

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 798 OF 2013
(arising out of S.L.P. (Crl.) No. 4947 of 2013)

VINOD ZUTSHI ... APPELLANT

VERSUS

THE STATE OF RAJASTHAN & ANR. ... RESPONDENTS

WITH CRIMINAL APPEAL NO. 799 OF 2013
(arising out of S.L.P. (Crl.) No. 4957 of 2013)

O R D E R

Leave granted.

These appeals arise out of the Special Leave Petition (Crl) No. 4947 of 2013 which has been filed by the petitioner Shri Vinod Zutshi, who is presently holding the post of Deputy Election Commissioner in the Election Commission of India and was earlier functioning as the Secretary in the Rajasthan Tourism Development Corporation, apart from other posts that he had held in the State. Insofar as the appellant, Shri Hridesh Kumar Sharma, in the appeal arising out of Special Leave Petition (Crl.) No. 4957 of 2013 is concerned, he is presently holding the post of Director, Archaeology and Museum, Government of Rajasthan.

In the above appeals, the appellants have assailed the order passed by the High Court of Rajasthan in S.B. Criminal Misc. Petition No. 159 of 2013 and S.B. Criminal Misc. Petition No. 157 of 2013 wherein they had challenged the order of the Magistrate taking cognizance against them in a case registered by the complainant/informant- Mr. Bhagwat Gaur (Respondent No. 2 herein). The complainant/informant, who claims to be a public spirited person, initially filed a public interest litigation challenging the decision of the Government of Rajasthan by which a lease deed was granted in favour of an applicant for 99 years to develop tourist spot and set up a resort at a prime place in the city of Jaipur. The informant's public interest litigation was dealt with by a Division Bench of the High Court which was pleased to set aside the order passed by the Government of Rajasthan granting lease for 99 years in favour of an applicant which is the subject matter of challenge before this Court wherein this Court by Order dated 25.5.2012 in S.L.P.(C) No. 17701 of 2012 directed that the operation of the judgment and order passed by the High Court shall be kept in abeyance.

However, at this stage, and in these appeals, we are not concerned with the subject matter of the public interest litigation which has assailed the grant of lease for 99 years, as these matters arise out of the judgment and order passed by the High Court wherein the appellants had challenged the order of the Magistrate taking cognizance against them in a criminal case which was lodged by respondent No. 2 alleging that the respondent had acted in connivance with and was instrumental in facilitating the grant of lease in favour of the applicant. It may be essential to state that the grant of lease deed was a triggering factor for the respondent- Bhagwat Gaur to file FIR against the appellants and several other officers on 28.4.2010

even though, he had already filed a public interest litigation in the High Court assailing the grant of lease on 6.4.2010. Further development in the matter indicates that investigations were conducted in regard to the FIR on three different occasions and a final report was submitted in regard to the allegations levelled, by the investigating authorities recording report for closure of the case. On the first occasion, the above report/final report was given stating therein that the court had no jurisdiction to proceed with the matter in view of submission of the final report followed by the second closure report on 27.9.2010. The competent court accepted the closure report/the final report in regard to the FIR.

Respondent No. 2-informant, however, was still not satisfied and, hence, he filed a protest petition before the Magistrate and on the third occasion which was on 14.3.2011, the Deputy Commissioner of Police submitted a negative final report in regard to the case lodged against the appellants and other persons in which the second protest petition was filed by the complainant-informant. The Magistrate on this occasion accepted the protest petition and took cognizance of the offence under Sections 420, 409 and 120-B of the Indian Penal Code and while taking cognizance, issued non-bailable warrant(s), inter alia, against several accused persons including the appellants in the appeals, apart from the other accused persons who were named in the FIR. This order was passed by the learned Magistrate on 9.9.2011 which was challenged in the High Court by the appellants. Separate remedies were pursued by the accused persons before different forums and one of the accused had come up to this Court wherein the order of the Magistrate taking cognizance was ordered to be kept in abeyance and, in the meantime, the court exercising revisional jurisdiction was ordered to deal with the matter. The appellants also pursued a similar remedy relying on the order of this Court but it appears that the Court of District and Sessions Judge ultimately chose to dismiss the Revision Petition and perhaps misinterpreted the order passed by this Court as it refused to grant similar relief to the appellants. The appellants' applications were thus rejected which were assailed by them before the High Court by filing S.B. Criminal Misc. Petition No. 159 of 2013 and S.B. Criminal Misc. Petition No. 157 of 2013 referred to hereinabove. Along with the Misc. Petitions they had also filed stay applications requesting the court to stay the 9.9.2011 order by which non-bailable warrant(s) was issued by the Magistrate while accepting the protest petition of the complainant.

The High Court admitted the writ petition and has posted the matter for final hearing but, in the meantime, non-bailable warrant(s) is sought to be executed on the appellants which compelled them to file applications for stay of the order passed by the trial court as also non-bailable warrant(s) issued against them. The High Court by the impugned common judgment and order passed in both the appeals has been pleased to reject the stay applications filed by each of the appellants holding that the same is devoid of any merit. The said order is under challenge in these two appeals wherein learned counsel for the appellants have given the sequence of events leading up to the filing of these appeals by way of special leave petitions.

The only question which remains for consideration at this stage is whether the Magistrate while taking cognizance of the matter was justified in issuing non-bailable warrant(s) also. However, the appellants have also assailed the order taking cognizance of the case against them, but as the case is still sub-judice before the High Court, we do not deem it appropriate to comment on the merit of the same.

Insofar as the issuance of non-bailable warrant(s) are concerned, the same, in our view, requires to be treated on the same footing which was found in case of other similarly situated person by a Co-ordinate Bench of this Court in S.L.P. (C) No. 17701 of 2012 whereby an order was passed directing the warrant of arrest to be kept in abeyance. We see no ground or reason to take a different view in regard to the case of the appellants who clearly stand on an identical footing.

Besides the above, it has been pointed out on merit that insofar as the appellant-Vinod Zutshi is concerned, he had joined as

Secretary (Tourism), Government of Rajasthan on 19.1.2004 and was given the charge of Chairman, Rajasthan Tourism Development Corporation on 28.2.2004 whereas the process regarding initiation of the grant of lease was started way back in July, 2003 when the appellant was not at all in the picture or in any way connected with initiation of the grant of lease. The appellant, no doubt, was a Member of the Committee on 9.2.2004 with 15 other Members of Indian Administrative Service (IAS) but that clearly was a collective decision taken by the Committee. Yet the appellant allegedly has been made an accused although, the Committee consisting of 15 IAS officers took the decision regarding the grant of lease, which Committee was presided over by the Chief Secretary and the case has been lodged against the appellant although he was not the whole and sole authority in the decision making process.

We have noticed that the Magistrate taking cognizance and allowing the protest petition of the respondent-complainant simultaneously issued non-bailable warrant(s) against the appellant(s) which prima facie appears to be unsustainable. However, this view is purely incidental since the correctness of the order taking cognizance and whether the same is fit to be quashed will be gone into by the High Court at the appropriate stage. We also see no reason to interfere with further proceeding pending before the trial court at this stage since the application for quashing is yet to be considered by the High Court.

But insofar as the execution of non-bailable warrants against the appellants are concerned, the same clearly, in our view, deserve interference in view of the facts recorded hereinbefore, apart from the fact that this Court had already ordered in the case of a similarly situated accused person, indicated hereinabove, whereby non-bailable warrant had been ordered to be kept in abeyance. Hence, in order to maintain parity as also considering the merit of the matter, we are of the view that the non-bailable warrants issued against the appellants deserve to be kept in abeyance, which obviously implies that there shall be a stay of the warrant(s) of arrest issued against the appellants.

We, however, also felt inclined to put it to the counsel for the respondent-complainant regarding the legal competence of a person to lodge a criminal case in regard to the allegations for which he had already filed a public interest litigation as a public spirited person in the High Court challenging the administrative decision of the Government which was pending when the criminal case was filed. However, learned counsel for the respondent has rightly submitted that this is a matter which is yet to be gone into by the High Court and, therefore, we do not touch upon this issue further.

However, since the impugned judgment is under challenge and the High Court had refused to grant stay of arrest of the appellants and the appeals by way of special leave petitions were filed assailing the same for the reasons stated hereinabove, we have thought it appropriate to keep the order of arrest in abeyance. Thus, there is no reason for us to keep these appeals pending.

However, in the interest of justice, we need to clarify that any observation that has been made by this Court will not affect the merit of the case in any manner.

The appeals are allowed to the aforesaid extent.

.....J.
(GYAN SUDHA MISRA)

.....J.

New Delhi, the
10th June, 2013.

ITEM NO.12 COURT NO.2 SECTION II
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).4947/2013

(From the judgement and order dated 16/05/2013 in CRMSP
No.148/2013,CRLMP No.159/2013 of The HIGH COURT OF RAJASTHAN AT
JAIPUR)

VINOD ZUTSHI Petitioner(s)
VERSUS
THE STATE OF RAJASTHAN & ANR. Respondent(s)
(With appln(s) for exemption from filing O.T. and ex-parte stay and
office report)

WITH SLP(Crl) NO. 4957 of 2013
(With office report)

Date: 10/06/2013 These Petitions were called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE GYAN SUDHA MISRA
HON'BLE MR. JUSTICE MADAN B. LOKUR
(VACATION BENCH)

For Petitioner(s) Dr. A.M. Singhvi, Sr. Adv.
Mr. Swadeep Hora, Adv.
Mr. Abhishek Singh, Adv.
Mr. Akhil Anand, Adv.

For Respondent(s) Dr. Manish Singhvi, A.A.G.
Ms. Pragati Neekhara, Adv.

Mr. Mahabir Singh, Sr. Adv.
Mr. Rakesh Dahiya, Adv.
Mr. S.S. Shamsheri, Adv.
Mr. Gagan Deep Sharma, Adv.

UPON hearing 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

| |(S.S.R. Krishna)
| |Court Master

|

file)

(Signed order is placed on the