

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).2563/2005

(From the judgement and order dated 06/10/2004 in CRLWP No. 415/2004 & CRLMA No. 2151/2004 of The HIGH COURT OF BOMBAY AT NAGPUR)

COMMNR. OF POLICE, MAHARASHTRA & ANR.

Petitioner(s)

VERSUS

RAMESH TARACHAND CHAVAN & ANR.

Respondent(s)

(With office report)

Date: 05/04/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE C.K. PRASAD

For Petitioner(s) Ms. Asha Gopalan Nair,Adv.

For Respondent(s)

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

Heard counsel for the petitioners.

No one appears from the other side, apparently because the respondent has no longer any interest in the matter.

The High Court made certain observations while disposing of a petition for a writ of Habeas Corpus. The petitioner, the Commissioner of Police, Maharashtra is seriously aggrieved by the observation of the High Court and has brought the matter to this Court.

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In the SLP this Court, by order dated

2.5.2005 issued notice limited to the following

observations made in the High Court order :-

"Such protest petition may be either anticipatory or it may be filed after submission of the final report u/s 169 of the Code. It is obligatory on the police and also the Magistrate to hear the aggrieved person by issuing him notice if the officer in charge of the Police Station has not

done so before accepting the final report u/s read with Section 173 of the Cr.P.Code."

Counsel for the petitioners submitted that the observation makes it obligatory for the police to hear the aggrieved person (who may be the informant or a witness supporting the informant) before releasing the accused under Section 169 or submitting final report under Section 173 (2) of the Code of Criminal Procedure.

We feel that the words ".... on the police" (shown in italics in the above quotation) slipped by inadvertence and it does not have any sanction of law. The scheme of the Code of Criminal Procedure does not contemplate any notice or opportunity of hearing to the informant before the police releases the accused under Section 169 or submits the final report under Section 173 of the Code of Criminal Procedure.

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The police in the course of investigation is bound to take down the statements of all the witnesses as also of the accused persons. On the basis of the materials collected during investigation, including statements recorded under Section 161 Cr.P.C., it is for the Investigating Agency to come to a conclusion whether or not the accused are liable to be tried for any cognizable offence(s). It may accordingly submit a charge-sheet or a final form under Section 173 of the Code of Criminal Procedure. It is then for the Court to take the final call. In case the police has submitted final form, the Court is undoubtedly obliged to issue notice to the informant before accepting the same. That is the settled position

in law and there cannot be any deviation from it.

With the above observation and clarification,
this Special Leave Petition is disposed of.

(NEETU KHAJURIA)
SR. P.A.

(MITHLESH GUPTA)
Court Master