

HB

Cr1.A.No. 1114 OF 2003
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1114 OF 2003

STATE OF U.P. & ORS.....APPELLANT(S)

VERSUS

SURENDRA KUMAR.....RESPONDENT(S)

J U D G M E N T

B.P.SINGH,J.

The application for intervention is refused.

The State of U.P., the appellant herein has impugned the order passed by a learned Judge of the Allahabad High Court dated 20th September, 2002 in Criminal Miscellaneous Application No.4909 of 2002. The learned Judge, by his aforesaid order, modified his earlier order passed on 21.5.2002 which was an order passed on an application filed by the respondent under Section 482 Cr.P.C.

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The facts of the case are that the respondent Surendra Kumar is a partner of a firm which has been appointed as the City Booking Agent of the Northern Railways having its office in Kanpur. It appears that the Sales Tax Officer seized certain goods from the aforesaid city booking office of the respondent and in connection therewith a proceeding was initiated which was pending before the Court of the First ACJM, Kanpur. A criminal case was registered under Sections 420, 468, 471, 481, 482 and 120B I.P.C. but it is not in dispute that the respondent is not accused in that case which is against unknown persons. A prayer was made before the learned ACJM for release of the goods seized by the Sales Tax authorities. After considering the matter, by an order dated 20th April, 2002 the ACJM directed that the goods be released in favour of the respondent Surendra Kumar subject to his furnishing a personal bond in the sum of Rs.1,00,000/-.

This order of the ACJM was impugned before the High Court by the Respondent in an application filed
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under Section 482 Cr.P.C. The prayer in the said application was as follows :-

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the part of the order dated 20.4.2002 (Annexure No.7 to the affidavit) passed by the Addl. Chief Metropolitan Magistrate, 1st Kanpur Nagar, in case No.21 of 2001 (State Vs. Unknown) to the extent only by which the court below has directed the applicant to file personal bond of Rs. One lac in the Court.

It is further prayed that this Hon'ble Court may further be pleased to pass an order directing the court below not to compel the applicant to file personal bond of Rs. One lac in the court, and direct the opposite party No.2 that they may check and seize the goods only after the delivery of the goods to the consignee by the applicant.

And/or pass such other and further order which this Hon'ble Court may deem fit and proper in the circumstances of the case."

The High Court by its order dated May 21, 2002 allowed the application and modified the order of the ACJM to the extent that the respondent shall not be

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required to file personal bond of R.1,00,000/-. The application under Section 482 Cr.P.C. was accordingly, disposed of. It appears that thereafter on July 1, 2002 the respondent moved another application for modification of the order dated 21.5.2002 in which the following prayer was made :-

"....modify the order dated 21.5.2002..... restraining the opposite parties from search and seizure of the goods etc. which are lying at the railway station or in the custody of City Booking Agency prior to delivery of goods to its consignee.... restrain the opposite parties from interfering in the functioning of the City Booking Agency by illegal mode of seizure u/s 102 Cr. P.C....."

The High Court by its impugned order allowed the application. The operative part of the order reads as follows :-

"I agree with the argument and accordingly, direct that the opposite party Nos. 2 and 3 shall not search and seize the goods lying at the railway station or in the custody of the city booking agency of the applicant prior to their delivery to the

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consignees and they shall also not interfere in the functioning of the city booking agency. The order dated 21.5.2002 is modified accordingly."

Learned Counsel appearing on behalf of the State of U.P. submitted that the High Court having disposed of the application filed under Section 482 Cr.P.C., the respondent could not have asked for modification of that order which really amounted to a review of the order. He further submitted that the application for modification of the order is not really an application for modification because the prayer made in the application has no relationship whatsoever with the order passed earlier, namely absolving the respondent of his liability to furnish personal bond in the sum of Rs.1,00,000/-. Learned Counsel appearing on behalf of the respondent sought to support the order submitting that what the High Court has done is only in accordance with the judgment of a Division Bench of the High Court wherein it was held that the goods, as long as they are in the custody of the City Booking Agency, cannot be seized.

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We are of the view that the impugned order passed by the High Court was wholly unwarranted. The respondent had moved the High Court only for setting aside that part of the order of the ACJM whereby he had required the respondent to furnish a personal bond in the sum of Rs.1,00,000/-. That prayer was allowed. Nothing further remained to be done. In the garb of an application for modification of that order, the respondent could not file an application which was in effect a review application praying for other reliefs. Yet the High Court passed an order directing the appellants not to search and seize the goods lying at the railway station or in the custody of the City Booking Agency of the applicant prior to the delivery to the consignees. It has further directed that the appellants shall not interfere in the functioning of the City Booking Agency. These are matters which were entirely beyond the scope of the application under Section 482 Cr.P.C. and if, we may say so, beyond the jurisdiction of the High Court exercising jurisdiction

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under Section 482 Cr.P.C. It does not arise out of any order passed by a Court, nor was there any allegation of abuse of the process of the Court, nor was it a case of manifest injustice caused to a party. A direction like the one which the High Court has given in its impugned order could be given by the High Court in exercise of its writ jurisdiction in an appropriate case and not under Section 482 Cr.P.C. In any event, since the application under Section 482 stood disposed of, the review of that order by the High Court in the garb of modifying that order is wholly unwarranted. We, therefore, set aside the impugned order of the High Court dated September 20, 2002.

This appeal is, accordingly, allowed.

.....J.
(B.P.SINGH)

.....J.
(ARUN KUMAR)

NEW DELHI;
DECEMBER 16, 2004.

ITEM NO.101(PH) COURT NO.11 SECTION II

S U P R E M E C O U R T O F I N D I A
Record of Proceedings

Criminal Appeal No.1114 of 2003

State of U.P. & Ors.Appellant (s)

VERSUS

Surendra Kumar Respondent(s)

Date :16/12/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P.SINGH
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s)Mr. Sunil Gupta, Sr.Adv.
Mr. Punit D.Tyagi, Adv.
Mr. Vivek Vishnoi, Adv.
Mr. S.B.Dixit, Adv.
Mr. Prantap Kalra, Adv.

For Respondent (s)Mr. L.N.Rao, Sr.Adv.
Mrs. Rani Chhabra, Adv.
Mrs. Sudha Pal, Adv.
Ms. Seema Nair, Adv.

Mr. K. Radhakrishnan, Sr.Adv.
Mr. Wasim A.Qadri, Adv.
Mrs. Vimla Sinha, Adv.
Mr. S.N.Terdal, Adv.

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

Crl.A. No.1114/2003

The application for intervention is refused.

The appeal is allowed in terms of the signed judgment.

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S.L.P.(Crl.)No.2552/2004

Put up after vacation.

The parties may, if so advised, place on record such material as they wish to rely upon subject to the condition that such material should be a part of the record before the High court.

(SUKHBIR PAUL KAUR)(ASHA JOSHI)
COURT MASTERCOURT MASTER

(Signed Non-Reportable Judgment in Crl.A.No.1114/2003 is placed on the file)