

ASHFAQ KHAN AND ANR.

v.

STATE OF U.P. AND ORS.

(Criminal Appeal No. 230 of 2008)

FEBRUARY 1, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Constitution of India, 1950 – Article 226 – FIR lodged – Writ Petition for quashing of FIR – Dismissed relying on decision/deisions in other writ petitions before High Court – On appeal, held: High Court did not show applicability of ratio of the decisions in batch of writ petitions to the present case – Hence matter remitted to High Court – Penal Code, 1860 – ss. 420 and 424 – Uttar Pradesh Gangstors and Anti-Social Activities (Prevention) Act, 1986 – ss. 2 and 3.

Appellants filed a writ petition for seeking quashing of First Information Report lodged for alleged commission of offences punishable u/ss. 420 and 424 IPC and u/ss 2 and 3 of U.P. Gangstors and Anti-social Activities (Prevention) Act, 1986. High Court dismissed the writ petition placing reliance on its decision in Writ Petition No. 10500 of 2005. Hence the present appeal.

Allowing the appeal and remitting the matter to High Court, the Court

HELD: The order of the High Court does not show as to how the ratio of the decision in a batch of writ petitions disposed of had any application or relevance so far as the present case is concerned. The matter is remitted to High Court to consider as to how the facts involved in Writ Petition No. 10500 of 2005 and/or the ratio of that decision had any relevance so far as the present dispute is concerned. [paras 5 and 6] [273-G; 274-A]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 230 of 2008.

A From the Judgment and final Order dated 2.3.2006 of the High Court of Judicature at Allahabad in Crl. M.W.P. No. 2590/2006.

Siddhartha Dave and Vibha Datta Makhija for the Appellants.

B Shail Kumar Dwivedi, A.A.G., Abhishek Choudhry, Manoj Kr. Dwivedi, Vandana Mishra, Vibha, G. Venkateswara Rao and Kamalendra Mishra for the Respondents.

C The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order of a Division Bench of the Allahabad High Court dismissing the Writ Petition filed by the appellant.

D 3. The facts in a nutshell are as follows:

E A Writ Petition was filed before the High Court for quashing the First Information Report (in short the 'FIR') lodged for alleged commission of offences punishable under Sections 420 and Sections 424 of the Indian Penal Code, 1860 (in short the 'IPC') and Sections 2 and 3 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (in short the 'Prevention Act'). The stand in the writ petition was that even if the FIR is taken at its face value, there is no scope for holding that the appellants committed cheating or an offence punishable under the Prevention Act. At the most it may make out a case for evasion of tax for which action is permissible under the concerned Trade Tax Act.

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H 4. Learned counsel for the respondents on the other hand submitted that in the cases referred to, a Division Bench of the High Court had disposed of large number of cases involving more or less similar prayers to quash the FIR in each case. It is pointed out that the High Court had categorised different type of cases and one of such categories was where no previous case was pending under any other law prior to initiation of investigation under the Prevention Act. It is also submitted that

the appellants' case falls within the following parameters and guidelines formulated by the High Court:

"(a) It is expected that the investigation will be completed by the police within the prescribed limit under the general law i.e. Section 167 of Code of Criminal Procedure, 1973 by filing the charge-sheet or final report, if the accused is in custody within that period;

(b) It is expected that the Special Court will conclude the hearing of the cases, where rate of crime is not so higher by applying a summary procedure preferably within a period of 3-6 months from the date of filing the charge-sheet before the Court depending upon the facts and circumstances of each case;

(c) In case of pendency of Appeal/Revision/Review by an accused, Special Court will be empowered to split up the file in respect of other co-accused to avoid delay in hearing the case;

(d) If any person applied or surrendered or produced before the Court in connection with the matters where rate of crime is not higher, the Special Court expeditiously dispose it of following the principles as laid down in *Smt. Amarawati and Anr. vs. State of U.P.*

(e) In case the Special Court found that the crime case is not so negligible nor the rate of crime is lower in nature, it will proceed strictly in accordance with law;

(f) It will be solemn duty of the Special Courts and the police authorities to follow the guidelines for the sake of investigation viz-a-viz personal liberties."

5. The order of the High Court does not show as to how the ratio of the decision in a batch of writ petitions disposed of had any application or relevance so far as the present case is concerned.

6. In the aforesaid circumstances, we set aside the

A impugned order of the High Court and remit the matter to it to consider as to how the facts involved in Writ Petition No.10500 of 2005 and/or the ratio of that decision had any relevance so far as the present dispute is concerned. We make it clear that we have not expressed any opinion on the merits of the case.

B 7. The appeal is allowed.

K.K.T.

Appeal allowed.