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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) NO.1953 OF 2013

Dr. Subramanian Swamy and Ors. ... Petitioner (s)

Versus

Raju, Through Member, Juvenile Justice Board And Anr. ... Respondent(s)

J U D G M E N T

RANJAN GOGOI, J.

1. Should the adjudication sought for by the petitioner be refused at the threshold on the basis of the fairly well established legal proposition that a third party/stranger does not have any right to participate in a criminal prosecution which is primarily the function of the State. The aforesaid question arises in the following facts and circumstances.

2. On 16.12.2012, a ghastly incident of gang rape took place in a moving bus in the streets of Delhi. In connection with the said incident six accused were arrested on 22.12.2012, one of whom, namely, the first respondent in the present special leave petition was a juvenile on the date of the occurrence of the crime. The victim of the offence died on 29.1.2013. While the Juvenile Justice Board (hereinafter for short "the Board") was in seisin of the matter against the first respondent, the petitioners in the special leave petition approached the Board seeking impleadment in the proceedings before the Board and an interpretation of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter for short 'the JJ Act') so as to enable the prosecution of the first respondent in a regular criminal court. According to the petitioners while the Board did not pass any written orders in the matter it had expressed its inability to decide the question of law brought before it and directed the petitioners to approach a higher Court. Accordingly, on 18.1.2013 the petitioners filed a public interest litigation in the High Court of Delhi with the following prayers.

(i) Laying down an authoritative interpretation of Sections 2(l) and 2(k) of the Act that the criterion of 18 years set out therein does not comprehend cases grave offences in general and of heinous crimes against women in particular that shakes the roots of humanity in general.

(ii) That the definition of offences under Section 2(p) of the Act be categorized as per the grievousness of the crime committed and the threat to public safety and order.

(iii) That Section 28 of the Act be interpreted in terms of its definition, i.e., Alternative Punishment and serious offences having minimum punishment of 7 years imprisonment and above be brought outside its purview and the same should be tried by an Ordinary Criminal Court.

(iv) Incorporating in the Act, the international concept of age of Criminal Responsibility and diluting the blanket immunity provided to the juvenile offender on the basis of age.

(v) That the instant Act be read down in consonance with the rights of victim as protected by various Fundamental Rights including Article 14 and 21 of the Constitution of India.

(vi) Pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. By order dated 23.1.2013 the High Court declined to answer the

questions raised on the ground that the petitioners had an alternative remedy under the JJ Act against the order as may have been passed by the Board. On the very next day, i.e., on 24.1.2013 the Board dismissed the application filed by the petitioners seeking impleadment and the other reliefs. On 19.2.2013 the petitioners had approached this Court seeking special leave to appeal against the order dated 23.1.2013 passed by the High Court of Delhi dismissing the public interest litigation.

4. The prayers made by the petitioners in the public interest litigation before the High Court not having been touched upon in any manner whatsoever, on the ground already noticed, naturally the scope of the present special leave petition, if it is to be entertained, must be understood to be co-extensive with the questions arising before the High Court.

5. At the very outset, Mr. Sidharth Luthra, learned Additional Solicitor General appearing for the Union as well as Mr. A.J. Bhambhani, learned counsel for the first respondent has raised a vehement plea that this special leave petition should not be entertained as the same ex facie disclose serious doubts with regard to its maintainability. The gravamen of the contentions raised by the learned counsels for the respondents is that the administration of criminal justice in India does not envisage any role for a third party/stranger and it is the State which represents the victim of a crime to vindicate the rights that may have been violated and the larger social interest in enforcing and maintaining the criminal law system. In this regard learned counsels have placed reliance on several decisions of this Court, which will be noticed hereinafter, wherein the aforesaid legal principle has been stated and reiterated.

6. To counter the arguments advanced on the plea of maintainability raised by the respondents, the first petitioner - Dr. Subramanian Swamy, who had appeared in person and were authorized to do so on their behalf by the other petitioners, has submitted that the prayers made before the High Court which would now require consideration of this Court make it clear that the petitioners neither seek impleadment in the proceeding pending before the Board against the first respondent nor the payers made have any specific bearing to the criminal acts committed by the first respondent. According to the first petitioner, reference to the 16th December, 2012 incident and to the role of the first respondent in the said incident is merely incidental and illustrative. The approach to the High Court and to this Court has been made in view of the larger public interest inherent in the question raised by the petitioners. All that the petitioners seek is an authoritative pronouncement on the provisions of the JJ Act and its applicability to juveniles within the meaning of the said Act who commit certain categories of extremely heinous and depraved criminal acts. On merits, the first petitioner has contended that the provisions of the JJ Act ought to be read down by this Court to provide for categorization of the offences committed by a juvenile depending on depravity thereof and for the trial of a juvenile for the most serious and heinous of such offences by treating such acts as offences under Indian Penal Code. We have noticed, in brief, the contentions of the petitioners on merits though we had confined the hearing that took place on 14.8.2013 to the question of maintainability of the special leave petition leaving the merits of the questions and issues raised open for consideration in the event it becomes so necessary.

7. The administration of criminal justice in India can be divided into two broad stages at which the machinery operates. The first is the investigation of an alleged offence leading to prosecution and the second is the actual prosecution of the offender in a Court of Law. The jurisprudence that has evolved over the decades has assigned the primary role and responsibility at both stages to the State though we must hasten to add that in certain exceptional situations there is a recognition of a limited right in a victim or his family members to take part in the process, particularly, at the stage of the trial. The law, however, frowns upon and prohibits any abdication by the State of its role in the matter at each of the stages and, in fact, does not recognize the right of a third party/stranger to participate or even to come to the aid of the State at any of the stages. Private funding of the investigative process has been

disapproved by this Court in Navinchanda N. Majithia v. State of Meghalaya and Others[1] and the following observations amply sum up the position:

> "18. Financial crunch of any State treasury is no justification for allowing a private party to supply funds to the police for conducting such investigation. Augmentation of the fiscal resources of the State for meeting the expenses needed for such investigations is the lookout of the executive. Failure to do it is no premise for directing a complainant to supply funds to the investigating officer. Such funding by interested private parties would vitiate the investigation contemplated in the Code. A vitiated investigation is the precursor for miscarriage of criminal justice. Hence any attempt, to create a precedent permitting private parties to supply financial assistance to the police for conducting investigation, should be nipped in the bud itself. No such precedent can secure judicial imprimatur."

8. Coming to the second stage of the system of administration of criminal justice in India, this Court in Thakur Ram and Others v. The State of Bihar[2], while examining the right of a third party to invoke the revisional jurisdiction under the Code of 1898, had observed as under :

> "The criminal law is not to be used as an instrument of wrecking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book."

9. In Panchhi and Others v. State of U.P.[3] this Court have refused leave to the National Commission for Women to intervene in an appeal before this Court wherein a young mother was facing execution of the capital sentence imposed on her on the ground that the National Commission for Women or for that matter any other organization cannot have locus standi in a criminal case.

10. This Court has also been slow in approving third party intervention in criminal proceedings on grounds of larger public interest. In Janta Dal v. H.S. Chowdhary and Others[4] the public interest litigation petitioner was held to have no locus to bring a public interest litigation seeking certain directions in a matter of issuance of a letter of rogatory/request to the Swiss Government in an investigation that was then pending in what came to be popularly known as the Bofors case. Similarly, in Simranjit Singh Mann v. Union of India and Anr.[5] this Court had declined leave to the President of a recognized political party, namely, Akali Dal (M) to challenge, under Article 32 of the Constitution, the conviction and sentence of the accused found guilty of the offence under Section 302 IPC. The view taken by this Court in Simranjit Singh Mann (supra) seems to be based on the fact that petitioner before this Court was a total stranger to the offence committed by the accused whereas in Janta Dal (supra) the public interest litigation petitioner was found to have a personal and private interest in the matter. [para 119 of the Report in Janta Dal (supra)]

11. Adverting to the facts of the present case, undoubtedly, in the pleadings of the petitioners there is a reference to the first respondent, i.e., the juvenile who is alleged to have committed the offence. There can also be no manner of doubt that if the provisions of the JJ Act are to be construed in the manner that the petitioners seek the first respondent will be affected. The petitioners are in no way connected with the incident in question. But would the above, by itself, render the action initiated by the petitioners non-maintainable on the ground that they have no locus to raise the questions that have arisen being total strangers to the alleged crime, as contended by the Respondents on the strength of the principles noticed above?

12. The petitioners do not seek impleadment in the inquiry against the

first respondent presently pending before the Board or in the trial to which he may be relegated in the event the questions of law are answered in favour of the petitioners and that too within the requisite time span. Such a prayer, i.e., for impleadment was raised and decided against the petitioners by the Board. The said prayer had not been pursued before the High Court. Neither the same has been raised before us. All that the petitioners seek is an authoritative pronouncement of the true purport and effect of the different provisions of the JJ Act so as to take a juvenile out of the purview of the said Act in case he had committed an offence, which, according to the petitioners, on a true interpretation of Section 2(p) of the Act, is required to be identified and distinguished to justify a separate course of action, namely, trial in a regular Court of Law as a specific offence under the Penal Code and in accordance with the provisions of the Code of Criminal Procedure. The adjudication that the petitioners seek clearly has implications beyond the case of the first respondent and the proceedings in which he is or may be involved. In fact, interpretation of the relevant provisions of the JJ Act in any manner by this Court, if made, will not be confined to the first respondent alone but will have an effect on all juveniles who may come into conflict with law both in the immediate and distant future. If we are to view the issue of maintainability of the present proceeding from the aforesaid perspective reference to the case of the first respondent in the pleadings must be understood to be illustrative. If this Court is to interpret the provisions of the Act in the manner sought by the petitioners, the possible effect thereof in so far as the first Respondent is concerned will pale into insignificance in the backdrop of the far reaching consequences that such an interpretation may have on an indeterminate number of persons not presently before the Court. We are, therefore, of the view that it would be appropriate for us hold that the special leave petition does not suffer from the vice of absence of locus on the part of the petitioners so as to render the same not maintainable in law. We, therefore, will proceed to hear the special leave petition on merits and attempt to provide an answer to the several questions raised by the petitioners before us.

13. We, therefore, issue notice in this special leave petition and permit the respondents to bring their respective additional pleadings on record, if any.

14. By our order dated 31.7.2013 we had permitted the first petitioner to bring to the notice of the Board that the present special leave petition was to be heard by us on 14.8.2013. We are told at the Bar that in anticipation of our orders in the matter, the Board has deferred further consideration of the proceedings against the first respondent. In the light of the view taken by us that the questions raised by the petitioners require an answer which need not be specific qua the first respondent we make it clear that it is now open for the Board to proceed further in the matter and render such orders, in accordance with law, as may be considered just, adequate and proper.

.....CJI.
[P. SATHASIVAM]

.....J.
[RANJANA PRAKASH DESAI]

.....J.
[RANJAN GOGOI]

New Delhi,
August 22, 2013.

ITEM NO.1B COURT NO.1 SECTION II
(For judgment)

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).1953/2013

(From the judgement and order dated 23/01/2013 in WPCRL No.124/2013, of The HIGH COURT OF DELHI AT N. DELHI)

DR. SUBRAMANIAN SWAMY AND ORS. Petitioner(s)

VERSUS

RAJU THR.MEMBER JUVENILE JUSTICE BRD&ANR Respondent(s)

Date: 22/08/2013 This Petition was called on for Judgment today.

For Petitioner(s) Petitioner-In-Person

For Respondent(s) Mr. Sidharth Luthra, ASG (N/P)
Mr. B. Krishna Prasad, AOR
Mr. B.V. Balram Dass, Adv.
Ms. Supriya Juneja, Adv.
Mr. Gurmohan Singh Bedi, Adv.

Mr. Sudarsh Menon, AOR

Intervenor-In-Person

Hon'ble Mr. Justice Ranjan Gogoi, pronounced the judgment of the Bench comprising Hon'ble the Chief Justice of India, Hon'ble Mrs. Justice Ranjana Prakash Desai and His Lordship.

Issue notice, in terms of the signed reportable judgment. The respondents are permitted to bring their respective additional pleadings on record, if any.

The criminal miscellaneous petition for intervention is allowed.

(Chetan Kumar)	(Savita Sainani)
Court Master	Court Master

(Signed Reportable Judgment is placed on the file)

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[1] (2000) 8 SCC 323
[2] AIR 1966 SC 911
[3] (1998) 7 SCC 177
[4] (1992) 4 SCC 305
[5] (1992) 4 SCC 653