

ITEM NO.22

COURT NO.11

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No. 5061/2022

(Arising out of impugned final judgment and order dated 15-11-2019 in CRLR No. 209/2012 passed by the High Court Of Judicature At Allahabad)

MOHD. SHAKIR

Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.73170/2022-CONDONATION OF DELAY IN FILING and IA No.73174/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.73172/2022-EXEMPTION FROM FILING O.T. and IA No.73178/2022-EXEMPTION FROM FILING AFFIDAVIT)

Date : 26-08-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DINESH MAHESHWARI
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Petitioner(s) Mr. Kartikeya Bhargava, AOR

For Respondent(s) Mr. Arvendhu Kr. Mouli, AAG
Mr. Vishnu Shankar Jain, AOR
Mr. Shaurya Krishna, Adv.
Mr. Ashish Madan, Adv.
Ms. Shreya Srivastava, Adv.

Mr. Kavin Gulati, Sr. Adv.
Mr. Trilok Nath Saxena, Adv.
Mr. Vipin Kumar Saxena, Adv.
Ms. Abhina Saxena, Adv.
Mr. Rohit Sthalekar, Adv.
Mr. Mayank Chaturvedi, Adv.
Mr. Apoorv Chaturvedi, Adv.
Mr. H. C. Kharbanda, Adv.
Dr. Shiv Kumar Tiwari, Adv.
Mr. Dhirja Kumar Sammi, Adv.
Mr. Asit Shankar, Adv.

M/S. Mukesh Kumar Singh And Co., AOR

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

Heard learned counsel for the parties.

In this petition, seeking to challenge the order dated 15.11.2019, as passed by the High Court of Judicature at Allahabad in Criminal Revision No. 209 of 2012, this Court had taken note of the basic contention urged on behalf of the petitioner in the order dated 17.05.2022, which reads as under:

"Delay condoned.

Learned counsel for the petitioner has drawn our attention to the observations and directions occurring in the penultimate paragraph of the order dated 07.01.2012 as passed by the City Magistrate, Mathura; and has contended that it was wholly without jurisdiction for the learned Magistrate to give the findings as regards possession of the property in question and even issuing injunction apart from the direction for maintaining status quo while withdrawing the proceedings under Section 145 CrPC.

Issue notice returnable in the second week of July, 2022.

Dasti service in addition to ordinary process is permitted."

The said penultimate paragraph of the order dated 07.01.2012, as passed by the City Magistrate Mathura, reads as under: -

"Appreciated the documents available in case file and after hearing the arguments from both the parties, this is known with the documents, evidences and arguments produced by them that different cases are sub-judice in civil courts for the same property between these parties, in which disposal of applications has also been done and disposal is continued. Guidelines has been issued by Hon'ble Supreme Court and High Court in different judgements. Continuing proceedings u/s 145 Cr.P.C. in present circumstances is not found justified. Notice u/s 145(1) Cr.P.C. is revoked and possession of Gaurishankar Chaturvedi on the questioned property gets proved from different

documentary evidences from the date of issuing notice and two months prior to the same. Second party should not interfere in the peaceful possession of the first party by any mean by the time competent civil court passes final judgement in this reference. Copy of the order should be sent to the In-charge-inspector, Kotwali, Mathura with this direction to maintain status quo on the spot by the time competent civil court passes any final decision."

Learned counsel has appeared for respondent No. 2, the contesting party in this matter. We have heard the learned counsel for the parties at some length.

Not much of elaboration on factual aspects is required in this matter. Suffice it to observe that while dropping the proceedings under Section 145 of the Code of Criminal Procedure, 1973 ('CrPC') because of the pendency of civil litigations, the learned Magistrate could not be considered justified in making any observations or returning any findings as regards rights of the parties qua the property in question. The learned Magistrate had proceeded to record the findings, as if the possession of the respondent on the questioned property was proved from the documentary evidence from the date of issuing notice and two months prior to the same and then, had also proceeded to order that the second party would not interfere in the peaceful possession of the first party until the competent Civil Court passes final judgment in the matter, and that status quo shall be maintained.

In our view, in the given set of facts and circumstances, while dropping the proceedings under Section 145 CrPC, there was no justification for the learned Magistrate to make any such

observations or to record any such findings or to issue any interim direction for maintaining status quo by the parties. This was more so because two civil suits had already been filed in relation to the property in question.

It is given out before us that in one of the suits i.e., Civil Suit No. 1161 of 2007, titled as "*Zakir Ali v. Vaamanji and Others*", application for temporary injunction was granted by the Trial Court and an appeal filed by the present respondent against the said injunction order was disposed of by the order dated 29.10.2012; and now the civil suit is pending. The other civil suit filed by the present petitioner bearing number 692 of 2007 is also pending.

That being the position, the Magistrate ought to have left all the relevant aspects for consideration of the competent civil court and without recording any finding in the matter.

Hence, the order dated 07.01.2012 is modified in the manner that the observations occurring in the last part of the penultimate paragraph thereof shall stand annulled. In other words, the said order, upto the extent of revocation of notice under Section 145(1) CrPC shall remain intact but the observations, findings and directions occurring thereafter shall stand annulled.

It is made clear that no observations occurring in this order shall have any bearing on the merit consideration of the said civil suits and all the submissions of the parties shall remain open in the said suits, which shall be dealt with strictly in accordance with law.

This petition seeking special leave to appeal stands disposed

of accordingly.

All pending applications also stand disposed of.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(RANJANA SHAILEY)
COURT MASTER (NSH)