ITEM NO.47 COURT NO.5 SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 2366-2368/2015

(Arising out of impugned final judgment and order dated 30/01/2015 in CRM No. 20593/2014, 26949/2014 and CRM 3118/2015 in in CRLA No.937-DB/2002 passed by the High Court Of Punjab & Haryana At Chandigarh)

GAURAV KUMAR @ MONU Petitioner(s)

VERSUS

STATE OF HARYANA Respondent(s)

(with appln. (s) for exemption from filing O.T. and interim relief and office report)

Date : 06/04/2015 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s) Mr. Harin P. Raval, Sr. Adv.
Mr. Nipun Saxena, Adv.
Mr. Rishi Malhotra, Adv.
Mr. Prem Malhotra,Adv.

For Respondent(s) Mr. Mukul Rohtagi, AG

Mr. Sanjay Kumar, AAG
Mr. Vishwa Pal, Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

In this special leave petition preferred under Article 136 of the Constitution of India, the petitioner who claims to be a juvenile has called in question the legal defensibility of the order dated 30.01.2015 passed by the Division Bench of the High Court of Punjab and Haryana in Application No.20593 of 2014 in Criminal Appeal No.937-DB of 2002 under Section 482 of the Code of Criminal Procedure asserting, inter alia, that on the date, the

offence took place, i.e. 23.05.2000, he was 17 years and nine months old, his date of birth being 17.08.1982.

The High Court had called for a report from the concerned learned Sessions Judge. The report being against the petitioner, the learned counsel appearing for him did not press the application. Be it noted, the report of the learned Sessions Judge was to the extent that the present petitioner was not a juvenile on the date of occurrence.

It is submitted by Mr. Raval, learned senior counsel appearing for the petitioner that even though the application was not pressed, regard being had to the provisions contained in the Juvenile Justice (Care and Protection of the Children) Act, 2000 (for brevity, 'the Act'), the petitioner would be at liberty to challenge the order inasmuch as the matriculation certificate is in his favour.

Mr. Mukul Rohtagi, learned Attorney General for India, has seriously contested the said position on two scores, namely, once it has not been pressed, the same cannot be assailed and second, in any case, the certificate obtained by the petitioner cannot be treated as sacrosanct for many a reason.

Mr. Sanjay Kumar, learned AAG for the State of Haryana also supported the stand put forth by the learned Attorney General for India. Learned counsel for the State undertakes to file the countery affidavit in that regard. It is also agreed to by Mr. Rohtagi, learned Attorney General for India that the Union of India shall also file a counter affidavit.

Ordinarily, so stating, we would have adjourned the matter, but the circumstances compel us to say something more on this score. In *Central Bureau of Investigation* vs. *Swapan Ropyu* this Court, on 24.11.2014 passed the following order :

> **"This Court on 27th October, 2014, had passed the following order:**
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> > **'Mr. Rohatgi, learned Attorney General, apart from submitting that the finding recorded on that score is absolutely unsustainable, also submitted that the entire scheme of juvenility is engaging the attention of the Central Government. While dealing with the issue, two suggestions were given to the learned Attorney General, namely, whether there is any kind of consideration as regards the reduction of age, and whether the juvenility will depend upon the nature of offence committed. To elaborate, whether**

the attention of the Government will be drawn to the prevailing atmosphere that most of the juveniles are engaged in horrendous and heinous crimes like rape, murder and drug-peddling, etc.'

It is submitted by Mr. Mukul Rohatgi, learned Attorney General appearing for Union of India, along with Mr. Tushar Mehta, learned Additional Solicitor General that the concern expressed by this Court is still engaging the attention of the competent authority of the State. It is further submitted by Mr. Rohatgi that he realizes the concern of the 'Nation' at the rate the heinous crimes are committed by the juveniles, who are called juvenile under the present Act, the Juvenile Justice (Care and Protection of Children) Act, 2000. Elaborating the concern, the learned Attorney General would state that in the instant case the respondent, who claims to be a juvenile, has been alleged accused of offence wherein a gathering in a village was attacked by lethal weapons by other accused persons along with the respondent which has resulted in the death of nine persons and injuries have been suffered by several other persons."

Mr. Rohatgi and Mr. Mehta would submit that the High Court has found him to be a juvenile as he was seventeen years and six months on the date of alleged occurrence, though they seriously would contend that it is factually incorrect. That is the controversy to be gone into.

Mr. Rohatgi and Mr. Mehta would further propone that this kind of involvement of the juveniles under the present Act are increasing and it has actually become a matter of grave concern. We are inclined to think that the concern expressed by learned Attorney General is absolutely correct and we are of the convinced opinion that he will put it across to the competent authorities so that care is taken to the extent that the nature of the offence has some nexus with the age in question, for the cry of the collected is to live in a peaceful society that respects life, dignity and others' liberty.

Let this matter be listed in the second week of January, 2015, for further hearing."

When we said that we thought that there should be a rethinking by the by the Legislature, it is apt to note here that there can be a situation where commission of an offence may be totally innocuous or emerging from a circumstance where a young boy is not aware of the consequences but in cases of rape, dacoity, murder which are heinous crimes, it is extremely difficult to conceive that the Juvenile was not aware of the consequences.

As the FIR lodged in the present case would reveal, the deceased was liable to pay to the accused no.1 and as he did not pay back, all the accused persons including the present petitioner went to his house, forcibly took him away to another village and assaulted him with kicks, lathies and iron pipes. As the allegation would further reveal, the deceased was removed to a hospital for treatment, gave a dying declaration and consequently succumbed to death. We may hasten to clarify, the appeal has to be decided on its own merits. But the issue that emerges is whether in such a situation, can it be conceived by any stretch of imagination that the petitioner was not aware of the consequences? Or for that matter, was it a crime committed, if proven, with a mind that was not matured enough? Or the life of the victim is totally immaterial, for five people, including a juvenile, think unless somebody pays the debt, he can face his death.

We have repeated this, in addition to what we have said earlier. The rate of crime and the nature of crime in which the juvenile are getting involved for which the Union of India and the State Governments are compelled to file cases before this Court to which the learned Attorney General does not disagree, have increased. A time has come to think of an effective law to deal with the situation, we would request the learned Attorney General to bring it to the notice of the concerned authorities so that the relevant provisions under the Act can be re-looked, re-scrutinized and re-visited, at least in respect of offences which are heinous in nature.

Let the matter be listed in the first week of May 2015.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master