

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CrI. Appeal No.....2000 @
Petition(s) for Special Leave to Appeal (CrI.) No. 2256/2000

(From the judgement and order dated 05/11/1999 in CRLR 2206/99
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

HARISH SEHGAL

Petitioner (s)

VERSUS

STATE OF U.P. & ANR.

Respondent (s)

With

SLP(CrI.).../2000 (CC(CRL) 6169/2000)
(With CrI.M.P. 6169/2000 - for c/delay in filing SLP)

(FOR ORDERS)

(HEARD BY HON'BLE THE CHIEF JUSTICE, HON'BLE LAHOTI AND
BRIJESH KUMAR, JJ.)

Date : 24/11/2000 These Petitions were called on for orders today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Petitioner (s) Ms. Sandhya Goswami, adv.
In SLP 2256 &
respondent in
SLP...(CC(CrI)6169)

For Respondent (s)
in SLP 2256 & Mr. R.P. Gupta, adv.
petitioner in Ms. Rashmi Jain, adv.
SLP....(CC(CRL)6169)

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UPON hearing counsel the Court made the following
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Hon'ble Mr. Justice R.C. Lahoti pronounced the order
of the Court.

CRL.A.NO..../2000 @ S.L.P.(CRL) NO.2256/2000@@
CC

Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed order.

S.L.P.(CRL) NO...../2000 (CC(CRL)6169/2000@@
CC

Delay condoned.

The special leave petition is dismissed in terms of the signed order.

The Registrar (Judicial) shall communicate the copies of this order to the Registrars of High Court of Allahabad and High Court of Uttaranchal at Nanital so that the records are quickly transmitted and made available before the High Court of Uttaranchal at Nanital soliciting orders of the Chief Justice in the matter of listing and early hearing.

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(Neena Verma)
Court Master

(Prem Prakash)
Court Master

Signed non-reportable order is placed on the file.@@
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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1014 OF 2000
(Arising out of SLP(Crl.) No.2256/2000)

Harish Sehgal

Appellant

Versus

State of U.P. & Anr.

Respondents

WITH

S.L.P.(Crl)& & ../2000
(With Crl.M.P.6169/2000)

O R D E R@@
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The property in dispute consists of part of Khasra Nos.96,97,98 and 103 and an old dilapidated building standing over the land in village Dhak Patti, Pargana Central Doon, District Dehradun. It appears that dispute as to possession over the said property erupted between Harish Sehgal (referred to as Party No.1) and Ms. Lata Gupta (referred to as Party No.2). The local police intervened and proceedings under Section 145 Cr.P.C. were initiated before the City Magistrate, Dehradun. The property was attached under Section 146 Cr.P.C. and entrusted to the interim custody of a Receiver on 5.12.1998. On 29.10.1999 the learned City Magistrate passed a final order terminating the proceedings. Party No.2 was declared to be in

possession of the disputed property on the date of preliminary order and two months prior to that. The attachment was ordered to be withdrawn with the result that the party no.2 became entitled to restoration of possession from the Receiver.

Raising a grievance that in spite of the order being in favour of Party No.2 the operative portion of the order was not happily worded in accordance with clause (a) of sub-section (6) of Section 145 of the Cr.P.C. and therefore the order was not effective and was vulnerable to defiance, Party No.2 preferred a revision in the High Court of Allahabad. By order dated 5.11.1999, the High Court directed the following words to be added in the operative part of the order :

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pratham paksh dwidiya paksh
ke kabje me koi vevdhan nahi karega.
Jab thak done paksho me koi paksh
saksam niyale se apne kabje vse
swamitya ke bawath koi adesh nahi
prapt karta hai.

[Party No.1 shall not cause
any disturbance in possession of
Party No.2 until one of the two
parties has obtained an order of a
competent court as to its possession
and title.]

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and further directed that the above portion shall be deemed a part of the order dated 29.10.1999 (passed by the City Magistrate) and disposed of the revision with that observation. However, the High Court passed the abovesaid order upon hearing the learned counsel for the revisionists only and the opposite parties, i.e., the State of U.P. and Harish Sehgal, the party no.1, were not even noticed.

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Feeling aggrieved by the High Court s order dated 5.11.1999 and mainly complaining of jurisdictional error on the part of the High Court committed in passing the order without noticing the parties opposite arrayed before it, SLP (Crl.) No.2256/2000 has been preferred by party no.1 before this Court.

So also, feeling aggrieved by the order dated 29.10.1999 passed by the City Magistrate, Party No.1 preferred a petition under Section 482 Cr.P.C. before the High Court. The High Court entertained the petition and by an interim order dated 27.1.2000 directed the operation of the order dated 29.10.1999 passed by the City Magistrate to remain stayed for a period of three months and also the attachment and interim custody to continue as it was on 27.1.1999. Bi-party hearing commenced before the High Court but as it could not be concluded, on 12.5.2000 the High

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Court directed the case to remain part-heard, further hearing to continue on 7.7.2000 and the interim order already granted to continue till 15.7.2000. Aggrieved by this order Party No.2 has filed SLP (Cr1) No._____/2000 before this Court which is barred by time by a delay of 31 days. The grievance of Party No.2 is that the High Court should not have stayed, much less ex-parte the operation of the City Magistrate's order and even if the hearing was not concluded, the initial ex-parte order of stay the life of which was only three months, should not have been extended further by order dated 12.5.2000. During the course of hearing we are informed at the Bar that the hearing before the High Court has not yet concluded and in the meantime the High Court of Uttaranchal has come into existence followed by transmission of the record of the case to Nanital, the seat of the new High Court.

We have heard the learned counsel for the parties.

Cr1.A. No. & /2000 (@ SLP (Cr1) No.2256/2000)

Delay condoned. Leave granted.

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We see merit in the plea of Party No.2 that the High Court should not have passed the order dated 5.11.1999 without noticing the parties opposite likely to be affected adversely by passing of the order. There was a pitched battle causing apprehension of breach of peace between the parties leading to the initiation of the proceedings under Section 145 Cr.P.C. followed by attachment and interim custody of the property. The words directed to be added by the High Court in the order of the City Magistrate gave teeth to the order and did amount to a material variation in the phraseology of the operative part of order passed by the City Magistrate. If only the High Court would have noticed the parties opposite, the factum of the pendency of Miscellaneous application No.701 of 2000 preferred by Party No.1 could have been brought to the notice of the High Court and thereafter both the matters could have been heard together. There is some merit in the submission of the learned counsel for the Party No.1 that the passing of the order dated 5.11.1999 by the High Court impliedly affirms the order of the City Magistrate dated 29.10.1999 which order of the High Court having achieved a finality, in the petition under Section 482 Cr.P.C. filed by Party No.1 before the High Court, the High Court may feel technically inhibited from passing any other order even if it may be

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inclined to do so.

For the foregoing reasons the appeal is allowed. The impugned order dated 5.11.1999 is set aside. Criminal Revision No.2206 of 1999 is restored on the file of the High Court. The High Court shall take up Criminal Revision No.2206 of 1999 and Miscellaneous Application No.701 of 2000 for hearing analogously, after noticing all the necessary parties, and then decide the matter afresh.

Delay condoned.

Leave to appeal sought for is against an interim order. We are not inclined to entertain this special leave petition. The same is dismissed. However, we request the High Court to take up both the matters before it for hearing expeditiously. It is brought to our notice that in the disputed property an educational institution is being run and the pendency of these proceedings is adversely affecting the smooth functioning of the educational institution to the detriment of the students who have nothing to do with the dispute between the parties. We would appreciate if the

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High Court assigns priority to the hearing of these matters and disposes of them within a period of two months from the date of communication of this order, as far as practicable.

If for any reason the hearing is not concluded and the case is not decided within the said period of two months, the High Court would do well to hear and dispose of the issue as to continuing or vacating the interim order of stay.

It is also brought to our notice that a civil suit is pending as regards the same property between the same parties. The effect of pendency of civil suit on the proceedings under Sections 145 and 146 Cr.P.C. is also left to be determined by the High Court.

Needless to say it is open to the parties also to seek any appropriate interim relief from the Civil Court which is at liberty to make an order as to interim custody, possession or preservation of property in dispute. Such an order of Civil Court, if made, shall supersede the order of criminal court.

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We make it clear that we have not expressed any opinion on the merits of the controversy either way.

The Registrar (Judicial) shall communicate the copies of this order to the Registrars of High Court of Allahabad and High Court of Uttarachal at Nanital so that the records are quickly transmitted and made available before the High Court of Uttaranchal at Nanital soliciting orders of the Chief Justice in the matter of listing and early hearing.

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.CJI.

.J.
(R.C. Lahoti)

.J.
(Brijesh Kumar)

New Delhi;
November 24, 2000.