

ITEM NO.19 COURT NO.3 SECTION IIA

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl)... 2008
CRLMP.NO(s). 12864

(From the judgement and order dated 24/03/2008 in CRLA No. 932/2004 &
CRLM No. 13500/2006 of the HIGH COURT OF DELHI AT NEW DELHI)

UDAI RAM Petitioner(s)
VERSUS

GOVT. OF NCT OF DELHI & ORS. Respondent(s)

(With CRL.M.P.No.12864/2008 for c/delay in filing SLP)

Date: 22/08/2008 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s) Mr. Arun Bhardwaj,Adv.
Mr. Gyanendra Singh,Adv.
Mr. Vishwa Pal Singh,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
ORDER

Delay condoned.

The petitioner has in the synopsis and list of dates, merely stated that he has been convicted under Section 379 of the Indian Penal Code. The fact that an order under Section 458 of the Code of Criminal Procedure had been passed was also suppressed. By reason of the said order, the Additional Sessions Judge, New Delhi directed:

"The accused persons have been in illegal and forcible possession of the property for last 20 years. I direct SHO of PS Bara Hindu Rao to remove the accused persons

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from property No. T-56 and T-57 i.e. two rooms in question and if the shape of the property has been changed and new rooms had been constructed or the courtyard had been covered then, he shall remove the accused persons forcibly from the renewed/modified premises No. T-56 and T-57 as identified by the complainant within a period of 15 days from today and after removing the accused persons from the possession of the premises No. T-56 and T-57 Tokri Walan the possession shall be restored to the complainant Inder Singh, his wife Prakash Kaur and Jagjeet Singh. A report about the taking of the possession and restoring the possession to the complainant shall be filed in the court within 3 weeks from today."

When an appeal was preferred before the High Court, an interim order was passed on 8.12.2004 to the following effect:

"Under the circumstances, till the next date of hearing, the impugned sentence of imprisonment as well as fine of the appellants stand suspended as the are ordered to be released on bail upon their executing personal bonds in the sum of Rs. 25,000/- each with one surety each in like amount to the satisfaction of the Court concerned.

The next date of hearing, the operation of the impugned order under section 456 Cr.P.C. is also modified to the extent that the SHO shall remove the appellants from the premises in question in terms of the orders passed by the trial Court but shall keep the property in his custody till further orders from this Court."

(sic)

The impugned order dated 24.3.2008 of the High Court has been passed on the application of the complainant Shri Inder Singh Grover, stating:

"By moving this application, learned counsel for the complainant/ applicant seeks modification of order dated 8th December, 2004 where this Hon'ble Court ordered to the effect that the SHO shall remove the appellants from the premises in question but shall the property in his custody till further orders from this Court.

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Now learned counsel for the complainant/ applicant by moving this application states that trial court has passed the decree in his favour about recovery of possession of demise premises besides recovery of damages. He further states that appeal filed by the appellants also stood dismissed. Learned counsel for the appellant does not dispute this legal position. This being so, the possession of the demise property has to be restored back to the complainant by SHO. Accordingly, it is ordered that S.H.O. shall restore the possession to the appellant/ complainant."

Having regard to the fact that the petitioner has already been dispossessed and the interim order will be subject to the ultimate order that may be passed in the Criminal Appeal preferred by the petitioner and, furthermore, in view of the suppression of fact before us, we are not inclined to exercise our jurisdiction under Article 136 of the Constitution of India.

The special leave petition is dismissed with the aforementioned observation.

(A.S. BISHT)
COURT MASTER

(PUSHAP LATA BHARDWAJ)
COURT MASTER