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Cr1.A.No. 109 OF 1998

ITEM No.101

Court No. 5

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.109 OF 1998

STATE OF U.P. Appellant (s)

VERSUS

NIRMAL KUMAR & ANR. Respondent (s)

(with prayer for interim relief)

Date : 17/02/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. CD Singh, Adv. for
Mr. JK Bhatia, Adv.

For Respondent(s)Mr. Ravi Prakash, Adv.
Mr. SWA Qadri, Adv. for
Mr. LR Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties.

The appeal is allowed to the extent indicated in signed order. No costs.

(D.L.Chugh) (Vijay Aggarwal)
AR-cum-PS Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.109 OF 1998

STATE OF U.P.Appellant(s)

versus

O R D E R

The above appeal has been filed by the State of U.P. challenging the order of a learned Single Judge of the Allahabad High Court dated 16.7.1997 in Criminal Misc. Writ Petition No.642 of 1997 and Criminal Revision No.990 of 1996 whereunder the High Court while setting aside the order dated 16.2.1993 passed by the VIIth Additional Sessions Judge, Agra and the order dated 4.7.1996, also quashed the seizure memo dated 26.11.1992 which was filed as Annexure 20 to the Crl. Misc. writ petition before the High Court.

Respondents have been served with notice and they have entered appearance and filed their counter affidavit.

On 1.4.1999 this Court, after hearing both sides and while vacating the interim orders granted on 15.12.1997, passed a conditional order that before the seized Khaira wood is released to Respondent No.1 (Nirmal Kumar) he shall execute a bond to the Magistrate concerned with a Bank Guarantee of Rupees seven lakhs, to the effect that if it is ultimately found that the first respondent has no right over the wood the said amount would be forfeited to the Government of Uttar Pradesh.

Heard the learned counsel appearing on either side.

The learned counsel appearing on either side tried to project their respective stands taken before the authorities concerned and the courts below reiterating the same points. On going through the impugned orders we are of the view that the courts below appears to have proceeded in some manner or other form of misconception as to the relevant provisions of law governing the matter in issue. Unwarranted and baseless assumptions as to the real and relevant points in issue also seems to have resulted in the different courts as well as the High Court passing orders which cannot, in our view, be said to be in conformity with the relevant provisions of law governing, contained in the Indian Forest Act, 1927 (for short "the Act") as applicable to the State at the relevant point of time. From the factual details furnished in the various orders of the courts below we find that an order of seizure purporting to exercise of powers under Section 52 of the Act was passed on 26.11.1992 noticed above, which came also to be set aside by the High Court. If power has been exercised under the provisions of Section 52 of the Act the next stage or course of action to be followed with reference to the same, appears to be under Section 54 of the Act and the other statutory provisions, following the said section. Section 58 of the Act indicates the procedure to be followed in respect of the goods seized under Section 52 of the Act which are likely to be perishable. We find that even at this stage the disputes raised between the parties as to whether the property seized is that of the Government or the respondent have been, not objectively adjudicated as envisaged but instead some sweeping observations seems to have been made one way or other. The litigation between the parties, as such issues even at this preliminary stage, in our view, virtually sidelined the main action ultimately to be taken under the Act, in the matter of a proper adjudication in accordance with law of the fundamental issue as to whether there had been really an offence committed, incidentally adjudicating on the nature and character of the property as well which alone could finally settle the rights of parties, namely, the State as well as the respondent-claimant with reference to and over the property seized.

We are informed by the learned counsel appearing on either side that even after the conditional order dated 1.4.1999 the respondent has not filed any claim or guarantee to avail the benefit of the conditional order passed by this Court on 1.4.1999. The reasons which seem to have weighed with the learned Judge in the High Court to ultimately arrive at a decision to quash not only the seizure order but the orders passed by the VIIth Additional Sessions Judge, Agra do not constitute valid, sufficient or proper grounds to set aside the order of seizure and for that matter the order passed by the Additional District Judge. The summary and superficial manner of dealing with the matter itself warrants the order of the High Court being set aside, to be followed by consequential decisions as to the proper course to be adopted.

Consequently, we set aside the orders of the High Court under challenge and as a consequence thereof we direct the restoration of the seizure order dated 26.11.1992. The order of the VIIth Additional Sessions Judge, Agra so far as it directed public auction and deposit of the amount is also restored. For the reasons stated supra, we vacate the observations made and findings recorded by the courts below including the High Court as to the principles of law and the statutory provisions that should govern the matter in issue as also on the question of the rights of parties to the property seized. We leave open to the parties liberties to vindicate their respective rights as to the properties/proceeds realised from public auction of the properties in the manner known to and in accordance with law and as and when any such proceedings are initiated either by the Forest Department/Government or by the first respondent or anybody else claiming rights over the same, the court/authorities concerned shall adjudicate upon the issues raised on their own merits and in accordance with law. The appeal is allowed to the extent indicated above but with liberties granted to parties on either side as indicated in our order. No costs.

.....J.
(DORAISWAMY RAJU)

.....J.
(ARIJIT PASAYAT)
New Delhi,
FEBRUARY 17, 2004