

ITEM NO.302

COURT NO.6

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No.2084 of 2009

MUMTAZ @ MUMTYAZ

Appellant(s)

VERSUS

STATE OF U.P. (NOW UTTARKHAND)

Respondent(s)

WITH Cr1.A. No.460 of 2010

(With office report)

Date : 14/01/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. K.T.S. Tulsi, Adv.  
Mr. Kuber Boddh, Adv.  
Mr. Prafulla Kr. Behera, Adv.  
Mr. Rakesh Kr. Tewari, Adv.  
Mr. S. S. Nehra, AOR

For Respondent(s) Mr. Tanmay Agarwal, Adv.  
Mr. Jatinder Kumar Bhatia, AOR

For UOI Ms. V. Mohana, Adv.

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

When the argument commenced, Mr. Tanmay Agarwal, learned counsel appearing for the State of Uttarakhand, submitted that this Court on earlier occasions had adverted to the submissions of Mr. K.T.S. Tulsi, learned senior counsel for the appellant, and noted, as submitted by Mr. Tulsi, the decision in Jitendra Singh vs. State of U.P. (2013) 11 SCC 193, deserves to be reconsidered. Learned counsel would submit that this Court had not expressed any

view on the said authority. However, he has drawn our attention to the order dated 20<sup>th</sup> November, 2014, which reads as follows:

"Mr. Mukul Rohatgi, learned Attorney General appearing for Union of India prays for eight weeks' time to apprise the competent authorities inviting their attention as regards certain provisions of Juvenile Justice (Care and Protection of Children) Act, 2000, which possibly require a re-look regard being had to the prevalent situation.

List the matter after eight weeks."

Ms. V. Mohana, learned counsel appearing for the Union of India, has drawn our attention to the order dated 12<sup>th</sup> January, 2015, in S.L.P.(Cr1.) No.5699 of 2014, titled *Central Bureau of Investigation vs. Swapan Roy*, which is as under:

"Mr. Mukul Rohtagi, learned Attorney General for India and Mr. Tushar Mehta, learned Additional Solicitor General of India, submitted that the concern shown by the Central Government and this Court, which has been reflected in the orders passed on 27.10.2014 and 24.11.2014 has been conveyed to the competent authority. It is further submitted by Mr. Rohtagi that he will reiterate the concern expressed by him as well as by this Court to the competent authority so that necessitous action may be taken.

List the matter on 20.03.2015."

At this juncture, Mr. Agarwal impressed upon us to note his submissions as learned counsel felt that it has its own significance. Drawing our attention to Section 7-A of the Juvenile Justice (Care and Protection of Children) Act,

2000, it is urged by him that the said provision has really brought in immense anomalous situation in the field of conviction, sentencing and, in quintessencity, in criminal jurisprudence. It is his submission that "at any stage" has to be narrowly construed because if it is given a stretched connotation, it leads to absurdity. Learned counsel would contend that "at any stage" should convey till such time a person can be sent to observation home/special home. Elaborating the concept, it is contended by him if the issue of juvenility is raised after being convicted by the trial court and the High Court and being sentenced, a person raises a issue of juvenility after expiry of 15 or 20 years, it becomes extremely difficult to deal with such a person. Learned counsel would submit with agony that such a person would be a misfit in the special home or observation home and the purpose of the enactment is likely to be frustrated.

Mr. Tulsi, learned senior counsel, *per contra*, would contend that as per the language employed under Section 7-A(2) of the Act, conviction and the sentence, both have to be nullified and it will be for the Juvenile Justice Board to take appropriate steps.

Ms. Mohana, learned counsel appearing for the Union of India on behalf of the Attorney General, could only reiterate that the submission made by the Attorney General to be recorded and we do so.

We have recorded the aforesaid submissions so that learned counsel appearing for the Union of India would apprise the learned Attorney General about the order passed today so that he can apprise the competent authority about the prevalent situation and the concern expressed by the

counsel of a State.

Let the matters be listed for further hearing on  
8<sup>th</sup> April, 2015, at 2.00 p.m.

(Chetan Kumar)  
Court Master

(H.S. Parasher)  
Court Master