

SUPREME COURT OF INDIA

S.K. Bhatt

Vs.

State of U.P.

S.L.P. (Crl.) No. 96 of 2005

(R.C.Lahoti CJI. and G.P.Mathur JJ.)

11.03.2005

ORDER

1. Feeling aggrieved by the remarks made by the High Court in the judgment dated 5.11.2004, while allowing Criminal Misc. Writ Petition No. 7218 of 2004, the Sessions Judge whose order was set aside, has filed the present petition.

2. On the basis of a report submitted by the police under Section 190(1)(b) Cr.P.C., the learned Chief Judicial Magistrate took cognizance of the offence on 5.4.2004 and directed that summons be issued to the accused for their appearance on 21.5.2004. The accused did not appear on the date fixed, and some other dates were fixed and finally on 31.7.2004 the learned Chief Judicial Magistrate passed an order specifically recording that the accused are absent and fixed 27.8.2004 for their appearance in Court. A Criminal Revision Petition was filed by the accused before the Sessions Judge, Ghazipur which was dismissed on the ground that the order under challenge was an interlocutory order and, therefore, the revision was barred by virtue of Section 397(2) Cr.P.C. The accused then preferred Criminal Misc. Writ Petition in the High Court challenging the order dated 5.4.2004 passed by the learned Chief Judicial Magistrate and also the order dated 27.8.2004 passed by the learned Sessions Judge (petitioner herein). The High Court, after referring to four decisions of this Court in *Amar Nath and others vs. State of Haryana* and another, *Madhu Limaye vs. State of Maharashtra*, *Rajendra Kumar Sitaram Pande and others vs. Uttam and another* and *V.C. Shukla vs. State* held that an order summoning an accused is not an interlocutory order and, therefore, the bar created by Section 397(2) Cr.P.C. would not operate. The High Court accordingly set aside the order dated 27.8.2004 passed by the learned Sessions Judge and remanded the matter for deciding the revision on merits.

3. The petitioner who had decided the Criminal Revision Petition on 27.8.2004 in his capacity as Sessions Judge is aggrieved by certain remarks made against him in the order of the High Court. The main plea taken in the present Special Leave Petition is that the order dated 31.7.2004, wherein the learned Chief Judicial Magistrate had only recorded that the accused are absent and the case be posted for appearance of the accused on 27.8.2004, was an interlocutory order and, therefore, the bar created by Section 397(2) Cr.P.C. would

operate. An English translation of the memorandum of revision which was filed before the learned Sessions Judge has been filed as Annexure P-3 and it shows that the accused had specifically written that they were aggrieved by the order dated 31.7.2004 and also by the order taking cognizance of the offence and summoning them. The grounds of revision also indicate that the accused had laid challenge to the order taking cognizance of the offence and summoning them to face trial. However, we do not want to express any concluded opinion on this question.

4. Having regard to the entire facts and circumstances of the case, we consider it appropriate to dispose of the Special Leave Petition with the direction to the petitioner to move an application before the High Court for expunging the remarks by which he feels aggrieved. If such an application is filed, the High Court will decide the same in accordance with law, without being influenced in any manner by any observation made in the present order.