

; SLP(Crl.)No. 1599 OF 2000

ITEM No.3

Court No. 4

SECTION II  
A/N MATTER

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. 1599/2000  
(From the judgement and order dated 05/01/2000 in CRLMA 2558/96  
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

NATIONAL HUMAN RIGHTS COMMISSION

Petitioner (s)

VERSUS

BRIJ RAJ MEENA & ANR.

Respondent (s)

( With Appln(s). for stay and permission to place addl. documents on  
record ) ( For Final Disposal )  
( With Office Report )

Date : 22/03/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK  
HON'BLE MR. JUSTICE S.N. PHUKAN  
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Petitioner (s)

Mr. Anil Shrivastav,Adv.(N.P.)

For Respondent (s)

Mr. A.K. Ganguli,Sr.Adv.  
Dr. Krishan Singh Chauhan,Adv.  
Dr. K.P.S. Dalal,Adv.  
Mr. Chand Kiran,Adv.

State of U.P.

M/s.Pramod Swarup,Praveen Swarup,Advs.

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

.....L.....I.....T.....T.....T.....T.....T.....T.....J.  
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Leave granted.  
The appeal is allowed.

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(Y.P.Dhamija) (Suneet Bala Sharma)@@  
AA  
COURT MASTER COURT MASTER

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.322/2001@@  
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(arising from SLP( CRL) No. 1599/2000)

National Human Rights Commission ..Appellant

Vs.

Brij Raj Meena & Anr. ..Respondents

O R D E R@@  
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.....L.....I.....T.....T.....T.....T.....T.....J.  
.SP2

Leave granted.

The short question that arises for consideration is whether the High Court in exercise its power under section 482 of the Code of Criminal Procedure was justified in quashing a charge-sheet filed against the respondent along with others, who at the relevant time was working as Superintendent of Police, Ballia. The respondent urged before the High Court that the investigation having been carried on by an officer junior to him, the said investigation is vitiated being in contravention of paragraph 486 of the U.P. Police Regulation, and consequently the follow up action also. It was further urged that there is no sanction for prosecution under section 197 of the Code of Criminal Procedure, and therefore the proceeding is vitiated. The High Court was persuaded to accept both the contentions and came to the conclusion that the illegality in the investigation in breach of mandatory provisions of paragraph 486 of the U.P. Police Regulation vitiates the entire proceedings, and as such the proceedings should be quashed. On the question of applicability of section 197 of the Code

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of Criminal Procedure, the High Court also discussed several case laws on the point, and was of the opinion that the fact that the respondent had put his seal on the authenticity of false acts of the S.H.O. must be held to be in discharge of his official duty, and therefore the provisions of section 197 could be attracted. On these two conclusions, the High Court having quashed the proceedings, the present appeal, after granting permission to the National Human Rights Commission, has been preferred before this Court.

The question whether the provisions of paragraph 486 of the U.P. Police Regulation would have any application to a criminal investigation is no longer res-integra, and has been considered and answered by this Court in State of U.P.@@

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& Ors. Vs. Surinder Pal Singh (1989) 2 SCC 470. In that@@  
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case, the Court has held that the aforesaid regulation applies to an enquiry made in a departmental proceedings only, and not to investigation made in criminal prosecution. In view of the aforesaid decision, the conclusion of the High Court to the contrary cannot be sustained.

So far as the question of applicability of section 197 is concerned, the said provision has no application at that stage of investigation and filing of charge-sheet cannot

be quashed on the ground that section 197 applies. Section 197 only prohibits Magistrate from taking cognizance of an offence, if the pre-conditions therein are attracted to the

facts and circumstances of the given case. In that view of the matter, the High Court was wholly unjustified in entertaining a plea of bar of section 197, even at that stage of investigation where the charge-sheet has been filed. That conclusion of the High Court, therefore, cannot be sustained. Needless to mention that this Court has indicated in several decisions that the power under section 482 should be exercised sparingly and only when the Court comes to the conclusion that as otherwise the process of Court would be abused. We do not find any justification, in the facts and circumstances of the case, at that stage for invoking the jurisdiction under section 482 Cr.P.C. The impugned order of the High Court accordingly stands quashed and the concerned Magistrate, before whom the criminal case is proceeding, should proceed as against Shri Brij Raj Meena in accordance with law. The appeal is allowed. Our allowing the appeal and setting aside the order of the High Court may not be understood to mean that the rights of the accused to file appropriate objection, that is permissible to him under law is taken away in any manner.

.SP1

.....J.  
(G.B. PATTANAIAK)

.....J.  
(S.N. PHUKAN)

New Delhi,  
March 22, 2001

.....J.  
(B.N. AGRAWAL)