death or imprisonment for life?

As important questions of law were to be decided, we had issued notice to the State, now represented by Sri Chandramouli, learned State Public Prosecutor. This Court had also issued notice to the guardian of the juvenile and the juvenile was represented by Smt. Shanthala, learned Advocate.

In order to consider the questions before us, it is necessary to look into the provisions of law relating to juvenile offenders and Criminal Procedure Code.

4. Taking into consideration the need for care and protection and for providing proper care and treatment of the juveniles instead of making them to undergo before Court the rigor of a regular trial, the Parliament has from time to time, enacted special laws to provide not only care, protection, treatment, development and rehabilitation of the delinquent juveniles but also to provide

adjudication machinery or courts in respect of the matter concerning criminal offences committed by such juveniles. The earlier provisions can be found in the Children's Act 1960 and Juvenile Justice Act 1986

5. In the case of **SHEELA BARSE AND ANOTHER vs UNION OF INDIA AND OTHERS**<sup>4</sup>, the Hon'ble Supreme Court has observed that the trial of children must take place in juvenile courts and not in regular criminal courts. There are special provisions enacted in various statutes relating to children providing for trial by juvenile courts in accordance with the special procedure intended to safeguard the interest and welfare of the children. The Hon'ble Supreme Court also directed the State Governments to set up juvenile courts, one in each district and further directed that the Magistrates, who deal with such matters be suitably trained for dealing with the cases against juvenile-accused. These cases require a different type of procedure and qualitatively a different kind of approach. Taking into consideration these directions of the Hon'ble Supreme Court the Juvenile Justice Act, 1986 was enacted providing certain safeguards in dealing with juvenile offenders and streamlining the procedure in respect of crimes by the juveniles. This Act has been now redrafted in the form of The Juvenile Justice (Care and Protection of Children) Act, 2000.

Under the present Act, Section 4 reads thus

**"4. Juvenile Justice Board** - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this Act.

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred



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by the Code of Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the First Class and the Magistrate on the Board shall be designated as the Principal Magistrate.

- (3) No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.
- (4) The term of office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed.
- (5) The appointment of any member of the Board may be terminated after holding inquiry, by the State Government, if:-
  - (i) he has been found guilty of misuse of power vested under this Act;
  - (ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
  - (iii) he fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

It is to be noted that the Juvenile Justice Board as per the new Act shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the First Class along with two social workers forming a Bench and every such Bench shall have the powers of a Court conferred by the Code of Criminal Procedure. In conformity with the direction issued under Section 4(1) of the Act No.56/2000, the State of Karnataka has issued Notification bearing No.MME 94 MBB 2003 dated 25-7-2003 and has constituted five Juvenile Justice Boards. It is submitted by the learned State Public Prosecutor that formation of three more Juvenile Justice Boards, for the areas other than those for which Juvenile Justice Boards have already

been constituted, are under consideration. So far as the present case is concerned, as the offences in question had been committed within the jurisdiction of Davangere, the Juvenile Justice Board at Shimoga is the authority concerned.

As regards the powers of Juvenile Justice Boards, Section 6 of Act 56/2000 provides that where such Board has been constituted for any District or a group of districts, such Board shall, notwithstanding anything contained in any law for the time being in force. But save as otherwise expressly provided in that Act, have power to deal exclusively with all proceedings under this Act relating to Juvenile in conflict in law.

6. As such, in our view, it is only the Board constituted under The Juvenile Justice (Care and Protection of Children) Act, 2000 which alone is empowered to deal with the offences said to have been committed by the juvenile. There cannot be two opinions that in the light of the provisions and observations of the Apex Court, a juvenile in conflict with law has to be tried by the concerned Juvenile Justice Board constituted under The Juvenile Justice (Care and Protection of Children) Act, 2000 and not by the regular Court. However, the doubt regarding jurisdiction has arisen in view of the following observation of the Division Bench of this Court in the case of Krishna, supra.

“The opinion given was to the effect that he was aged 14 years. Though a submission was canvassed before us that he ought to have been tried by the Juvenile Court, we have overruled this submission in view of the clear provisions of Section 27 Cr.P. C. which stipulates that in the case of an offence punishable with death or imprisonment for life, that it is the Court of Sessions which will exercise jurisdiction even if the accused is a minor.”

The above opinion has been expressed presumably taking into consideration that Section 27 of the Cr.P.C., provides for trial of juveniles in respect of offences not punishable with death or imprisonment for life and under Section 26 of the Cr.P.C. The Court of Sessions is empowered to try offences punishable with death or imprisonment for life. However, this opinion or pronouncement of the Division Bench is per incuriam in the light



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of the earliest pronouncement of the Hon'ble Supreme Court in the case of **RAGHBIR vs STATE OF HARYANA**<sup>5</sup>, which reads thus

“An accused who is less than 16 years and thus a child within the meaning of the Act (Section 2 (d) of the Haryana Children Act which is also in pari materia with the Karnataka Act) and who is accused of an offence under Section 302 Penal Code is entitled to the benefit of the Haryana Children Act. Therefore, his trial and conviction under the Cr. P. C is illegal.”

The Hon'ble Supreme Court further observed that:

What Section 27 contemplates is that a child under the age of 16 years may be tried by the Chief Judicial Magistrate or any Court specially empowered under the Children Act, 1960 It is an enabling provision, and, has not affected Haryana Children Act in the trial of delinquent children for offences punishable with death or imprisonment for life. Criminal Procedure appears in item 2 of the Concurrent list of the Seventh Schedule of the Constitution One of the circumstances under which repugnancy between the law made by the State and the law made by the Parliament may result is whether the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable.”

Taking this into consideration the Hon'ble Supreme Court held in that case that the relevant provisions of the Code and the Juvenile Act can co-exist since their sphere of operation is different.

7. Considering all these aspects, as there is legislative mandate as well as mandate of the Hon'ble Supreme Court, in our view, when a juvenile has been charged with an offence or offences, it is the Juvenile Justice Board which has the power of trying the said juvenile in conflict with law in accordance with the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000.

8. Hence, we answer the questions referred as follows:

(1) Whether the Sessions Court at Davangere will have jurisdiction to deal with a juvenile in a case committed to it under Section 209 Cr.P.C. by the Juvenile Justice Board Shimoga?

5. AIR 1981 SC 2037

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**OR**

Whether the Sessions Court can try the case committed to it, by other than jurisdictional Magistrate?

Ans: In view of the fact that a Juvenile Justice Board has already been constituted by Notification No.MME 94 MBB 2003 dated 25-7-2003 to have jurisdiction over Davangere District also, it is that Board which has the exclusive power of dealing with the trial of Juveniles in conflict with law and to that extent, the jurisdiction of any Court including that of the Sessions Court: or Fast Track Court is barred.

(2) Whether Section 27 Cr.P.C. r/w pronouncement of the Division Bench of this Court in the case of KRISHNA vs STATE OF KARNATAKA reported in ILR 2000 Kar. 2542 has overriding effect over Section 6 of the Juvenile Justice (Care and Protection of Children) Act? 2000 or vice versa?

**OR**

Which Court/Board has to deal with Juvenile in respect of offences punishable with death or imprisonment for life?

Ans: It is held that Section 27 of the Cr.P.C. has no inconsistency with Section 6 of The Juvenile Justice (Care and Protection of Children) Act, 2000. However, the words "notwithstanding anything contained in any other law for the time being in force," used in Section 6(1) of the Juvenile Justice (Care and protection of Children) Act, 2000 has overridden the provisions of Section 26 (a) of the Cr.P.C. In view of specific provision in Section 6(1) of the Juvenile Justice (Care and protection of Children) Act and pronouncement of the Supreme Court in Sheela Barse and another vs Union of India and Others (AIR 1986 SC 1773) and Raghubir vs State of Haryana (AIR 1981 SC 2037), the decision of Karnataka High Court in Krishna's case is no more good law.

The reference is answered accordingly.

Let a copy of this order be communicated to all the Courts for their guidance.

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9. Before concluding it is necessary to advert to a submission made by the State Public Prosecutor regarding necessity of forming Juvenile Justice Boards for each district. As per the report submitted to him by the State Government, only five Juvenile Justice Boards have been constituted to deal with the entire State except for certain district. For example, Shimoga Juvenile Justice Board has jurisdiction over seven districts namely Shimoga, Karwar, Chikmagalur, Chitradurga, Udupi, Mangalore and Davangere. The offences committed by Juveniles in all these districts have to be tried in Shimoga. That requires transportation of juveniles in conflict with law from far off places like Mangalore., Udupi, Karwar etc. The very purpose of enacting Juvenile Justice (Care and Protection of Children) Act is lost in view of the practical difficulties which are faced in keeping, maintaining and taking these juveniles to the place of trial. Keeping in view the practical difficulty with which the Board as well as the Juveniles have to face, in fact, as directed by the Hon'ble Supreme Court in Sheela Barse's case, the State Government may consider the necessity of establishing one Juvenile Justice Board for each district. We hope that the State Government will implement the mandate of the Apex Court in the letter and spirit of the Act as expeditiously as possible.

The learned Sessions Judge of the Fast Track Court, Davangere shall take immediate steps in this regard to forward the case to the Juvenile Justice Board, Shimoga immediately on receipt of a copy of this order.

Accordingly, the criminal reference is disposed of.

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