

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(s).4692/2011

(From the judgement and order dated 08/04/2011 in CRLA No. 675/2001
(Old No. 1887/2000) of the HIGH COURT OF UTTARAKHAND AT NAINITAL)

SANJEEV KUMAR GUPTA

Petitioner(s)

VERSUS

STATE OF U.P.(NOW UTTARAKHAND)

Respondent(s)

(With appln(s) for bail, directions, c/delay in filing reply, exemption
from filing O.T. and office report)

WITH

SLP(Crl) NO. 4789 of 2011
(With appln. for bail and office report)
SLP(Crl) NO. 4823 of 2011
(With appln. for bail and office report)
SLP(Crl) NO. 4843 of 2011
(With appln. for bail and office report)
SLP(Crl) NO. 5286 of 2011
(With appln. for bail and office report)
SLP(Crl) NO. 5300 of 2011
(With appln. for bail and office report)
SLP(Crl) NO. 5365 of 2011
(With appln. for bail and office report)

Date: 05/11/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

Counsel for the parties

Amicus curiae Mr. Gaurav Agrawal, Adv.

Mr. R.L. Khurana, Sr. Adv.
Mr. M.C. Dhingra, Adv.
Mr. Piyush Kant Roy, Adv.

Intervenor Mr. Jatinder Kumar Sethi, Adv.
Mr. Umesh Arora, Adv.
Ms. Indra Sawhney, Adv.

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Mr. Rahul Verma, Adv.
Mr. Jatinder Kumar Bhatia, Adv.

Mr. Abhishek Atrey, Adv.
Mr. Brijesh Panchal, Adv.
Mr. Aishverya Shandilya, Adv.

Mr. Ranjit Kumar, Sr. Adv.
Mr. R.S. Sodhi, Sr. Adv.
Mr. U.U. Lalit, Sr. Adv.
Mr. Rahul Malhotra, Adv.
Mr. Chanchal Kumar Ganguli, Adv.

Mr. Y. Prabhakara Rao, Adv.

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

We have gone through the report of the Director General of Police (DGP), Uttarakhand, dated October 06, 2012, and we have also heard Mr. Gaurav Agrawal, whom we appointed as amicus curiae to assist the Court.

The amicus pointed out that there are a number of glaring deficiencies in the report submitted by the DGP and it raises the suspicion whether the accused against whom there is a serious allegation of making threats to Mr. Umesh Arora, Advocate, are being shielded.

The amicus submitted that the FSL report confirms that the SMSs received on the phone of Mr. Arora were actually sent on the date and time as recorded in the mobile phone. Further, it is undeniable that Sushil @ Silli Kapoor and Kshitij Bora were also with Ripudaman Singh and Gajender Singh Nayal when they had visited Mr. Arora and, according to him, had given threats to him.

The meeting between Mr. Arora and the four accused, is also admitted in the affidavits filed on their behalf before this Court. There was, therefore, no reason for Sushil @

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Silli Kapoor and Kshitij Bora to be left off the charge sheet.

The amicus further pointed out that the contents of the SMSs plainly and clearly make out a case under Section 506 of the Penal Code and the circumstances in which the SMSs were sent also attract the provisions of conspiracy and abetment and, therefore, there was no reason not to include those Sections in the charge sheet. The submission of the charge sheet for the lesser offence of causing insult, punishable under Section 504 of the Penal Code is, therefore, quite inexplicable.

Mr. Agrawal also submitted that in the facts of the case, the action of the Sub-Inspector Deepak Singh Rawat in advising Mr. Arora to withdraw the case certainly amounted to a criminal offence and there is no reason for him to be left off the criminal charge and be subjected only to a disciplinary proceeding.

We find that the objections raised by Mr. Agrawal and the allegations pointed out by him in the report of the Director General of Police, Uttarakhand, require serious consideration.

At this stage, we may also note that Mr. Agrawal pointed out to us that in the previous order dated July 13, 2012, this Court had said that the Superintendent of Police, Dehradun, shall complete the investigation of the case, taking into account the report received from FSL, CBI, and submit his report to the DGP, who after vetting it, will submit a final report to this Court.

It appears to us that the DGP has failed to appreciate the gravity and the seriousness of the matter and has sent the report without following the directions given by this Court.

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We direct the DGP to respond to the deficiencies pointed out in his report by Mr. Agrawal, the learned amicus.

The response from the DGP should reach this Court within two weeks from the date of receipt/production of a copy of this order before him.

Put up immediately on receipt of the response from the DGP, Uttarakhand.

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|Court Master

|(N.S.K. Kamesh)

| |Court Master

| |(Sneh Bala Mehra)

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