HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Revision Petition No.1371/2025

A [redacted] (Accused At Present Detained In Observation Home Ajmer)

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Rameshwar Lal Sahu [redacted]

----Respondents

Connected With

S.B. Criminal Revision Petition No.1217/2025

K [redacted]

----Petitioner

Versus

1. State Of Rajasthan, Through P.p
2. Rameshwarlal Sahu [redacted]

----Respondents

For Petitioner(s)	:	Mr. Dushyant Singh Naruka Mr. Vinay Pal Yadav
For Respondent(s)	:	Mr. Amit Punia, PP
For Complainant(s)	:	Mr. Fateh Ram Meena

JUSTICE ANOOP KUMAR DHAND
Judgment

27/10/2025

Reportable

For convenience of exposition, this judgment is divided in the following parts:-

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1. Since common question of law and facts are involved in both the revision petitions and they arise out of a common order dated 16.06.2025 passed by the Special Judge, POCSO Act, 2012 and Protection of Child Rights Commission Act, 2005 Cases Court No.2, Ajmer in Criminal Appeal Case No.7/2025, hence, with the consent of counsel for the parties, both the revision petitions are taken up together for final disposal and are being decided by this common order.

Contentions of the petitioners:-

2. Learned counsel for the petitioners submits that criminal cases were registered against the petitioners for the offences punishable under Sections 376/511, 354-A, 354-D, 384, 306 and 120-B IPC and under Sections 7/8 & 11/12 of the POCSO Act and under Section 67-A of the Information and Technology Act, 2000 (for short "the IT Act"). Learned counsel submits that after investigation, charge-sheet was submitted against the petitioners, who were juvenile at the time of commission of alleged offence. Learned counsel submits that the charge-sheet was submitted before the Juvenile Justice Board, Ajmer, who took a decision vide judgment dated 26.03.2025 to conduct the trial, against the petitioners, instead of sending them for trial before the Children's Court as accused.

3. Learned counsel for the petitioners further submits that aggrieved by the aforesaid order dated 26.03.2025, an appeal was preferred by the respondent-complainant before the Appellate Court, i.e., Special Judge, POCSO Act, 2012 and the Commission for Protection of Child Rights Act, 2005 No.2 Cases, Ajmer (for short "the Appellate Court") which came to be allowed vide

judgment dated 16.06.2025 while quashing the impugned order dated 26.03.2025 passed by the Juvenile Justice Board and remitting the case of the petitioners to the Children's Court for conducting fresh trial as accused. Learned counsel submits that the above stated offence does not fall within the purview of "heinous offence", as defined under Section 2(33) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "the Act of 2015"). Learned counsel submits that as per the definition clause, i.e., Section 2(33) of the Act of 2015, "heinous offence" means an offence where the punishment is minimum 7 years, but in the instant case for none of the alleged offences, the minimum punishment/sentence has been prescribed as 7 years, hence, under these circumstances, the order impugned passed by the Appellate Court is not sustainable. Learned counsel submits that a similar issue came up before the Hon'ble Apex Court in the case of **Shilpa Mittal Vs. State of NCT of Delhi and Another** reported in **AIR 2020 SC 405**. Learned counsel submits that in view of the submissions made hereinabove, the impugned judgment passed by the Appellate Court be quashed and set-aside and the matter be remitted to the Juvenile Justice Board for conducting their trial, as per the provisions contained under the Act of 2015.

Contentions of the Public Prosecutor:-

4. *Per contra*, learned Public Prosecutor as well as counsel appearing on behalf of the complainant opposed the arguments raised by learned counsel for the petitioners and submitted that for the offence punishable under Section 376 IPC, the minimum sentence is 07 years. Learned counsel submits that the petitioners have made an attempt to commit rape upon the prosecutrix,

hence, the petitioners are liable to be prosecuted for the aforesaid offence where the minimum sentence is 07 years. Learned counsel submits that the Appellate Court has not committed any error in passing the order impugned which requires any interference by this Court. Hence, both the revision petitions are liable to be rejected.

5. In support of their contentions, both the learned Public Prosecutor and counsel for the complainant have placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Barun Chandra Thakur Vs. Master Bholu & Anr.** reported in **2023 (12) SCC 401** and the judgment passed by the Allahabad High Court in the case of **XXX Vs. State of U.P. and Anr.** while deciding **Criminal Revision No.3690/2025** on 10.10.2025. Learned counsel submits that in view of the submissions made hereinabove, both the revision petitions lack merits and are liable to be rejected.

Discussions, Analysis and Findings:-

6. Heard and considered the submissions made at the Bar and perused the material available on the record.

7. The legal issue involved in these revision petitions is 'whether the alleged offence, for which the petitioners are facing the inquiry, can be treated as "heinous offence", within the purview of Section 2(33) of the Act of 2015?'

8. The Act of 2015 came into force with effect from January 15, 2016 as the Parliament intended to tackle child offenders committing "heinous offences" in the age group of 16-18 years by legislating new laws. It repeals Juvenile Justice (Care and Protection of Children) Act, 2000.

9. Para 4 of the statement of object and reasons of the Act of 2015 reads as under:-

"Further, increasing cases of crimes committed by the children in the age group of 16-18 years in the recent years makes it evident that the current provisions and system under the Juvenile Justice (Care and Protection of Children) Act, 2000 are illequipped to tackle the matter. The data collected by the National Crime Records Bureau (NCRB) establishes that crimes by children of age group of 16-18 years have increased specially in certain categories of heinous offences".

10. The Act of 2015 classifies offences in three categories. They are "petty offences", "serious offences" and "heinous offences".

11. Clause (45) of Section 2 of the Act of 2015 provides that the "petty offences" include offences for which the maximum punishment under the IPC or any other law for the time being in force is imprisonment up to 3 years.

12. Clause (54) of Section 2 of the Act of 2015 provides that the "serious offences" include offences for which the maximum punishment under the IPC or any other law for the time being in force is imprisonment between 3 to 7 years.

13. Clause (33) of Section 2 of the Act of 2015 provides that the "heinous offences" include offences for which the minimum punishment under the IPC or any other law for the time being in force is imprisonment for 7 years or more.

14. Section 14 of the Act of 2015 provides for enquiry by the Board regarding child in conflict with law. Clause (1) of Section 14 provides that where a child alleged to be in conflict with law is produced before the Board, the Board shall hold an inquiry in

accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of the Act.

15. Clause (2) of Section 14 of the Act of 2015 provides that the inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

16. Clause (3) of Section 14 of the Act of 2015 provides that a preliminary assessment in case of „heinous offences“ under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

17. Clause (4) of Section 14 of the Act of 2015 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. The Proviso to this Section provides that for “serious“ or “heinous offences“, in case the Board requires further extension of time for completion of inquiry, 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.

18. Under Section 15 of the Act of 2015, special provisions have been made to tackle child offenders committing “heinous offences“ in the age group of 16-18 years. The Board has been given option

to transfer cases of "heinous offences" to the Children"s Court after conducting preliminary assessment.

19. Section 15 of the Act of 2015 reads as under:-

"15. Preliminary assessment into heinous offences by Board. 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 subsection (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.

2. Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973: Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14."

20. Clause (3) of Section 18 of the Act of 2015 provides that where the Board after preliminary assessment under Section 15 of the Act 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. Further, in all such cases, in which the Board can refer a child to the Children's Court, after preliminary assessment under Section 15 of the Act, the Children's Court is required to decide whether the child should be subjected to a judicial system as an adult under Section 19 of the Act of 2015.

22. Section 19 (1) (ii) of the Act of 2015 provides that the Children's Court should take a re-look and determine whether the child has to be tried as an adult or not.

23. From a reading of the aforestated provisions of the Act of 2015, it would be evident that under Section 15 of the Act in case of "heinous offences" alleged to have been committed by a child, who has completed or is above the age of 16 years, the Board is required to conduct a preliminary assessment with regard to his mental and physical assessment, ability to understand the consequential circumstances in which he allegedly committed the offences and, thereafter, it may pass an order that there is a need for trial of the said child, as an adult and transfer his case to the Children's Court having jurisdiction to try such offences. Such a preliminary assessment cannot be made by the Board into offences which are not covered within the definition of "heinous offences".

24. Under the Act of 2015, offences have been classified into three categories. They are "petty offences", "serious offences" and "heinous offences". As seen above, "petty offences" include the offences for which maximum punishment is imprisonment upto 3

years, "serious offences" include offences for which punishment is imprisonment between 03 years and 07 years and "heinous offences" are those for which the minimum punishment is imprisonment for 07 years or more. Hence, the category between "serious offences" and "heinous offences" is missing. The Act of 2015 has not classified or defined the offences for which punishment under any statute is imprisonment for more than 07 years, but no mandatory minimum punishment of imprisonment for 07 years or more has been prescribed. However, the same would not justify inclusion of all offences under which the offender child can be ordered to undergo sentence of imprisonment for more than 07 years in the category of "heinous offences".

25. The legislature has consciously classified the offences under different categories in order to achieve the object of the Act. The children, who have committed "petty offences", "serious offences" and "heinous offences" are not treated alike under the provisions of the Act of 2015.

26. The term "heinous offences", as defined under Section 2(33) of the Act of 2015, cannot be interpreted in a way, which may be less beneficial for the child, who is alleged to have committed an offence falling between the category of "serious offences" and "heinous offences", as the Act of 2015 treats all the children below 18 years equally except in the age group of 16-18 years, who has committed "heinous offences".

27. The children under the age group of 16-18 years may have different mental capabilities, as development of brain takes place at different stages in different individuals. The gravity or extremity

of the crime may also differ, thus, indicating different level of maturity.

28. The Act of 2015 provides under Section 18(3) that if after 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, if the juvenile is found to have committed a "heinous offence" and is above the age group of 16 years then the Board may transfer the case to a Children's Court.

29. Now the question which emerges for consideration of this Court is "whether any offence would be treated as 'heinous offence' where the minimum sentence of seven years imprisonment is not prescribed?"

30. Before proceeding to decide these revision petitions on merits, it would be gainful to quote the relevant provisions, for which the petitioners are facing trial, i.e., Sections 354-A, 354-D, 306, 384, 376/511 and 120-B IPC and under Sections 7/8 & 11/12 of the POCSO Act and under Section 67-A of the IT Act, as follows:-

354A. Sexual harassment and punishment for sexual harassment.—

(1) A man committing any of the following acts—

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

354D. Stalking.—(1) Any man who—

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

384. Punishment for extortion.—Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

376. Punishment for rape.—(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which 3 [shall not be less than ten

years, but which may extend to imprisonment for life, and shall also be liable to fine].

(2) Whoever,—

(a) being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or 1*****

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

(a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this sub-section shall be paid to the victim.

511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with [imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with [imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.

120B. Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an

offence punishable with death, 1 [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

31. Sections 7, 8, 11 & 12 of the Protection Of Children From Sexual Offences Act, 2012 are reproduced as under:-

7. Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

8. Punishment for sexual assault.—Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

11. Sexual harassment.—A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor. Explanation.—Any question which involves "sexual intent" shall be a question of fact.

12. Punishment for sexual harassment.—Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

32. Section 67A of the Information Technology Act, 2000 is reproduced as under:-

67A. Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.–Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

33. Perusal of the aforesaid sections clearly indicates that in none of the above offences, the minimum sentence has been prescribed as 7 years. The sentence can be awarded to an accused, which may extend to 7 years or more, but in the instant case, in none of the offences, the minimum sentence is 7 years.

34. For ready reference, the provisions contained under Section 2(33) of the Act of 2015 is reproduced as under:-

"2. Definition:- In this Act, unless the context otherwise requires:-
(33)heinous offence includes 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."

35. Perusal of the aforesaid provision indicates that "heinous offence" means an offence for which the minimum punishment/sentence under the Indian Penal Code or any law for the time being in force is prescribed as 7 years or more.

36. The controversy involved in these revision petitions is no more *res integra,* as the same has been set at rest by the Hon'ble Apex Court in the case of **Shilpa Mittal** (supra), wherein a clear and specific question of law was formulated in Para 2, which reads as under:-

> "2. "Whether an offence prescribing a maximum sentence of more than 7 years imprisonment but not providing any minimum sentence, or providing a minimum sentence of less than 7 years, can be considered to be a *'heinous offence'* within the meaning of Section 2(33) of The Juvenile Justice (Care and Protection of Children) Act, 2015?" is the extremely important and interesting issue which arises in this case."

37. The aforesaid question has been answered by the Hon'ble Apex Court in the case of **Shilpa Mittal** (supra) in Paras 20 to 38, which reads as under:-

> **"20.** It is contended by Mr. Siddharth Luthra, that if the definitions of offences, i.e., petty, serious and heinous are read literally then there is one category of offences which is not covered by the Act of 2015. He submits that petty offences are those offences where the punishment is up to 3 years, serious offences are those where the maximum punishment is of 7 years, and as far as heinous offences are concerned, if the definition is read literally, then these are only those offences which provide a minimum sentence of 7 years and above. He submits that this leaves out a

host of offences falling within the 4th category. The 4th category of offences are those where the minimum sentence is less than 7 years, or there is no minimum sentence prescribed but the maximum sentence is more than 7 years. He has submitted a chart of such offences. It is not necessary to set out the chart in-extenso but we may highlight a few of these offences. Some of these offences relate to abetment but they also include offences such as those Under Section 121A, 122 of Indian Penal Code, offences relating to counterfeiting of currency, homicide not amounting to murder (as in the present case), abetment to suicide of child or innocent person and many others. He submits that it could not have been the intention of the Legislature to leave out these offences and they should have been in some category at least. The submission of Mr. Luthra is that if from the definition of *'heinous offences'*, the word 'minimum' is removed then all offences other than petty and serious would fall under the heading of 'heinous offences'. He submits that if the 4th category of offences is left out it would result in an absurdity which could not have been the intention of the Legislature. He further submits that applying the doctrine of surplusage, if the word 'minimum' is removed then everything will fall into place.

21. On the other hand, Mr. Mukul Rohatgi, learned senior Counsel for the juvenile 'X' submitted that this Court cannot rewrite the law. He further submits that the intention of the Legislature cannot be deciphered by this Court only on the ground that a category of offences have been left out. If there is a lacuna in the scheme of the Act it is for the Legislature to correct the lacuna and this Court cannot step in.

22. It is true that if we accept the submission of Mr. Luthra, then things will fall into place. There would be only 3 categories of offences and all offences punishable with imprisonment of 7 years and above would be classified as

'heinous offence'. However, we are not solving a jigsaw puzzle where we have to put all the pieces in place. We are interpreting a statute which must be interpreted as per its language and intent.

23. The Golden Rule of Interpretation was laid down by the House of Lords in ***Grey*** v. ***Pearson*** (1857) 6 HLC 61, as follows:

"**...** I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther.

24. The Privy Council in ***Salmon*** v. ***Duncombe and Ors.*** (1886) 11 AC 627 stated the principle in the following terms:

"It is, however, a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftsman's unskillfulness or ignorance of law. It may be necessary for a Court of Justice to come to such a conclusion, but their Lordships hold that nothing can justify it except necessity or the absolute intractability of the language used....."

25. In Justice G.P. Singh's treatise, "Principles of Statutory Interpretation'1 the doctrine of surplusage as a limit on the traditional Rule of strict construction has been referred to. The main judgment on this point is the decision of the House of Lords in ***McMonagle*** **v.** ***Westminster City Council*** MANU/UKHL/0029/1990 : [1990] 2 A.C. 716. In that case the Defendant's premises contained a machine which on insertion of a coin revealed two naked women in a manifestly immoral manner. The Defendant was charged

with using this premises as a sex establishment without any licence. His contention was that the Act (Local Government (Miscellaneous Provisions) Act, 1982) used the words 'which is not unlawful' and since he was conducting an unlawful activity he did not require a licence. It was in this context that the House of Lords held that the words 'which are not unlawful' should be treated as surplusage and as having been introduced by incompetent draftsmanship. In that case the intention of the Legislature was clear that no sex establishment could be set up without a licence. The words 'which is not unlawful' would render the entire provision nugatory. That does not happen in this case. What has happened in this case is that there is a 4th category of offences which is not dealt with under the Act. It cannot be said with certainty that the Legislature intended to include this 4th category of offences in the category of 'heinous offences'. Merely because removing the word 'minimum' would make the Act workable is not a sufficient ground to hold that the word 'minimum' is surplusage.

26. This Court in ***Vasant Ganpat Padave*** v. ***Anant Mahadev Sawant*** was dealing with the provisions of Section 32- F(1)(a) of the Maharashtra Tenancy and Agricultural Lands Act, 1948. It was an admitted case of the parties that this was a law for agrarian reforms. The provision in issue deals with the rights of the tenant to purchase the property where the landlord is a widow, minor or person with mental or physical disability. This Section essentially gave a right to the tenant to exercise his right of purchase within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy. The Section literally provided that the landlord shall send an intimation to the tenant of the fact that he has attained majority before the expiry of the period during which the landlord is entitled to terminate the tenancy Under Section 31. Though a widow or a disabled

person were not required to give notice for the tenant to exercise his right of purchase, in the case of a minor unless the minor on attaining majority issued such a notice, the tenant would not be able to exercise his right of purchase. Effectively the minor on attaining majority cold defeat the right of the tenant by not issuing the notice. It is in this context that this Court held that this would create such an anomaly that it would turn the entire scheme of agrarian reform on its head. Therefore, it held as follows:

> **"25.** ... This anomaly indeed turns the entire scheme of agrarian reform on its head. We have thus to see whether the language of Section 32-F can be added to or subtracted from, in order that the absurdity aforementioned and the discrimination between persons who are similarly situate be obviated."

After discussing various Rules of interpretation the Court held that instead of striking out the classification as a whole it would delete the words 'of the fact that he has attained majority'. We may refer to para 43 which is relevant:

> "**43.** Given the fact that the object of the 1956 Amendment, which is an agrarian reform legislation, and is to give the tiller of the soil statutory title to land which such tiller cultivates; and, given the fact that the literal interpretation of Section 32-F(1)(a) would be contrary to justice and reason and would lead to great hardship qua persons who are similarly circumstanced; as also to the absurdity of land going back to an absentee landlord when he has lost the right of personal cultivation, in the teeth of the object of the 1956 Amendment as mentioned hereinabove, we delete the words ".. of the fact that he has attained majority..". Without these words, therefore, the landlord belonging to all three categories has to send an intimation to the tenant, before the expiry of the period during which such landlord is entitled to terminate the tenancy Under Section 31."

27. Mr. Luthra, drew our attention to the speech of the Minister while introducing the Bill in relation to the Act of 2015. We need not repeat the speech in detail but reading of the same clearly indicates that the Minister while dealing with the issue of 'heinous offences' wherein the children could be tried as adults mainly made reference to the offences of murder, rape and terrorism. There are some other speeches that have been referred to by Mr. Luthra, but we are not referring to the same because the intention of the Legislature as a whole cannot be gauged from the speeches of individual members, some of whom supported the Bill and some of whom did not support the Bill. The main reliance could only be made on the objects and reasons and introduction of the Bill by the Minister which basically makes reference to offences like murder, rape, terrorism, where the minimum punishment is more than 7 years.

28. There can be no quarrel with the submission made by Mr. Siddharth Luthra that in a given circumstance, this Court can even add or subtract words from a statute. However, this can be done only when the intention of the Legislature is clear. We not only have to look at the principles of statutory interpretation but in the present case, the conundrum we face is that how do we decipher the intention of the Legislature. It is not necessary that the intention of the Legislature is the one what the judge feels it should be. If the intention of the Legislature is clear then the Court can get over the inartistic or clumsy wording of the statute. However, when the wording of the statute is clear but the intention of the Legislature is unclear, the Court cannot add or subtract words from the statute to give it a meaning which the Court feels would fit into the scheme of things.

29. There can be no manner of doubt that if the intention of the Legislature is absolutely clear from the objects and reasons of the Act then the Court can correct errors made by the person who drafted the legislation and may write down or omit/delete/add words to serve the purpose of the legislation and ensure that the legislation is given a meaning which was intended to by the Legislature. The issue is whether in the present case we can clearly hold what was the intention of the Legislature.

30. We must also while interpreting an Act see what is the purpose of the Act. The purpose of the Act of 2015 is to ensure that children who come in conflict with law are dealt with separately and not like adults. After the unfortunate incident of rape on December 16, 2012 in Delhi, where one juvenile was involved, there was a call from certain Sections of the society that juveniles indulging in such heinous crimes should not be dealt with like children. This incident has also been referred to by the Minister in her introduction. In these circumstances, to say that the intention of the Legislature was to include all offences having a punishment of more than 7 years in the category of 'heinous offences' would not, in our opinion be justified. When the language of the Section is clear and it prescribes a minimum sentence of 7 years imprisonment while dealing with heinous offences then we cannot wish away the word 'minimum'.

31. No doubt, as submitted by Mr. Luthra there appears to be a gross mistake committed by the framers of the legislation. The legislation does not take into consideration the 4th category of offences. How and in what manner a juvenile who commits such offences should be dealt with was something that the Legislature should have clearly spelt out in the Act. There is an unfortunate gap. We cannot fill the gap by

saying that these offences should be treated as heinous offences. Whereas on the one hand there are some offences in this category which may in general parlance be termed as heinous, there are many other offences which cannot be called as heinous offences. It is not for this Court to legislate. We may fill in the gaps but we cannot enact a legislation, especially when the Legislature itself has enacted one. We also have to keep in mind the fact that the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015 is that children should be protected. Treating children as adults is an exception to the rule. It is also a well settled principle of statutory interpretation that normally an exception has to be given a restricted meaning.

32. We may add that the High Courts of Bombay Saurabh Jalinder Nangre & Ors. Vs. State of Maharashtra, 2019(1) Crimes 253 (Bom.), Patna Criminal (SJ) No.1716/2018 titled Rajiv Kumar Vs. State of Bihar judgment dated 18.09.2018, and Punjab and Haryana CRR 1615 of 2018 titled Bijender Vs. State of Haryana & another, judgment dated 21st May, 2018, have taken a view that the category of 'heinous offences' cannot include offences falling within the 4th category. No contrary view has been brought to our notice. We see no reason to take a different view.

33. It was urged by Mr. Luthra that while defining 'heinous offences' the word 'includes' has been used which would mean that the definition is an inclusive definition and includes things not mentioned in the definition. We are not impressed with this argument since the definitions of 'petty offences' and 'serious offences' also use the word 'includes'. In fact the word 'includes' is a surplusage. The word 'includes' in the three definition clauses does not make any sense. There

is nothing else to be included. The definition is complete in itself.

34. From the scheme of Section 14, 15 and 19 referred to above it is clear that the Legislature felt that before the juvenile is tried as an adult a very detailed study must be done and the procedure laid down has to be followed. Even if a child commits a heinous crime, he is not automatically to be tried as an adult. This also clearly indicates that the meaning of the words 'heinous offence' cannot be expanded by removing the word 'minimum' from the definition.

35. Though we are of the view that the word 'minimum' cannot be treated as surplusage, yet we are duty bound to decide as to how the children who have committed an offence falling within the 4th category should be dealt with. We are conscious of the views expressed by us above that this Court cannot legislate. However, if we do not deal with this issue there would be no guidance to the Juvenile Justice Boards to deal with children who have committed such offences which definitely are serious, or may be more than serious offences, even if they are not heinous offences. Since two views are possible we would prefer to take a view which is in favour of children and, in our opinion, the Legislature should take the call in this matter, but till it does so, in exercise of powers conferred Under Article 142 of the Constitution, we direct that from the date when the Act of 2015 came into force, all children who have committed offences falling in the 4th category shall be dealt with in the same manner as children who have committed 'serious offences'.

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 the Parliament takes the call on the matter.

37. In passing we may note that in the impugned judgment the name of the Child in Conflict with Law, has been disclosed. This is not in accordance with the provisions of Section 74 of the Act of 2015, and various judgments of the courts. We direct the High Court to correct the judgment and remove the name of the Child in Conflict with Law.

38. We further direct that a copy of this judgment be sent to the Secretary Law, Ministry of Law and Justice, Government of India, Secretary, Ministry of Women and Child Development, Government of India and the Secretary, Home, Ministry of Home Affairs, and Registrar General, Delhi High Court, who shall ensure that the issue raised in this judgment is addressed by the Parliament as early as possible or by the Executive by issuing an Ordinance. Our directions shall continue to remain in force only till such action is taken."

38. In view of the above proposition of law, as laid down by the Hon'ble Apex Court in the case of **Shilpa Mittal** (supra), this Court finds no valid reason to take a different view, as in none of the alleged offences, the minimum sentence is prescribed as 07 years. There is no charge against the petitioners for the offence under Section 376 IPC, where the minimum sentence is 07 years. The only charge against the petitioners is "attempt to commit rape" and the same is punishable under Section 376/511 IPC, and

half of the minimum sentence of 07 years, i.e., three and a half years sentence is prescribed for attempt to commit rape. The judgments relied by the Public Prosecutor and counsel for the complainant in the case of **Barun Chandra Thakur** (supra) and **XXX Vs. State of U.P.** (supra) are not applicable in the instant case and the same are not related to the issue involved in these revision petitions.

Conclusions & Directions:-

39. In the considered opinion of this Court, none of the alleged offences fall within the purview of "heinous offence", as defined under Section 2(33) of the Act of 2015 because of the absence of minimum sentence of seven years or more, for the offences which are alleged to have been committed by the petitioners. Hence, the provision contained under Section 15 of the Act of 2015 are not attracted in this case. Hence, there is no reason or occasion to refer the case of the petitioners to the Children's Court for their trial as "Adult Accused".

40. In view of the discussions made hereinabove, the impugned judgment dated 16.06.2025 passed by the Special Judge, POCSO Cases, Court No.2, Ajmer is not sustainable in the eyes of law and the same is liable to be and is hereby quashed and set-aside. The matter is remitted to the Juvenile Justice Board for conducting inquiry against the petitioners, strictly in accordance with law, adhering to the provisions contained under the Act of 2015.

41. Accordingly, both the criminal revision petitions stand allowed. Stay applications and all pending applications (if any) stand disposed of.

(ANOOP KUMAR DHAND),J

Karan/29-30