

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.4457 OF 2003

(From the judgement and order dated 21/11/2002 in CP No.15/2002 in
BA No.2821/2002 of the HIGH COURT OF BOMBAY)

STATE OF MAHARASHTRA

Petitioner(s)

VERSUS

MOHAMMED RASHID & ANR.

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned judgment,
stay, exemption from filing O.T. and c/delay in filing SLP)

Date: 18/07/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE G.P. MATHUR

For Petitioner(s)

Mr. Ravindra Keshavrao Adsure,Adv.

For Respondent(s)

Mr. Sushil Kumar Jain,Adv.

Ms. Pratibha Jain,Adv.

Mr. A.P. Dhamija,Adv.

Mr. H.D. Thanvi,Adv.

Mr. Ram Niwas,Adv.

Mr. Sarad Singhania,Adv.

Mr. Puneet Jain,Adv.

Mr. L.P. Singh,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties.

Exemption allowed.

Delay condoned.

Leave granted.

The criminal appeal is allowed.

[T.I. Rajput]

Court Master

[V.P. Tyagi]

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.877 OF 2005

(Arising out of S.L.P. (Crl.) No.4457 of 2003)

State of Maharashtra

...Appellant(s)

Versus

Mohammed Rashid & Anr.

...Respondent(s)

O R D E R

Heard the learned counsel for the parties.

Delay condoned.

Leave granted.

The only grievance of the appellant-State in this appeal, at this stage, is about the direction contained in the impugned order dated 21st November, 2002, of the High Court to the effect that if any crime is registered against the applicant (first respondent herein) in future with Nallasopara Police Station within a period of three years, he shall not be arrested in connection therewith, except after service of four working days advance notice in writing to him.

The aforesaid order was passed in a contempt petition that had been filed by the first respondent against the State of Maharashtra and the concerned Assistant Police Inspector attached with the aforesaid police station. The first respondent, by an earlier order passed on 26th August, 2002, was granted anticipatory bail. The

grievance of the first respondent was that despite grant of interim order in his favour restraining the arrest, the police arrested him in violation of the order. While

disposing of the contempt petition and directing that the contempt petition be

dropped, it has been noticed in the impugned order that since on the face of it the first respondent was arrested in

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respect of a different offence registered against him as per the affidavit of the police officer, it would be difficult to hold the officer guilty of contempt unless it is shown

that the crime registered was a false one. Under these circumstances, the contempt action was dropped and inquiry was directed to be conducted by the Additional Chief Secretary, Home Department, Government of Maharashtra in respect of complaint filed by the first respondent dated 25th March, 2002.

In this appeal, we are not called upon to decide the correctness of the direction for holding an inquiry. That direction has not been challenged by the State. The limited challenge is to the blanket order of not arresting the first respondent for a period of three years in the manner above noted.

Having heard the learned counsel for the parties and also having perused the record, including the order dated 26th August, 2002, it is clear that such a blanket protection of not arresting the first respondent in any crime, except after written notice to him, could not be passed. Accordingly, the direction given in the penultimate paragraph of the impugned order giving blanket protection to the first respondent is set aside and, to that extent, the impugned order stands modified.

We may, however, clarify that if out of vindictiveness, any false case is registered against the first respondent, it goes without saying that he is not without remedy to challenge it in an appropriate forum.

The criminal appeal stands allowed to the above extent.

.....J.

[Y.K. SABHARWAL]

.....J.

.....

[G.P. MATHUR]

New Delhi,

July 18, 2005.