

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 137 OF 2016
(Arising out of S.L.P. (CRL.) No. 4871 of 2011)

S.B.MOREY ADDL.COMMR.OF I.T APPELLANT(S)

VERSUS

PRAVINKUMAR GOSALIA & ANR RESPONDENT(S)

WITH
CRIMINAL APPEAL NO. 138 OF 2016
@ SLP(Cr1) No. 5554/2011

O R D E R

Leave granted.

Heard learned counsel for the parties.

The appellant - Additional Commissioner of Income Tax questioned the correctness of the common judgment and order dated 12.10.2010 passed by the High Court of Judicature at Bombay, Bench at Goa, in Criminal Writ Petition Nos. 71 and 72 of 2010 wherein the High Court in exercise of its discretionary jurisdiction under Section 482 of the Code of Criminal Procedure partly allowed the Writ Petitions filed by the respondents herein and set aside the charges framed under Sections 201 and 204 of the Indian Penal Code ("IPC" for short) against them. The said order is under challenge before this Court, urging various legal grounds.

Learned counsel for the appellant submitted that the learned trial Judge after hearing the parties, considering the relevant materials contained in the report filed under Section 173 of Code of Criminal Procedure and after satisfying himself has framed the charges under the provisions of Section 181 read with Sections 201 and 204 of the IPC.

The respondents herein who are joint account holders have questioned the correctness of the framing of the charges against them. Challenging the said framing of the charges against them, learned counsel for the respondents submitted that the High Court after adverting to certain relevant facts and relevant legal contentions has arrived at the conclusion that the main offence is under Section 181 of the IPC, the charge framed in this regard is sustained, however, the charges framed for the offence punishable under Sections 201 and 204 of the IPC are set aside by recording reasons at paragraphs 12 and 13 in the impugned judgment and order.

The correctness of the abovesaid finding recorded by the High Court in the impugned judgment and order is challenged before this Court by the Department represented by its Additional Commissioner inter alia

contending that the exercise of the discretionary power by the High Court under Section 482 CrPC upon filing a writ petition under Article 226 of the Constitution ignoring the relevant materials contained in the report, more particularly even after the order was passed in the revision by the learned Additional Sessions Judge recording reasons. Learned counsel for the appellant submitted that the finding recorded by the High Court in setting aside the charges framed under Sections 201 and 204 of the IPC against the respondents is erroneous for non consideration of the material particularly the statement of the Manager of the Bank, who had stated that the locker had already been operated by the respondents before the said prohibitory order could be served upon the Bank. The said statement is given by the Manager of the Union Bank of India. The said relevant material is considered by the learned trial court Judge while framing the charges. In our opinion, non considering the same and setting aside the charges under Sections 201 and 204 IPC by the High Court have rendered the finding erroneous, therefore, we have to accept the case pleaded by the appellant and set aside that portion of the impugned order.

We order accordingly.

Resultantly, the appellant succeeds, the appeals are allowed, the order of the learned Judicial Magistrate, First Class, Margao is restored.

The Criminal Appeals are allowed accordingly.

.....J.
(V. GOPALA GOWDA)

.....J.
(ARUN MISHRA)

NEW DELHI,
FEBRUARY 16, 2016

ITEM NO.16

COURT NO.9

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 4871/2011
(From the judgment and order dated 12.10.2010 in CWP No. 72/2010
passed by the High Court of Judicature at Bombay, Bench at Goa)

S.B.MOREY ADDL.COMMR.OF I.T

Petitioner(s)

VERSUS

PRAVINKUMAR GOSALIA & ANR

Respondent(s)

(With appln.(s) for exemption from filing c/c of the impugned order
and stay and office report) (For Final Disposal)

WITH

SLP(Crl) No. 5554/2011

(With appln.(s) for exemption from filing c/c of the impugned order
and stay and Office Report)

Date : 16/02/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA

HON'BLE MR. JUSTICE ARUN MISHRA

For Petitioner(s) Mr. Arijit Prasad, Adv.
Mr. W.A. Quadri, Adv.
Mr. G. Kumar, Adv.
Mr. B. V. Balaram Das, Adv.

For Respondent(s) Mr. Vinay Navare, Adv.
Ms. Abha R. Sharma, Adv.

Mr. Bhavani Shankar S. Gadnis, Adv.

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

Leave granted.

The appeals are allowed in terms of the signed order.

(S. K. RAKHEJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)

