Before M. M. Punchhi, J.

SURJIT SINGH,—*Petitioner.*

versus

THE STATE OF HARYANA and others,—*Respondents.*

Criminal Revision No. 1544 *of* 1982.

November 4, 1982.

.....Code of Criminal Procedure (II of 1974)—*Sections* 209, 401 *and* 482—*Haryana Children Act (XIV of* 1974)—*Sections* 2(*h*), 3, 4, 6 *and* 7—*Judicial Magistrate committing some accused to the Court of Sessions and delinking the case of the remaining two expressing an opinion that they were less than* 16 *years of age—These two directed to be tried by the Children Court—Order of the Magistrate assailed on the ground that the Magistrate had no jurisdiction to decide about the age of delinked accused—Opinion of the Magistrate as to the age of the accused—Whether tentative—Age of the accused—Whether to be determined by the Children Court.*

Held, that the order of the Judicial Magistrate delinking the two accused holding them to be of less than 16 years of age has to be read in the spirit of section 7(1) of the Haryana Children Act, 1974 and his opinion in regard to age was merely tentative meant to set the Act in motion. It is for the Children Court ultimately to record its final opinion under sub-section (3) of Section 7 of the Act that the persons concerned brought before him were children or not. If it is found that they are not children, the Children Court with its final opinion as to their age will send the matter back to the Judicial Magistrate having jurisdiction over the proceedings.

(Para 5).

Petition for revision under section 401 *and* 482 *Cr. P. C. of the order of the Court of Judicial Magistrate* 1*st Class, Karnal, dated* 24*th August,* 1982 *holding that the accused Balwinder Singh and accused Amarjit Singh are less than* 16 *years of age. They required to be tried by the children court. The prosecution is required to file separate challan. To come up* 4*th September,* 1982 *for filing separate challan.*

M. S. Sullar, Advocate, *for the Petitioner.*

Sudhir Sardana, Advocate, for A.G., Haryana,

JUDGMENT

Madan Mohan Punchhi, J. (Oral)

(1) This is a petition for revision of an order dated 24th August, 1982 passed by the Judicial Magistrate 1st Class, Karnal, whereby out of the five persons accused of offences under sections

307/452/148/149, Indian Penal Code, produced before him he committed three accused to the Court of Session and dealt with the remaining two accused in the following manner:—

> "As a result, I hold that the accused Balvinder Singh and accused Amarjit Singh are less than 16 years of age. They are required to be tried by the Children Court. The prosecution is required to file separate challan. To come up on 4th September, 1982 for filing separate challan.
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> Sd/- . . .,
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> Dated the 24th August, 1982
>
> Judicial Magistrate 1st Class,
> Karnal

(2) The petitioner is the complainant. He has approached this Court primarily on the ground that the Judicial Magistrate 1st Class could not record such finding holding the aforesaid two accused to be minors, as the Court was not empowered to do so within the provisions of the Haryana Children Act, 1974 (hereinafter referring to as the Act). A doubt has arisen in my mind whether any Children Court had been set up under section 4 of the Act. On query from the Director, Social Welfare Board, Haryana, at my askance, it has been intimated that Children Court has not yet been set up. Thus. it is obvious that the learned Magistrate has acted not as as Children Court itself but has rather referred the accused to a Court termed as "Children Court". It is on the this aspect of the case that the learned counsel for the petitioner is emphatic that when there is no Children Court, the question of sending of the two aforesaid accused to that Court did not airse. In the situation, it is vehemently contended that the Magistrate was bound under sectino 209 of the Code of Criminal Procedure to commit the accused to the Court of Session along with the other co-accused.

(3) It would be seen from the broad line of the Act that the State Government is empowered to constitute Child Welfare Boards under section 3, and Children's Court under section 4 of the Act. Sub-section (4) of section 6 of the Act provides:

> "Where no children's court has been constituted for any area, the powers conferred on it, by or under this Act, shall be exercised in that area by the judicial magistrate of the 1st class specially nominated by the Session Judge."

On the other hand, section 7 of the Act provides procedure to be followed by a Magistrate not empowered under the Act and *vice-versa*. It would be worthwhile to quote it here:—

> "7(1) When any magistrate not empowered to exercise the power of a Board or a children's court under this Act is of the opinion that a person brought before him otherwise than for the purpose of giving evidence, is a child, he shall record such opinion and forward the child and the record of the proceedings to the competent authority having jurisdiction over the proceedings.
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> (2) The competent authority to which the record of proceedings is forwarded under sub-section (1) shall hold the enquiry as if the child had originally been brought before it.
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> (3) When any children's court is of the opinion that a person brought before it is not a child, he shall record such opinion and forward the person and the record of the proceedings to the court having jurisdiction over the proceedings.
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> (4) The court to which the record of proceedings is forwarded under sub-section (3) shall hold the enquiry or trial, as the case may be, as if the person had originally been brought before it.

(4) "Competent Authority" under section 2(h) of the Act, in relation to delinquent children, is a Children's Court constituted under section 4 of the Act and where no Children's Court has been constituted, any Court empowered under sub-section (4) of section 6 of the Act to exercise the powers conferred on a Children's Court.

(5) Now, it is the conceded position at the Bar that, in accordance with the order of the learned Magistrate, the separate challan file has gone to the Court of the Chief Judicial Magistrate, Karnal, for, seemingly, he is the Judicial Magistrate of the 1st Class specially nominated for the purpose by the Sessions Judge of the Division, as envisaged under sub-section (4) of section 6 of the Act. And it goes without saying that the order sought to be revised, was passed by the Judicial Magistrate Ist Class, as envisaged under section 7(1) of the Act. Any observations made by the said learned

Magistrate in his order with regard to the age of the accused is merely an opinion and not a finding. Though it is true that the order of the Magistrate is somewhat loose in this context, yet, read in the spirit of section 7(1) of the Act, it has to be held that what he meant was that he was of the opinion that Balvinder Singh accused and Amarjit Singh accused were less than 16 years of age. That opinion being tentative, was sufficient to set the Act into motion. It is for the Children's Court ultimately to record its final opinon under sub-section (3) of section 7 of the Act that the persons concerned brought before him were not children. Thereupon, it is required to send the matter to the Court having jurisdiction over the proceedings. In other words, his final opinion, that the aforesaid two accused persons were not children, would have the effect of his sending the case back to the learned Magistrate for their being committed to the Court of Session. But, at the present stage, that final opinion being not there, there is no occasion to disturb the impugned order merely because it contains a tentative opinion of the Magistrate, on which count the petitioner is aggrieved.

(6) For the foregoing reasons, this petition fails, recording a note of a clarificatory nature.

N.K.S.

Before S. S. Sandhawalia, C.J. & D. S. Tewatia, J.

NACHHATTAR SINGH and others,—*Petitioners.*

versus

GURINDER SINGH and others,—*Respondents.*

Criminal Misc. No. 827-M of 1962.

November 12, 1982.

Code of Criminal Procedure (II of 1974)—Sections 145(1) and 146(1)—Dispute regarding immovable property—Proceedings initiated under section 145—Magistrate recording his satisfaction that the dispute is likely to cause breach of peace—Further finding that the case is one of emergency under section 146(1)—Both these findings—Whether could be recorded in the same order.

Held, that sections 145 and 146 of the Code of Criminal Procedure, 1973 constitute a single scheme and are to be construed and applied harmoniously. Once the Magistrate is satisfied that the dispute likely to cause a breach of peace exists and there is adequate