

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1308 OF 2006

Vikas Dubey & Anr. Appellants

Versus

State of Uttar Pradesh & Anr. Respondents

O R D E R

This appeal arises out of a common order dated 17.02.2005 passed by the Allahabad High Court in Criminal Appeal Nos. 711 and 712 of 2005.

Shorn of unnecessary details, facts giving rise to the present appeal are that the District Magistrate in exercise of the powers under Section 14 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as the "Act") attached various properties belonging to the appellant and his family members. The appellants made representations for release of the property as contemplated under Section 15 of the Act. The District Magistrate declined to release the properties and rejected the appellants' prayer by order dated 08.12.2004 and referred the application filed by the appellants to the Court of Special Judge constituted under the Act. The Special Judge by order dated 13.01.2005 allowed the application but directed release of the properties subject to the execution of bonds and sureties.

Aggrieved by the aforesaid portion of the order of the Special Judge whereby it had directed for release of the properties subject to the execution of bonds and sureties the appellants preferred appeals before the High Court which were registered as Criminal Appeal No.711 of 2005 (Ram Kumar Dubey vs. State of U.P.) and Criminal Appeal No.712 of 2005 (Vikas Dubey & another vs. State of U.P.). Both the appeals have been allowed by the High Court by a

common judgment dated 17.2.2005 in the following words:

"In view of the aforesaid facts and the position of law, I am of the view that the impugned order as it relates to the objections of the appellants preferred before the court below is misconceived and the appeal in respect thereto has to be allowed.

The appeal is allowed and the impugned order dated 13.01.2005, as it relates to the objections preferred by the appellants before the court below in respect of the attached properties, is hereby set aside.

The court below shall expedite the disposal of the trial and if the accused persons cooperate shall conclude it within three months."

While allowing the appeals the High Court has observed as follows:

"Such interim arrangement as has been done in this case by the court below by passing the impugned order is obviously not contemplated under law and the whole order is without jurisdiction."

Mr. J.N. Dubey, learned senior counsel, appearing on behalf of the appellants submits that in view of the aforesaid observations of the High Court the properties are not being released and further those observations are absolutely uncalled for. He points out that

3

the order dated 13.01.2005 passed by the Special Judge directing for release of the properties was not assailed by the State and the appellants had challenged a portion of the said order whereby it had directed the release of the property subject to the execution of bonds and sureties and hence the High Court exceeded its jurisdiction in observing that the order passed is without jurisdiction.

Mr. Shail Kumar Dwivedi, learned Additional Advocate General has appeared on behalf of the State of Uttar Pradesh.

Having appreciated the rival submissions, we find substance in the submission of Mr. Dubey. The order of the Special Judge directing for release of the properties attached was not challenged by the State and the appellants had only challenged the conditions imposed for release of the properties. The High Court had upheld the contention of the appellants in this regard and had clearly observed that the order dated 13.01.2005 relates to the objections

raised by the appellants for release of the properties is set aside.

Once it has held so, the High Court has exceeded its jurisdiction by observing, in the absence of any challenge that the order passed by the Special Judge directing for release of the properties is without jurisdiction.

4

In the result the appeal is allowed, the offending observation in the order made by the High Court is set aside.

.....J

(G.S. SINGHVI)

.....J

(C.K. PRASAD)

New Delhi,
June 02, 2010.

5

ITEM NO.102

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 1308 OF 2006

VIKAS DUBEY AND ANR.

Appellant (s)

VERSUS

STATE OF UTTAR PRADESH AND ANR.

Respondent(s)

Date: 02/06/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE C.K. PRASAD
(VACATION BENCH)

For Appellant(s)

Dr.J.N.Dubey, Sr.Adv.
Mr.Anurag Dubey, Adv.
Mr.Meenesh Dubey, Adv.
Mr. S.R. Setia,Adv.

For Respondent(s)

Mr.Shail Kr.Dwivedi, AAG
Mr.Chandra Prakash Pandey, Adv.
Ms.Vandana Mishra, Adv.
Mr.Mukesh Verma, Adv.

Mr.C.P.Pandey, Adv.

Mr. Mohan Pandey,Adv

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

The appeal is allowed in terms of the signed order. The offending observation in the order made by the High Court is set aside.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)