2026:AHC:222817

A.F.R.
Reserved on : 08.10.2026
Delivered on : 27.10.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 4845 of 2026

Juvenile - X

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Ankita Tiwari, Nidhi, Sr. Advocate
Counsel for Opposite Party(s)	:	Kunwar Akhilendra Singh, G.A.

Court No. - 82

HON'BLE JAI PRAKASH TIWARI, J.

1. Vakalatnama of Sri Shyam Kishore Yadav and Sri Kunwar Akhilendra Singh, learned Advocates, filed on behalf of O.P. No.2 is taken on record.

2. Heard Sri Sushil Shukla, learned Senior Advocate assisted by Ms. Ankita Tiwari, learned counsel for the revisionist, Sri Shyam Kishore Yadav, learned counsel for the O.P. No.2 and Sri Ashutosh Srivastava, learned AGA for the State-respondent.

3. The present criminal revision under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 has been preferred by the revisionist challenging the validity and correctness of the judgment and order dated 16.07.2026 passed by the Special Judge (POCSO Act)/Children Court, Bulandshahr in Criminal Appeal No. 106 of 2026, by which, the learned Children Court affirmed the order dated 11.05.2026 passed by the Juvenile Justice Board, Bulandshahr in Criminal Misc. Case No. 107 of 2023 arising out of Case Crime No. 483 of 2016, under Sections 419, 420, 467, 468, 471 and 120-B IPC, Police Station Khurja Nagar, District Bulandshahr, whereby the revisionist's application seeking trial before the Juvenile Justice Board was rejected, directing the transmission of record for trial before the Children Court.

4. Learned Senior Advocate appearing for the revisionist submitted that the present FIR was lodged on 30.06.2016 at 21:35 hours at Police

Station- Khurja Nagar, District- Bulandshahr against unknown person by Haji Rafeeq, the owner of Altamash Pvt. Ltd., with regard to fraud and cheating of Rs. 40 lakhs committed against him. After investigation, charge-sheet was submitted against multiple accused including the present revisionist under Sections 419, 420, 467, 468, 471 and 120-B IPC. Subsequently an application was moved on behalf of the revisionist claiming him juvenile at the time of the alleged incident. Vide order dated 10.05.2022, the concerned Juvenile Justice Board (hereinafter referred to as "the Board")declared the revisionist to be a juvenile assessing his age at the time of the commission of the alleged offence to be above 16 years but below 18 years (specifically 16 years, 9 months, and 7 days) and opined that since the alleged offence falls under the category of heinous offence, therefore, a preliminary assessment under Section 15 of the Juvenile Justice Act, 2015 (hereinafter referred to as "the Act") is required to be conducted. Consequently, a preliminary assessment under Section 15 of the Act was conducted and on the basis of preliminary assessment, vide order dated 18.05.2022 the Board formed an opinion that the child in conflict with law ought to be tried by the competent Court as an adult, thereby transferred the record under Section 18(3) of the Act to the concerned Court. Thereafter, the mother of the juvenile (child in conflict with law) moved an application dated 26.08.2022 before the court of Additional Chief Judicial Magistrate, Khurja, Bulandshahar with a prayer that the case record pertaining to the juvenile (present revisionist) be separated and transmitted to the competent Court, however, the A.C.J.M., Khurja vide order dated 03.02.2023 rejected the said application observing that the Board transferred the record to the said court for trial. The revisionist approached this Court through Application U/s 482 Cr.P.C No. 6596 of 2023 to quash the order dated 03.02.2023 passed by learned A.C.J.M., Khurja and this Court allowed the application and transferred the case/trial before the Children's Court and directed the learned A.C.J.M. concerned to send the case record to the Board/Children's Court having jurisdiction to try the case. In compliance of the order of this Court, the A.C.J.M., Bulandshahr transmitted the record to the Board. Thereafter, the Board vide order dated 20.07.2023 held that the offence in question did not fall within the category of heinous offence but rather within the category of serious offence; consequently, the J.J. Board,

Bulandshahar had the jurisdiction to conduct the trial/inquiry in the matter. Accordingly, it was fixed before J.J. Board, Bulandhshahar but vide order dated 11.05.2026, the Board rejected the application and observed that the order dated 18.05.2022 passed by the Board directing trial as an adult remained valid, binding and beyond its review powers. The appeal filed thereagainst was also dismissed by the Children's Court vide order dated 16.07.2026. Hence this revision.

5. Learned Senior counsel further submitted that both the Courts below have committed grave error of law by failing to appreciate the legal framework laid down by the Hon'ble Supreme Court in ***Shilpa Mittal v. State (NCT of Delhi), (2020) 2 SCC 787***. It was vehemently contended that Section 467 IPC, which carries punishment extending upto imprisonment for life or imprisonment for a term which may be extended to ten years, does not prescribe a "minimum" sentence of seven years imprisonment; consequently, as per the principles in case of ***Shilpa Mittal (supra)***, the offence committed under Section 467 IPC falls strictly within the classification of "serious offences" rather than "heinous offences" under the Juvenile Justice Act, 2015.

6. Learned Senior counsel next submitted that preliminary assessment under Section 15 of the Act and transfer of case/trial under Section 18(3) of the Act apply exclusively to "heinous offences" and as such, treating the revisionist as an adult to try before the Children's Court is wholly illegal and devoid of jurisdiction.

7. Per contra, learned AGA appearing for the State and the learned counsel for the O.P. No. 2 supported the impugned orders. They submitted that the Juvenile Justice Board had already conducted a preliminary assessment under Section 15 of the Act and transferred the case to the Children's Court under Section 18(3) vide order dated 18.05.2022. They further argued that since the order dated 18.05.2022 was never challenged or set aside by any higher Court, it attained finality.

8. Learned AGA further submitted that under the law, criminal Courts including the J.J. Board have no power to review or recall their own orders. Therefore, the Board could not have reconsidered its earlier

transfer order dated 18.05.2022 and the Children's Court rightly maintained the jurisdiction over the case.

9. I have heard the learned counsel for the parties and perused the materials available on record.

10. The fundamental issues that arises for consideration before this Court are:-

> i- Whether an offence punishable under Section 467 of the Indian Penal Code, 1860, which prescribes a punishment of imprisonment for life or imprisonment of either description for a term which may extend to ten years and fine, but does not prescribe a minimum period of imprisonment of seven years, can be categorized as a 'heinous offence' within the ambit of Section 2(33) of the Juvenile Justice (Care and Protection of Children) Act, 2015.
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> ii- Whether the Juvenile Justice Board can oust its own jurisdiction and transfer the matter to the Children's Court merely on the premise that it lacks the power to review or recall its own order, ignoring the mandatory statutory framework and threshold criteria governing transfer of proceedings under the Juvenile Justice (Care and Protection of Children) Act, 2015.

11. In addressing the first issue, it is apposite to note that the Juvenile Justice (Care and Protection of Children) Act, 2015, creates a tripartite statutory division of offences into petty, serious, and heinous offences, based upon the quantum of punishment.

> 11.1. Under Section 2(45) of the Act, **"petty offences"** are defined as follows:
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> > Section 2(45):"petty offences" include the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to three

years;

11.2. Under Section 2(54) of the Act, **"serious offences"** are defined as follows:

> Section 2(54):"serious offences" include the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment between three to seven years;

11.3. On the other hand, Section 2(33) of the Act defines **"heinous offences"** in the following terms:

> Section 2(33):"heinous offences" include the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;

12. A bare reading of Section 2(33) of the Act of 2015 makes it clear that for an offence to be termed as "heinous", the statute must prescribe a mandatory minimum sentence of at least seven years imprisonment. However, an ambiguity arose regarding a category of offences under the Indian Penal Code such as Section 467 IPC, where the maximum punishment may extend to ten years or life imprisonment, but no minimum sentence is provided by law. This issue was settled by the Hon'ble Supreme Court in case of ***Shilpa Mittal (supra)***. The Apex Court held that offences, where the maximum sentence is more than seven years or life imprisonment but no minimum sentence or a minimum sentence of less than seven years is prescribed, cannot be treated as "heinous offences" under Section 2(33) of the Act. The Court held that until the Parliament amends the law, such offences must be categorized and treated as "serious offences" under Section 2(54) of the Act of 2015. Same is quoted below –

> *36. In view of the above discussion we dispose of the appeal by answering the question set out in the first part of the judgment*

> *in the negative and hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be an heinous offence. However, in view of what we have held above, the Act does not deal with the 4th category of offences viz. offence where the maximum sentence is more than 7 years' imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as "serious offences" within the meaning of the Act and dealt with accordingly till Parliament takes the call on the matter.*

13. In case at hand, the revisionist is charged under Section 467 IPC, which carries a punishment of imprisonment for life or imprisonment up to ten years along with a fine. Applying the above settled position of law to the present case, since Section 467 IPC does not prescribe any minimum sentence of imprisonment, it does not fall within the definition of a "heinous offence" under Section 2(33). Instead, it falls under the category of a "serious offence" under Section 2(54) of the Act.

14. Accordingly, the First Issue is answered in the negative. The offence under Section 467 IPC charged against the revisionist cannot be categorized as "heinous offence" under Section 2(33) of the Act of 2015.

15. Adverting to the second issue, it is well settled law that the Act of 2015 anchors full statutory power in the Juvenile Justice Board to adjudicate matters concerning a juvenile in conflict with law. Before determining the validity of the transfer orders passed by the Juvenile Justice Board and the Children's Court, it is necessary to examine the doctrine of jurisdiction. In legal parlance, jurisdiction refers to the authority or power of a court to hear and decide a case. It is broadly categorized into three heads:

(i) **Pecuniary Jurisdiction**: The financial limits within which a court can adjudicate matters.

(ii) **Territorial Jurisdiction**: The legal boundary or geographical limit within which a court exercises its authority.

(iii) **Subject-Matter Jurisdiction**: The statutory power

conferred upon a court to hear and decide cases of a particular nature or class.

16. It is a cardinal principle of law that subject-matter jurisdiction strikes at the very authority of the court. A defect of inherent or subject-matter jurisdiction cannot be cured by consent or procedural waiver. The law in this regard is well settled by the Hon'ble Supreme Court in ***Kiran Singh v. Chaman Paswan, AIR 1954 SC 340***, wherein it was held that a decree or order passed by a court without inherent jurisdiction is a nullity and *coram non judice* (not before a judge). This principle was further reaffirmed in ***Sushil Kumar Mehta v. Gobind Ram Bohra, (1990) 1 SCC 193*** and ***Harshad Chimanlal Modi v. DLF Universal Ltd., (2005) 7 SCC 791***, wherein the Apex Court reiterated that neither consent nor failure to raise an objection can confer jurisdiction on a court or tribunal, if it lacks statutory competence over the subject matter.

17. Further, the Hon'ble Supreme Court in the case of ***Vikram Bakshi v. R.P. Khosla, 2025 SCC OnLine SC 1783***, has stated that criminal courts are generally barred under Section 362 Cr.P.C. from reviewing or altering their final orders, save for clerical errors or limited instances of "procedural review" (such as recall due to lack of inherent jurisdiction, fraud, mistake of court, or non-service/death of a party, provided such grounds were not available during the original proceedings), observing as under:

> *31. This Court, however, in exceptional cases, has carved out limited scope for exercise of review power by criminal courts. In Grindlays Bank Ltd. (supra), it was observed that review can be distinguished between "procedural review" and "substantive review". A "procedural review" is inherent or implied in a court to set aside a palpably erroneous order passed under misapprehension by it, however, a "substantive review" is when error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense, this Court, held that no review lies on merits unless specifically provided under a statute.*
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> *32. This distinction has been further clarified in Budhia Swain v. Gopinath Deb6, wherein this Court has laid down certain grounds on which a criminal court can review or recall its judgment or order i.e.*

when the proceedings before it itself suffers from an inherent lack of jurisdiction or, a fraud is played upon court to obtain the order or, a mistake of court causing prejudice to party or the order was in ignorance of non-serving of necessary party or party had died and estate was not represented. It was further clarified that these exceptions were subjected to the limitation that such grounds cannot be raised to recall or review if they were available during the original action and was not availed.

33. In Ganesh Patel (supra) this Court held that application for recall seeking "procedural review" and not "substantive review" to which Section 362 of CrPC be attracted is permissible. This Court upheld the order of the High Court wherein it recalled the earlier order passed in the absence of the Respondent and based on false information.

34. A careful consideration of the statutory provisions and the aforesaid decisions of this Court clarify the now-well-settled position of jurisprudence of Section 362 of CrPC which when summarize would be that the criminal courts, as envisaged under the CrPC, are barred from altering or review their own judgments except for the exceptions which are explicitly provided by the statute, namely, correction of a clerical or an arithmetical error that might have been committed or the said power is provided under any other law for the time being in force. As the courts become functus officio the very moment a judgment or an order is signed, the bar of Section 362 CrPC becomes applicable, this, despite the powers provided under Section 482 CrPC which, this veil cannot allow the courts to step beyond or circumvent an explicit bar. It also stands clarified that it is only in situations wherein an application for recall of an order or judgment seeking a "procedural review" that the bar would not apply and not a substantive review" where the bar as contained in Section "362 CrPC is attracted. Numerous decisions of this Court have also elaborated that the bar under said provision is to be applied stricto sensu.

34A. Having said that, the following exceptional circumstances may be identified, wherein a criminal court is empowered to alter or review its own judgment or a final order under Section 362 CrPC:

> *a. Such power is expressly conferred upon court by CrPC or any other law for the time being in force or;*

b. The court passing such a judgment or order lacked inherent jurisdiction to do so or;

c. A fraud or collusion is being played on court to obtain such judgment or order or;

d. A mistake on the part of court caused prejudice to a party or;

e. Fact relating to non-serving of necessary party or death leading to estate being non-represented, not brought to notice of court while passing such judgment or order.

It needs to be reiterated that all these exceptions are only exercisable for seeking a recall or review of an order or judgment, if a ground that is raised was not available or existent at the time of original proceedings before the Court. Mere fact that the said ground, although available, was not raised or pressed during the concerned proceedings, does not provide for an exemption to the parties to assert it as a ground. Moreover, the said power cannot be invoked as a means to circumvent the finality of the judicial process or mistakes and/or errors in the decision which are attributable to a conscious omission by the parties.

35. Before we delve into the facts of the instant case in an attempt to sieve out the correct jurisprudence from the gamut of the arguments raised by the parties before us, we find it appropriate to first consider the maintainability of the Review Petition No. 579 of 2020 under Order XLVII of the Civil Procedure Code, 1908 preferred by the Khosla Group before the High Court. The Khosla Group filed the said review under the provisions of CPC 1908 seeking recall of Order dated 13.08.2020 passed in Criminal Miscellaneous (Co.) No. 4 of 2019 which was filed under section 340 of the CrPC.

36. The scheme of CrPC as enshrined in its long title defines it is an Act "to consolidate and amend the law relating to Criminal Procedure". Further, Section 4 of CrPC provides for scope of the CrPC which is reproduced herein:

"4. Trial of offences under the Penal Code, 1860 and other

laws.

(1) All offences under the Penal Code, 1860 (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences."

The provisions of Sub-section (1) of Section 4 of CrPC expressly mandates an investigation, inquiry or trial of offences under Penal Code, 1860 of 1860 to be conducted strictly as per the procedure provided in the provisions of the CrPC. The definition of "inquiry" as stipulated in Section 2 (g) of CrPC means every inquiry, other than a trial, conducted under the CrPC by a Magistrate or Court.

18. In view of the above, this Court finds that although, there is no specific provision conferring upon the Court the power to review its own order but there is limited power of review as the law laid down by the Hon’ble Supreme Court. Such power is confined to cases involving an inherent lack of jurisdiction or applications seeking the recall of an order or judgment on procedural grounds, commonly referred to as a procedural review, as distinguished from a substantive review on merits. In such circumstances, the bar imposed by Section 362 Cr.P.C., would not apply to a genuine application for procedural recall; however, the statutory bar would continue to operate against a substantive review of the order or judgment.

19. Applying these principles to the facts at hand, this Court finds that under Section 8(1) read with Section 9(2) of the Act of 2015, the Juvenile Justice Board possesses exclusive original jurisdiction to conduct inquiries into all petty and serious offences. The relevant statutory provisions read as under:

> **Section 8(1)** : Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.
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> **Section 9(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 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 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.

20. The Children's Court derives jurisdiction to try a juvenile as an adult only upon a valid, lawful transfer order passed under Section 18(3) following a preliminary assessment under Section 15 for a "heinous offence". The statutory framework governing this transfer provides as follows:

> **Section 15(1)** : In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance

with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation- For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

Section 18(3) : Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

21. In the present case, since the offence under Section 467 IPC is a "serious offence", the Juvenile Justice Board had no statutory authority to invoke Section 15 or pass a transfer order under Section 18(3). The Board erred in holding that it could not recall its order and that the Children's Court must try the matter. Statutory jurisdiction can neither be created nor abdicated on the pretext of procedural constraints or an inability to recall an order. An order passed by a court or board lacking subject-matter jurisdiction is void ab initio.

22. Furthermore, the Children's Court erred in affirming its jurisdiction over a non-heinous offence. When a case is received by the Children's Court following a preliminary assessment, Section 19(1) of the Act of 2015 imposes a mandatory statutory duty upon it to independently determine whether there is a need to try the child as an adult. The provision states:

Section 19(1) : After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—

(i) there is a need for trial of the child as an adult...

> (ii) there is no need for trial of the child as an adult, then the Children's Court may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

23. Under Section 19(1)(ii), if the Children's Court comes to the conclusion that there is no need for a trial as an adult which includes cases where the offence itself is non-heinous it is required to step into the shoes of the Board, conduct the inquiry itself, and pass appropriate orders under Section 18 of the Act.

24. Alternatively, where the transfer order passed by the Board is fundamentally without jurisdiction, the Children's Court lacks inherent original subject-matter jurisdiction over serious offences. In such circumstances, it ought to have exercised its statutory powers under Section 9(2) of the Act of 2015 read with Section 228(1)(a) of the Code of Criminal Procedure, 1973(Section 251(1)(a) of the Bharatiya Nagarik Suraksha Sanhita, 2023) to decline jurisdiction and return/forward the file to the competent Juvenile Justice Board.

25. In view of the findings recorded above, the criminal revision is **allowed**.

26. The impugned order dated 11.05.2026 passed by the Juvenile Justice Board transferring the case to the Children's Court, as well as the subsequent impugned order dated 16.07.2026 passed by the Children's Court affirming its jurisdiction, are hereby quashed and set aside.

27. The matter is remanded back to the Juvenile Justice Board, Bulandshahar having jurisdiction, under Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

28. The Juvenile Justice Board is directed to register the matter on its own vector and proceed with the inquiry strictly in accordance with the procedure prescribed for "serious offences" under Section 14 read with Section 18(1) of the Act, without subjecting the revisionist to any adult trial.

29. The record of the case shall be transmitted forthwith from the Children's Court to the concerned Juvenile Justice Board.

30. Before parting with the order, I would like to express my appreciation to my Research Associate **Ms. Divya Pandey**, for her thorough research and assistance to the Court in the instant case.

(Jai Prakash Tiwari,J.)

October 27, 2026
KK Patel

Digitally signed by :-
KRISHN KANT PATEL
High Court of Judicature at Allahabad