the Director of Control Food Laboratory dated the 24th of October, 1978, to this effect. No other argument having been raised, the conviction has to be affirmed.

17. Inevitably prayer for reduction in the sentence was made on his behalf. However, taking into consideration that the milk fat was so materially adulterated as to be 95 per cent deficient of the required standard we are unable to find any undue severity in the sentence imposed by the appellate court in its discretion. The same is, therefore, also upheld. The revision petition is dismissed.

S. S. Dewan, J.—I agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., K. S. Tiwana and S. S. Dewan, JJ.

BOHAR SINGH,—*Petitioner*

versus

STATE OF PUNJAB and another—*Respondents*

Criminal Writ Petition No. 45 of 1980.

May 5, 1981.

Constitution of India 1950—Articles 21 and 226—East Punjab Children Act (XXXIX of 1949)—Section 27—Accused convicted and sentenced to life imprisonment by a Court of Sessions—High Court dismissing the appeal and its judgment becoming final—Convict thereafter filing a writ of habeas corpus challenging his detention on the ground that he was a 'child' on the date of commission of the crime and his detention was thus in violation of section 27 of the Act—Such writ petition—Whether maintainable.

Held, that if a court of competent jurisdiction makes an order in a proceeding before it and the order is *inter parties*, its validity cannot be challenged by invoking the writ jurisdiction even though the said order may affect the aggrieved party's fundamental rights. Since no writ would lie against the judicial process established by

law, then plainly the judgments and orders of the High Court and the Court of Session would be totally out of the purview of the writ jurisdiction and amenable only to the processes of appeal, revision or special leave. Again, the original order of the Sessions Judge would stand merged in the appellate judgment of the High Court and apart from the fact that the High Court had patent jurisdiction to decide the appeal preferred before it by the convict himself, it has to be highlighted that it is a Court of Record. It is well settled that a Court of Record unlike a Court of limited jurisdiction has the fullest power to determine the scope of its jurisdiction. Consequently, its decision both with regard to having jurisdiction and deciding a lis before it is one which cannot even remotely be labelled as one lacking in inherent jurisdiction. Courts of Record in this context are on a peculiarly strong and on a sacrosanct footing. This apart, the anomaly of the High Court issuing a writ of *habeas corpus* against a judgment rendered by itself is too glaring to pass unnoticed. It appears to be plainly incongruous that a writ of *habeas corpus* should lie in essence and in true effect against the appellate judgment of the High Court itself. Moreover, a Criminal Court once having rendered judgment becomes *functus officio* and cannot thereafter review or recall the same. Jurisprudential considerations attach a degree of finality to the criminal judgments far greater than those in the civil jurisdiction. This is well reflected in the Code of Criminal Procedure itself which does not provide for any review or recall of a criminal judgment once delivered. The issuance of a writ of *habeas corpus* with regard to a person undergoing imprisonment under the judgment of a competent criminal court in essence and in practical terms is tantamount to a review or reconsideration of such a judgment. The acceptance of a writ of *habeas corpus* and the release of such a person would indirectly accomplish what the law directly prohibits, namely, the reviewing or recalling of a criminal judgment which has once achieved finality. Thus, a convict undergoing imprisonment under the judgment of a criminal court, which has become final, cannot prefer and maintain a writ of *habeas corpus* to assail his detention. (Paras 11, 12, 13, 15, 16 and 21).

Narjit Singh v. *State of Punjab and others*, Criminal Writ No. 34 of 1972 decided on April 6, 1973. OVERRULED.

Petition under Articles 226 and 227 of the Constitution of India praying that :—

(i) *The petitioner be ordered to be released forthwith from the illegal custody of the respondents by means of a writ in the nature of* Habeas Corpus *or any other appropriate writ, order or direction.*

(ii) *Any other order, writ or direction be issued as deemed appropriate by this Hon'ble Court.*

(iii) *During the pendency of this petition the petitioner be ordered to be released on bail.*

(iv) *Filing of an affidavit be dispensed with.*

Balwant Singh Malik with Ram Kumar Pawari, Advocate, *for the Petitioner.*

M. P. Singh Gill, D.A.G., Punjab & D. S. Boparai, A.A.G., *for the Respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

Whether a convict undergoing imprisonment under the judgment of a criminal court, which has achieved finality, can prefer and maintain a writ of *habeas corpus* to assail his detention, is the pristinely legal question which provides the common link in this chain of four Criminal Writ Petitions, which are before us on a reference.

2. The issue of law being identical and the facts closely similar, the learned counsel for the parties agree that this judgment will govern all these cases. It, therefore, suffices to advert to the matrix of facts in Crl. W. P. No. 45 of 1980 (*Bohar Singh* v. *State of Punjab and another*). The petitioner therein was tried along with others on the charge of murder and other allied offences and being convicted therefor was sentenced to imprisonment for life by the judgment of the learned Sessions Judge, Ferozepore, dated April 3, 1975. He preferred Criminal Appeal No. 496 of 1975 jointly with his co-accused, which was dismissed by a Division Bench of this Court on July 27, 1978. No further appeal was carried to their Lordships of the Supreme Court and in accordance with the aforesaid judgment the petitioner was detained in various jails in the State.

3. More than five years after the date of the original conviction the present writ petition has been preferred on April 21, 1980, seeking a writ of *habeas corpus* against what is alleged to be an

illegal custody of the petitioner. The primary ground set out therefor is that on the date of the commission of the crime on September 30, 1974, the petitioner was less than 16 years of age and therefore, came within the definition of 'child' under the East Punjab Children Act, 1949 (hereinafter called the Act.) and consequently section 27 of the said Act bars the imposition of a sentence of imprisonment for life on him. This claim is rested solely on the ground that in his statement made under section 313 of the Code of Criminal Procedure, 1973, in the Court of Session, the petitioner stated his age as 15 years. The assessment of the petitioner's age having been not accepted *prima facie*, he was got medically examined by Dr. S. K. Gupta P.W. 1, who opined that his age on the date of the examination was about 17 years. This opinion is now belatedly attempted to be challenged on the ground that the same did not rest on a solid clinical basis or any ossification test. However, it is the admitted position, that even though the petitioner was represented by a counsel in the criminal trial at no stage thereof was any claim made on his behalf that the provisions of the Act would be applicable to him. So much so that even when expressly heard on the point of sentence not a hint of such a ground was urged before the trial court. Equally it is the common case that in the criminal appeal, filed in this Court, wherein again the petitioner was represented by a counsel, such an issue was not even remotely raised either in the Grounds of Appeal or in the course of arguments. As already noticed no special leave petition against the dismissal of the petitioner's appeal was preferred to their Lordships of the Supreme Court.

4. It is the petitioner's claim that the burden lay on the prosecution to bring on the record definite evidence that the age of the petitioner, at the time of the commission of the offence was more than 16 years and to show why he had not been dealt with under the Act. This having allegedly not been done by the prosecution, it is the case that both the trial of the petitioner by the Court of Session as also the sentence of imprisonment for life imposed upon him, in the alleged violation of section 27 of the Act, are wholly void.

5. It calls for pointed notice that not even an affidavit in support of the averments in the writ petition has been filed on behalf of the writ petitioner on the ground that he is confined in jail. Nevertheless on the aforementioned premises a writ of *habeas corpus* is sought for setting him at liberty from the alleged illegal custody.

6. The connected and the identical matter in Criminal Writ No. 13 of 1980 (Jaimal Singh and another *v.* State of Punjab), had come up before me sitting singly. Therein *inter alia*, an objection was raised to the very maintainability of a writ of *habeas corpus*, on the ground that it could be directed only against a flagrantly illegal detention plainly violative of the law and not against an imprisonment by warrant of the judgment of the criminal court which has achieved finality. Considering the significance of the issue, the matter was referred to a Division Bench. Before it, reliance was placed primarily on the judgment in *Borstal Inmate Narjit Singh* v. *The State of Punjab and another* (1) for sustaining the writ of *habeas corpus*. The learned Judges composing the Division Bench entertained some doubts about the correctness of *Narjit Singh's case* (supra), in view of the earlier observations of their Lordships in *B. R. Rao* v. *The State of Orissa* (2) and the recent judgment of their Lordships in *State of Orissa v. Ram Chander Agarwala and others* (3) holding that there is no provision for review in the Code. As a necessary result, all these four *habeas corpus* writ petitions were referred for decision by the Full Bench.

7. Now the sheet-anchor of the respondent-State in challenging the very maintainability of this *habeas corpus* petition is the well-known and celebrated judgment of the Constitution Bench in *Naresh Shridhar Mirajkar etc.* v. *State of Maharashtra and another* (4). Basically relying thereon it has been strenuously contended that no writ including one of *habeas corpus* is competent against the judicial process of the courts established by law, in general, and in particular against a judgment of a court of record like the High Court itself. In sum, the stand is that even if such a judgment be erroneous it is not amenable to correction within the writ jurisdiction. Such a judgment can only be assailed by the judicial remedies expressly provided by way of an appeal or revision and finally by way of a Special Leave Petition in the Supreme Court.

8. Since the corner-stone of the weighty objection raised on behalf of the respondents rests on *Mirajkar's case* (supra), it becomes necessary to advert to its facts and ratio in some detail. In a sensational libel suit on the original side of the High Court of Bombay

(1) Criminal Writ 34 of 1972 decided on 6th April, 1973.
(2) A.I.R. 1971 S.C. 2197.
(3) A.I.R. 1979 S.C. 87.
(4) A.I.R. 1967 S.C. Page 1.

between a well-known industrialist Mr. Thachersey and Mr. R. K. Karanjia, Editor of the "Blitz" (an English Weekly Newspaper of Bombay), one Bhaichand G. Goda was cited as a witness for the defence. When he first appeared, he was cross-examined at length on behalf of Mr. Karanjia, but later a request was made on his behalf that he be recalled for further cross-examination. On his second appearance, Bhaichand G. Goda made a request to the presiding Judge to withhold his evidence from the newspaper Reporter on the ground, that the publication of reports of his earlier deposition had caused him an immense business loss and financial embarrassment. After hearing arguments on both sides, the learned Judge directed that Goda's deposition should not be reported by the press in order to save his business from harm. Against the said direction, the petitioner moved a writ petition in the Bombay High Court which was dismissed on the short ground that the impugned order was a judicial order of the High Court and was not amenable to a writ under Article 226 of the Constitution of India. It was thereafter that the petitioner moved the Supreme Court under Article 32 of the Constitution of India for the enforcement of his fundamental rights under Article 19(1) (a) and (g) of the Constitution and along with him three other petitions were moved on behalf of the persons who claimed to be journalists and sought enforcement of their fundamental rights to publish the proceedings in their respective papers.

9. On the aforesaid facts, Gajendragadkar, C.J., speaking for the majority, noticed that the basic issue before the Court was as under :—

> "On these facts the question which arises for our decision is whether a judicial order passed by the High Court prohibiting the publication in newspapers of evidence given by a witness pending the hearing of the suit, is amenable to be corrected by a writ of *certiorari* issued by this Court under Art. 32(2). This question has two broad facets : does the impugned order violate the fundamental rights of the petitioners under Art. 19(1) (a), (d) and (g), and if it does, is it amenable to the writ jurisdiction of this Court under Art. 32(2) ?"

After an elaborate consideration of principle and precedent Gajendragadkar, C.J., held that the impugned order was passed by

the High Court in its inherent jurisdiction in advancement of the interests of justice and was, therefore, judicial in nature and consequently could not be violative of a fundamental right. It was observed as follows :—

> "....Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can effect the fundamental right of the citizens under Art. 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the Court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by Court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Art. 19(1)."

The Court then proceeded further to consider that assuming that such a judicial order may be said incidently and indirectly to affect the fundamental rights of the petitioner, could such incidental and indirect effect of the order justify the conclusion that the order itself would infringe Article 19(1) of the Constitution ? It answered this question in the negative to hold that any incidental consequences which may flow from the order may not introduce any constitutional infirmity in it. Coming to the basic question—whether such a judicial order was amenable to the writ jurisdiction, it was concluded as follows:—

> "..The order, no doubt, binds the strangers; but nevertheless, it is a judicial order and a person aggrieved by it though a stranger, can move this Court by appeal under Art. 136 of the Constitution. Principles of *Res judicata* have been applied by this Court in dealing with petitions filed before

this Court under Art. 32 in *Daryo* v. *State of U.P.* (5). We apprehend that somewhat similar considerations would apply to the present proceedings. If a judicial order like the one with which we are concerned in the present proceedings made by the High Court, binds strangers, the strangers may challenge the order by taking appropriate proceedings in appeal under Art. 136. *It would, however, not be open to them to invoke the jurisdiction of this Court under Art. 32 and contend that a writ of certiorari should be issued in respect of it. The impugned order is passed in exercise of the inherent jurisdiction of the Court and its validity is not open to be challenged by writ proceedings.*"

10. In view of the aforesaid categoric observations, we are unable to find any meaningful point of distinction from the ratio of the aforesaid case and its plain application to the present one. In *Mirajkar's case* (supra), the violation alleged was that of the fundamental right under Article 19 of the Constitution and it was sought to be remedied by way of a writ of *certiorari* under Article 226 of the Constitution. In the present case, there is an alleged violation of the fundamental right to life and personal liberty under Article 21 of the Constitution which again is sought to be remedied by a writ in the nature of *habeas corpus* again under Article 226 of the Constitution. If, as it has been categorically held by their Lordships in *Mirajker's case* (supra), no writ was competent against the judicial order of the High Court, even on the assumption that it violated Article 19 of the Constitution, then one fails to see how a writ of *habeas corpus* would lie against a considered judicial judgment of the High Court on the alleged tenuous ground of an infraction of Article 21 of the Constitution.

11. Indeed, a close analysis of *Mirajker's case* (supra), would show that the stand taken by the respondent-State in the present one is even on a stronger footing than in the said case. Therein, even Mr. Setalvad had to concede (paragraph No. 52 of the report) that if a Court of competent jurisdiction makes an order in a proceeding before it, and the order is *inter-partes,* its validity cannot be challenged by invoking the writ jurisdiction even though the said

(5) A.I.R. 1961 S.C. 1457.

order may affect the aggrieved party's fundamental rights. The basic argument, therefore, before the Court was that the impugned orders affected strangers (namely; the journalists, who had a right to publish the proceedings) who were not parties to the proceedings and, therefore, they could assail the same within the writ jurisdiction. However, as has been noticed above, even this argument was categorically rejected. In the present case, as already stands noticed and indeed can hardly be disputed, the judgment is admittedly *inter-partes*. It deserves highlighting that the petitioner had himself preferred the appeal against his conviction and the Court had directly pronounced upon the same and dismissed it by a judgment binding both on the petitioner and the State as well. Therefore, a judgment of a Court which is plainly *inter-partes* would be all the more not amenable to the writ jurisdiction.

12. Again in *Mirajker's case* (supra), it had been contended that the order of the Bombay High Court barring publication of the proceedings was in a way collateral to the real *lis* before the Court and was not in terms a judicial determination of the dispute before it. Even accepting this position, the Supreme Court nevertheless took the view that even such an order was judicial in nature, because it had been passed in exercise of the court's inherent jurisdiction to advance the interests of justice. Consequently, even such an order was held to be not amenable to the writ jurisdiction. Here even any such infirmity is totally lacking because there is no manner of doubt that the judgment of the High Court, which pronounced upon the guilt of the petitioner and imposed sentence therefor, is in its pristine essence, judicial in nature. If the larger principle laid down in *Mirajker's case* (supra) is that no writ would lie against the judicial process established by law, then plainly the judgments and orders of the High Court and the Court of Session would be totally out of the purview of the writ jurisdiction and amenable only to the processes of appeal, revision or Special Leave.

13. Again there would hardly seem to be any doubt that the original order of the Sessions Judge would now stand merged in the appellate judgment of the High Court. Apart from the fact that the High Court had patent jurisdiction to decide the appeal preferred before it by the petitioner himself, it has to be highlighted that it is a Court of Record. It is well-settled that a Court of Record unlike a Court of limited jurisdiction has the fullest power to determine the scope of its jurisdiction. Consequently, its decision, both

with regard to having jurisdiction and deciding a *lis* before it is one which cannot even remotely be labelled as one lacking in inherent jurisdiction. Courts of record in this context are on a peculiarly strong, and if one may say so, on a sacrosanct footing. In this context, it was observed as follows in *Mirajkar's case*:—

> "If the decision of a superior Court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a superior Court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court."
>
> * * * * * * * *
>
> "* * * Therefore, in our opinion, having regard to the fact that the impugned order has been passed by a superior Court of Record in the exercise of its inherent powers, the question about the existence of the said jurisdiction as well as the validity or propriety of the order cannot be raised in writ proceedings taken out by the petitioners for the issue of a writ of *certiorari* under Article 32."

14. Apart from the plain application of the ratio of *Mirajkar's* case (supra), what deserves highlighting in the present one is the fact that the petitioner and his co-accused had themselves invoked the appellate jurisdiction of the High Court against the judgment of conviction on the charge of murder and the sentences imposed therefor by the learned Sessions Judge, Ferozepur. Therefore, having himself preferred the appeal (far from having ever raised any objection to the jurisdiction of the Court), it cannot now lie in the petitioner's mouth to say that the High Court would be a Court inherently lacking in jurisdiction to try his case. It is not and in fact could not be disputed on behalf of the petitioner that both on the merits of the case as also on the point of sentence, the petitioners and his co-accused could have been lawfully acquitted by the High Court or in affirming the conviction even a sentence under the East Punjab Children Act could have been imposed upon him if it had been even remotely raised or urged before the High Court. Therefore, the highest that can possibly be said for the petitioner's

case is that a Court of competent jurisdiction had erred in the imposition of sentence. Mr. Boparai, the learned counsel for the respondents, therefore, seems to be on a firm footing in his submission that there cannot be a finical dissection of the jurisdiction of the High Court where the appeal had been preferred by the petitioner himself. It would, therefore, not be easy and indeed it is not possible to hold that whilst the High Court may well have had jurisdiction to even acquit the petitioner, yet the self-same Court would be lacking in inherent jurisdiction if it merely imposes a sentence which at best, according to the petitioner was erroneous. Having himself sought the jurisdiction of the Court, the petitioner cannot now possibly be allowed to divide this jurisdiction in order to seek a benefit thereunder and to avoid all consequential burdens arising therefrom. Therefore, once it is held that the High Court was rightly seized of the matter, then the hallowed dictum that a Court having jurisdiction has equally the jurisdiction to decide rightly or wrongly, has only to be recalled and reiterated. Even with regard to tribunals (in contrast to Courts of law *stricto sensu*), it was observed as follows in *Mirajkar's case* (supra) :—

> "* * * It is clear that the observations made by this Court in this case unambiguously indicate that it would be inappropriate to suggest that the decision rendered by a judicial tribunal can be described as offending Article 14 at all. It may be a right or wrong decision, and if it is a wrong decision it can be corrected by appeal or revision as may be permitted by law, but it cannot be said *per se* to contravene Article 14.....".

(15) Again the anomaly of the High Court issuing a writ of habeas corpus against a judgment rendered by itself is too glaring to pass unnoticed. In this context also it is apt to recall that in *Mirajkar's case* (supra), Sarkar, J., observed that one of the fundamental principle concerning the issue of a writ is that it is always issued to an inferior Court. It was observed as follows:—

> "* * *. I think it would be abhorrant to the principle of certiorari if a Court which can itself issue the writ is to be made subject to be corrected by a writ issued by another Court. When a Court has the power to issue the writ it is not, according to the fundamental principle of certiorari, an

inferior court or a court of limited jurisdiction. It does not cease to be so because another court to which appeals from it lie, has also the power to issue the writ. That should furnish strong justification for saying that the Constitution did not contemplate the High Courts to be inferior courts so that their decisions would be liable to be quashed by writs issued by the Supreme Court which also had been given the power to issue the writs. Nor do I think that the cause of justice will in any manner be affected if a High Court is not made amenable to correction by this Court by the issue of the writ. In my opinion, therefore, this Court has no power to issue a certiorari to High Court."

If that be so it appears to be plainly incongruous that a writ of habeas corpus should lie in essence and in true effect against the appellate judgment of the High Court itself. It deserves recalling that as in the present case a writ of habeas corpus can be issued by any learned Single Judge of the Court whereas the appellate judgment of the High Court may be of the Division Bench as in the present case or even of a larger Bench than that. Even on these larger considerations it would appear that the High Court in essence cannot issue a writ against itself.

(16) Again in this context one must recall the larger and the hallowed principle that a criminal Court once having rendered judgment becomes *functus officio* and cannot thereafter review or recall the same. Jurisprudential considerations attach a degree of finality to the criminal judgments far greater than those in the civil jurisdiction. This is well reflected in the Code of Criminal Procedure itself which does not provide for any review or recall of a criminal judgment, once delivered, in sharp contrast to the even limited ground on which sometimes it is possible to review a judgment passed in the civil jurisdiction. All doubts in this context have been set at rest by the final Court after consideration of the earlier precedents in the recent judgment of the Supreme Court in *State of Orissa* v. *Ram Chander Aggarwala etc.* (6) by the following observations:—

"* * *. This decision instead of supporting the respondent clearly lays down, following Chopra's case (A.I.R. 1955

(6) A.I.R. 1979 S.C. 87.

S.C. 633) (supra) that once a judgment has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction. This Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise an order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revised except in accordance with the provisions of the revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The provisions of Section 561-A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code."

Now the issuance of a writ of habeas corpus with regard to a person undergoing imprisonment under the judgment of a competent criminal Court in essence and practical terms is tantamount to a review or reconsideration of such a judgment. The acceptance of a writ of habeas corpus and the release of such a person would indirectly accomplish what the law directly prohibits, namely, the reviewing or recalling of a criminal judgment which has once achieved finality. On these larger considerations as well it appears to me as inappropriate that a writ of habeas corpus should be maintainable by a convict undergoing imprisonment in accordance with the judicial criminal process. .

17. Now apart from rationale and first principles it appears that the observations of the Final Court directly covering the issue (and no judgment of the Supreme Court or any other High Court holding to the contrary was indeed cited) are conclusively against the stand taken on behalf of the petitioners. In *Col. Dr. B. Ramachandra Rao* v. *The State of Orissa and others* (supra) in a similar context it was observed by their Lordships as follows:—

"As admitted by both sides the petitioner was sentenced to imprisonment on conviction by the Third Additional Sessions Judge, Secunderabad in October, 1965. Unfortunately, neither side has been able o inform us as to whether that sentence has expired or is still running. The jail authorities at Bhubaneshwar, we have little doubt,

must have information whether or not the petitioner when brought there, was undergoing a sentence of imprisonment and how much sentence remained to be undergone, and the petitioner also, in our opinion, must be presumed to be aware of the sentence imposed on his. *We need only add that in case the petitioner is undergoing the sentence of imprisonment imposed on him by competent court then too writ of habeas corpus cannot be granted. This position is well-settled.*"

It remains to advert to the sheet-anchor of the petitioners, namely, the Division Bench judgment in *Narjit Singh* v. *The State of Punjab and others* (supra)—decided on the 6th of April, 1973. Therein in a similar situation Narjit Singh petitioner claiming to be a child had sought relief in the nature of a habeas campus against his detention in compliance with the judgment of conviction on a charge of murder by the Court of Session upheld by the High Court in appeal. The learned Judges of the Division Bench reported the case to the State Government under section 34(1) of the Children Act, for keeping the petitioner in safe custody in a Borstal jail or like institution, on such condition and for such period as the State Government may think it fit, not exceeding the maximum period of imprisonment for which the petitioner could be sentenced for the offence of murder.

18. It deserves highlighting that in *Narjit Singh's case* the Court found from the pleadings that it was an undisputed fact (which is certainly not the position herein) that at the time of the commission of the murders Narjit Singh was less than 16 years of age and was a child within the meaning of the East Punjab Children Act. On these premises the learned Judges formulated the issue before them in the following terms—

"The question that arises, is: Does the fact of Narjit Singh being a 'child' render all the proceedings against him before the Committing Magistrate, the Sessions Judge and the High Court, including his conviction and sentence, illegal and void *ab initio* entitling him to a writ of habeas corpus?"

and rendered the answer as follows:—

"* * * For the foregoing reasons, we would reject the first contention of Mr. Malik and answer the question posed in the negative."

19. Now even a plain reading of the judgment in *Narjit Singh's case* makes it patent that the precise issue which is before us, namely, the very maintainability of the writ petition was not even remotely raised or debated. Consequently the learned Judges of the Bench had not the least occasion to advert to this issue at all. Therefore, *Narjit Singh's case* is no warrant for the proposition that a writ of habeas corpus is necessarily maintainable against a judgment of the High Court itself. It is no doubt true that in the absence of the plea of non-maintainability of the criminal writ the Judges did afford some marginal relief to the petitioner therein as already stands noticed. As a matter of abundant caution if *Narjit Singh's case* is sought to be construed as an authority that a writ of habeas corpus is maintainable in such circumstances we are clearly of the contrary view and for the detailed reasons recorded earlier the judgment must be overruled on this specific point.

20. Before parting with the judgment we must notice in fairness to the learned counsel for the petitioners that some lament was made by them that the barring of the remedy of a writ of habeas corpus against the judicial process of the Criminal Court including the judgments of the High Court itself may some time render an error on the point of sentence or conviction to be incurable. We are unable to subscribe to this line of approach. The High Court both by the relevant statutory provisions as also by virtue of its inherent jurisdiction has ample power to prevent any flagrant abuse or failure of the processes of law. In a proper case as against the decisions of the subordinate Criminal Courts, the High Court can entertain an appeal by condoning even an inordinate delay. It has then equally wide powers by way of revision under the Criminal Procedure Code as also under the Letters Patent. As regards the High Court's judgments appeals against the same are provided by the Constitution itself under Article 134 and by way of Special Leave to appeal under Article 136. The final Court obviously has equal, if not more wide-ranging powers to correct any abuse or failure of the law. Again apart from the judicial process the statute has not denuded the executive wing also from interfering in a proper case and indeed this power is equally wide-ranging. Under section 432 of the Code the State Government has power to suspend or remit sentences and direct the release of a convict on a wide variety of considerations provided in the said section. Again there is no dearth of precedent that when Courts of law were unable to render adequate relief within

the strict four corners of the Judicial process then they can make a recommendation to the executive to exercise the powers vested in it which has invariably been acceded to. Consequently the apprehensions of the learned counsel for the petitioners that the marginal limitation placed on a writ of habeas corpus against the judicial process itself would result in any grave failure of justice appears to me as imaginary and hallucinatory.

21. In the light of the foregoing discussion the answer to the question posed at the very outset is rendered in the negative and it is held that a convict undergoing imprisonment under the judgment of a Criminal Court, which has become final, cannot prefer and maintain a writ of habeas corpus to assail his detention.

22. In view of the above all the four writ petitions are not maintainable and are hereby dismissed.

H. S. B.

FULL BENCH

Before S. S. Sandhawalia C.J., K. S. Tiwana and S. P. Goyal, JJ.

KHUSBASH SINGH SANDHU,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent*

Civil Writ No. 2808 *of* 1979.

May 29, 1981.

Demobilized Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Service (Executive Branch) Rules 1972—*Rules* 3, 4 *and* 5—*Assumed date of joining service under rule* 4(1) (*a*)—*'First opportunity' contemplated therein—Minimum academic qualifications for joining the service—Whether should be possessed by an ex-serviceman on the 'first opportunity' he had to join the service.*

Held, that rule 4(1) (a) of the Demobilized Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Service (Executive Branch) Rules, 1972 entitles a demobilized