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SLP(Crl.)No. 1998 OF 2000

ITEM No.15

Court No.10

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. 1998/2000

(From the judgement and order dated 07/02/2000 in CRLA 227/94
of The HIGH COURT OF KARNATAKA AT BANGALORE)

STATE OF KARNATAKA

Petitioner (s)

VERSUS

APPAJI NINGAPPA PATIL

Respondent (s)

Date : 12/02/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.P. MOHAPATRA
HON'BLE MR. JUSTICE S.N. VARIAVA

For Petitioner (s)

Mr. Sanjay R. Hegde,Adv.

For Respondent (s)

Mr. G.V.Chandrashekhar,adv.for
Mr. P.P. Singh,Adv.

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

.....L.....I.....T.....T.....T.....T.....T.J
.SP2

Leave granted.
Appeal is allowed.

.SP1

(Suman Wadhwa)
PA to Addl.Regr.

(K.K.Chadha)
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.210 OF 2001
(Arising out of S.L.P.(Crl.) No. 1998/2000)

State of Karnataka

& Appellant

Vs.

O R D E R

We have heard learned counsel for the parties and also perused the judgment/order dated 7.2.2000 of the High Court of Karnataka in Criminal Appeal No.227 of 1994. In the said judgment/order a Division Bench of the High Court disposed of the appeal with certain observations. The relevant portion of the judgment is extracted below:

In the light of the aforesaid position, while declining to interfere with the order of acquittal, we direct that the accused shall deposit with the Bank within an outer limit of six months from today with the sum of Rs.46,206/- and he shall thereafter produce the receipt for the said deposit along with a copy of this order before the Civil Court at Belgaum in O.S.No.425/89. On the production of the proof of deposit, the Civil Court shall pass an order to the effect that the Bank's claims are satisfied and dispose of the civil suit.

In the light of the aforesaid directions, the appeal to stand dismissed on merits.

The respondent was tried on the charges under Sections 409, 420 and 465 of the Indian Penal Code for misappropriation of a sum of Rs.46,206/- due to the United Commercial Bank, Belgaum, Karnataka. The trial court on assessment of the evidence on record acquitted the respondents of the charges. The State moved the High Court under Sec.378(1) of the Criminal Procedure Code for leave to challenge the judgment/order of acquittal. Leave having been granted Criminal Appeal No.227 of 1994 was registered.

On perusal of the judgment of the High Court it is clear that the case has not been considered on merit. The appeal has been disposed of with the directions noted earlier with a view to ensure recovery of the sum for realisation of which the Bank has already filed a suit. It is stated by learned counsel for the respondent that the amount has been deposited in the trial court on 23.1.2001.

The consideration on which the High Court has proceeded to dispose of the appeal is not at all relevant for deciding the case. The criminal appeal filed after grant of leave under section 378 has to be disposed of on consideration of the evidence on record and broad probabilities of the case. The High Court has signally failed in proper exercise of the jurisdiction as an appellate court. The judgment/order passed by the High Court is clearly unsustainable.

Accordingly, the appeal is allowed. The judgment/order of the High Court under challenge is set aside. The case is remitted to the High Court for disposal of the Criminal Appeal No.227 of 1994, on merit in accordance with law after giving opportunity for hearing to the parties.

(D.P.MOHAPATRA)

& & & & & & & ..J.
(S.N. VARIAVA)

New Delhi
Dated: February 12, 2001