
(2009) 06 UK CK 0015
In the Uttarakhand High Court

Ms. Shashi Agarwal and Another

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 01-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 504

Citation : (2009) 06 UK CK 0015

Hon'ble Judges : Vinod Kumar Gupta, C.J

Bench : Single Bench

Judgement

V.K. Gupta, C.J.—Criminal Case No. 1667 of 2006: State v. Shashi Agarwal & others (offences under Sections 147, 148, 149 read with Sections 307, 504 & 506 I.P.C.), pending in the court of learned Judicial Magistrate, Rudrapur, was filed against some accused persons, including the two petitioners herein, namely Ms. Shashi Agarwal and Ms. Meenaxi Agarwal. Criminal Misc. Application No. 620 of 2006 was filed by these two petitioners in this Court on 2nd August, 2006 with a prayer to quash the proceedings in the aforesaid Criminal Case. The prayer is reproduced hereunder, which reads thus:

It is therefore, most respectfully prayed that this Hon''ble court may kindly be pleased to quash the proceedings in criminal case No. 1667 of 2006 State v. Shashi Agarwal and Ors. u/s 147/148/149/307/504/506 I.P.C. pending in the court of Judicial Magistrate Rudrapur, District Udham Singh Nagar. Otherwise the Applicants will suffer an irreparable loss and injury.

2. In the same Criminal Case, an Order was passed on 31st July, 2008 by the learned Trial Magistrate whereby, upon an application filed by the prosecution, the prosecution was permitted to carry out further investigation in the case. This specific Order alone was challenged by the same two petitioners in Criminal Misc. Application No. 518 of 2008 filed u/s 482 CrPC. The prayer part of this Application is reproduced hereunder, which reads thus:

It is, therefore, most respectfully prayed that this Hon''ble Court may graciously

be pleased to stay the effect and operation of the impugned order dated 31.7.2008 passed by the learned Chief Judicial Magistrate, Rudrapur, District-Udham Singh Nagar whereby the learned Chief Judicial Magistrate ordered for further investigation in Case Crime No. 960-A of 1999 u/s 147, 148, 149, 307, 504 and 506 IPC at Police Station-Kichha, District-Udham Singh Nagar, C.B. Case No. 36 of 2008 in Criminal Case No. 4119 of 2007 during the pendency of the instant 482 application before this Hon"ble Court otherwise the applicants will suffer irreparable loss and injury.

3. Criminal Misc. Application No. 620 of 2006 was dismissed by this Court on 22nd July, 2008. Even while this Petition, insofar as it related to the quashing of the proceedings in the aforesaid Criminal Case was dismissed, in Paras 2 & 3 of the Order dated 22nd July, 2008, this Court had made certain observations and issued certain directions qua the learned Trial Court with respect to the disposal of the Bail Applications of the petitioners as well as the grant of exemption from personal appearance with respect to petitioner No. 1.

4. Criminal Misc. Application No. 518 of 2008 was also dismissed by this Court vide Order dated 11th August, 2008 upholding the Trial Magistrate's Order dated 31st July, 2008.

5. The petitioners as well as private respondent Manoj Narain Agarwal challenged both the aforesaid Orders passed by this Court in the Supreme Court, namely the Order dated 22nd July, 2008 passed in Criminal Misc. Application No. 620 of 2006 and the Order dated 11th August, 2008 passed in Criminal Misc. Application No. 518 of 2008, insofar as they felt aggrieved of the respective parts of these two Orders. Vide Judgment dated 15th April, 2009, the Supreme Court disposed of three Criminal Appeals; being Criminal Appeal No. 725 of 2009 arising out of SLP (Crl.) No. 5419 of 2008, Criminal Appeal Nos. 726-727 of 2009 arising out of SLP (Crl.) Nos. 6061-6062 of 2008, and Criminal Appeal Nos. 728-729 of 2009 arising out of SLP (Crl.) Nos. 6136-6137 of 2008. Undoubtedly, in the aforesaid three Criminal Appeals, the aforesaid two Orders dated 22nd July, 2008 and 11th August, 2008 passed by this Court were under challenge and consideration by their Lordships of the Supreme Court.

6. Mrs. Geeta Luthra, learned Senior Counsel appearing for the petitioners has submitted that vide the aforesaid Judgment, the Supreme Court has set aside, lock, stock and barrel, this Court's order dated 22nd July, 2008 passed in Criminal Misc. Application No. 620 of 2008 and, therefore, this Petition be heard de novo by this Court in its entirety. I do not agree with her. Order dated 22nd July, 2008 can be said to be consisting of two parts. Insofar as the first part of the Order is concerned, it is contained in the First Para of the Order which, being very short and brief, is reproduced hereunder for ready reference. It reads thus:

After hearing the detailed arguments of the learned Senior Counsel appearing for the petitioners as well as learned Senior Counsel appearing for the respondent No. 2 and Mr. G.S. Sandhu, learned Government Advocate appearing for

respondent No. 1 and upon perusal of various documents in this case as well as the counter affidavit and the supplementary counter affidavit filed by the respondent No. 2, I feel totally disinclined to interfere in this matter while exercising this Court's jurisdiction u/s 482 of CrPC. The petition accordingly is liable to be dismissed.

7. Vide this First Part (first para of the said Order), this Court dismissed Section 482 Petition on the basis of a very short reasoning contained therein. In Paras 2 & 3, however, (Second Part of the Order) this Court made certain observations and issued certain directions to the Trial Court with respect to the Bail Applications of the petitioners and the grant of exemption from personal appearance insofar as petitioner No. 1 is concerned.

8. A very careful reading of the aforesaid Supreme Court Judgment dated 15th April, 2009 clearly suggests to me that their Lordships of the Supreme Court, insofar as Criminal Misc. Application No. 518 of 2008 is concerned, set aside this Court's Order dated 11th August, 2008, lock, stock and barrel, and remitted the matter to this Court for re-consideration de novo. Insofar as the Order dated 22nd July, 2008, however, is concerned, the First Part of the Order has not at all been set aside. What has been set aside is only the Second Part of the Order with respect to the observations made and the directions contained about the Bail Applications and the personal exemption aspect of the case. A very, very careful perusal of the Supreme Court Judgment clearly reveals to me that the First Part of the 22nd July, 2008 Order has not at all been set aside by their Lordships of the Supreme Court.

9. Mrs. Luthra pointedly made a reference to the following two sentences in Para 30 of the Supreme Court Judgment:

30. We, therefore, set aside the orders passed by the High Court in its order dated 11.8.2008 opining that the same was beyond its jurisdiction u/s 482 of the Code of Criminal Procedure. It is, however, made clear that all contentions of the parties shall remain open....

10. According to her, by using the expression, "set aside the orders", their Lordships of the Supreme Court clearly intended to set aside both the Orders of the High Court, namely Order dated 22nd July, 2008 and the Order dated 11th August, 2008. I do not agree with her. My reading of Para 30 of the aforesaid Supreme Court Judgment clearly indicates to me that their Lordships of the Supreme Court intended to set aside the Order dated 11th August, 2008 only because the observations made in the entire Para 30 of the Judgment point out to that intendment only and nothing else.

11. Mrs. Luthra further referred to one more sentence occurring in Para 31 of the Supreme Court Judgment to canvass her point of view that the Supreme Court intended to set aside both the Orders. The referred sentence in Para 31 reads thus:

The impugned directions are set aside and the matters are remitted to the High Court for consideration of the application filed before it by the parties afresh on merit.

12. I do not agree with her on this count as well because Para 31 of the Judgment relates only to the Second Part of the High Court Order dated 22nd July, 2008. It does not at all relate to the First Part of the said Order.

13. At the risk of reiteration, I wish to point out and observe that their Lordships of the Supreme Court, if the Judgment dated 15th April, 2009 is read and understood in its entirety, in the perspective in which it has been written, did not set aside the First Part of the Order dated 22nd July, 2008. Not one word in the Judgment suggests that the First Part of the Order has been adversely commented upon or the Supreme Court has disapproved this Court dismissing Section 482 Petition. As far as the Second Part is concerned, this Court has nothing to do in the matter in the light of the directions contained in Para 31 of the Judgment because the matter relating to the grant of bail or exemption from personal appearance strictly now lies in the domain and jurisdiction of the Trial Magistrate in the light of the fact that the directions as well as observations contained in the Second Part of this Court's Order dated 22nd July, 2008 now stand completely obliterated in all respects.

14. In conclusion, therefore, disagreeing with Mrs. Luthra, I hold that Criminal Misc. Application No. 620 of 2008 is dead for all intents and purposes in the light of the aforesaid Judgment passed by the Supreme Court.

15. At this stage, Mrs. Luthra submits that she wishes to approach the Supreme Court for seeking clarification from their Lordships of the Supreme Court with respect to the Judgment dated 15th April, 2009 and this Court should afford protection to the petitioners during this period. Agreeing with her request, I direct that the interim protection granted to the petitioners shall continue till 31st July, 2009.