v?Reportable
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No.64 of 2017
(Arising out of S.L.P.(Crl.)No. 8184 of 2015)
Saloni Arora Appellant(s)
VERSUS
State of NCT of Delhi Respondent(s)
WITH
CRIMINAL APPEAL No.65 of 2017
(Arising out of S.L.P.(Crl.)No. 1908 of 2016)
J U D G M E N T
Abhay Manohar Sapre, J.
1) S.L.P.(Crl.) No. 8184 of 2015 is filed against the order dated 06.07.2015 passed by the High Court of Delhi at New Delhi in Crl.M.C. No. 2447 of 2012 whereby the High Court disposed of the petition and directed the Registrar General of the High Court of Delhi to make a formal complaint in terms of paragraph 27 in Criminal Revision Petition No. 497 of 2008 for prosecution of the
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appellant herein under Section 182 of the Indian Penal Code, 1860 (hereinafter referred to as â¬ SIPCâ¬ \235).
2) S.L.P.(Crl.)No. 1908 of 2016 is filed against the order dated 01.02.2016 passed by the High Court of Delhi in Crl.M.A. No. 1775 of 2016 filed by the Registrar General of High Court of Delhi in Crl.M.C. No. 2447 of 2012 whereby the High Court modified its earlier order dated 06.07.2015 and directed the S.H.O., Police Station Anand Vihar, Delhi to make a formal complaint in terms of the order dated 06.07.2015, in place of Registrar General of the High Court of Delhi, who was directed to make a formal complaint for prosecution of the appellant under Section 182 IPC.
3) Leave granted.
4) We herein set out the facts, in brief, to appreciate the issue involved in these appeals.
5) These appeals arise out of criminal proceedings (SC No 13/2007) pending in the Court of Additional Session Judge, Delhi in relation to the offences registered under Sections 120-B, 201, 302, 364 and 365 IPC against the accused on the basis of FIR No. 333/2006 PS: SPL. Cell.
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6) In the aforementioned proceedings, the State Prosecuting Agency sought to prosecute the appellant for commission of an offence punishable under Section 182 IPC. The appellant, felt aggrieved of this action of the prosecuting agency, filed an application for her discharge on the ground that since no procedure as contemplated under Section 195 of the Code of Criminal Procedure, 1973 (hereinafter referred to as â¬ Sthe Codeâ¬ \235) was followed by the prosecution, the appellant cannot be prosecuted for such offence.
7) The Trial Court, by order dated 25.05.2015, dismissed the appellant's application and the order of the Trial Court was upheld by the High Court, by impugned order, by dismissing the appellant's Criminal Misc. Application giving rise to filing of these appeals by special leave by the appellant before this Court.
8) Heard Mr. Ajay Choudhary, learned counsel for the appellant and Mr. A.N.S. Nandkarni, learned ASG for the State.
9) Having heard the learned counsel for the parties and on perusal of the record of the case, and further since the learned counsel for the respondent in the
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course of his submissions fairly conceded that the impugned order is not legally sustainable on a point of law and, in our view rightly so, we are inclined to allow the appeals and set aside the impugned orders.

10) As rightly pointed out by the learned counsel for the parties on the strength of law laid down by this Court in the case of Daulat Ram vs. State of Punjab, (AIR 1962 SC 1206) that in order to prosecute an accused for an offence punishable under Section 182 IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Code else such action is rendered void ab initio .

11) It is apposite to reproduce the law laid down by this Court in the case of Daulat Ram (supra) which reads as under:

â¬ S There is an absolute bar against the Court taking seisin of the case under S.182 I.P.C. except in the manner provided by S.195 Crl.P.C. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. The offence under S.182 is complete when a person moves the public servant for action. Where a person reports to a Tehsildar to take action on averment of certain facts, believing that the Tehsildar would take some action upon it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tehsildar, as the public servant concerned

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under S.182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned. The trial under S.182 without the Tehsildarâ¬ "!s complaint in writing is, therefore, without jurisdiction ab initio .â¬ \235 (Emphasis supplied)

12) It is not in dispute that in this case, the prosecution while initiating the action against the appellant did not take recourse to the procedure prescribed under Section 195 of the Code. It is for this reason, in our considered opinion, the action taken by the prosecution against the appellant insofar as it relates to the offence under Section 182 IPC is concerned, is rendered void ab initio being against the law laid down in the case of Daulat Ram (supra) quoted above.

13) Learned counsel for the respondent (NCT Delhi), however, submitted that the State has, therefore, made a fresh application in this behalf before the Trial Court which, according to him, is still pending consideration. Be that as it may.

14) We express no opinion on such application, if it is filed by the State as, in our view, it has to be dealt with on its own merits in accordance with law by the Court concerned.

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15) In the light of foregoing discussion, the appeals succeed and are allowed. Impugned orders stand set aside.

â¬ ¦â¬ ¦â¬ ¦.....J.
[A.K. SIKRI]

.â¬ ¦â¬ ¦.....J.
[ABHAY MANOHAR SAPRE]

New Delhi,
January 10, 2017

ITEM NO.1A COURT NO.3 SECTION IIC

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.64 of 2017

(@ Special Leave Petition (Crl.) No(s). 8184/2015)

SALONI ARORA Petitioner(s)

VERSUS

STATE OF NCT OF DELHI Respondent(s)

WITH

Criminal Appeal No.65 of 2017

(@ SLP(Crl) No. 1908/2016)

Date : 10/01/2017 These petitions were called on for pronouncement of judgment today.

For Petitioner(s) Mr. Ajay Choudhary,Adv.

For Respondent(s) Mr. D. S. Mahra,Adv.

Mr. Chirag M. Shroff,Adv.

Hon'ble Mr. Justice Abhay Manohar Sapre pronounced the judgment of the Bench comprising of Hon'ble Mr. Justice A.K. Sikri and His Lordship.

Leave granted.

The appeals are allowed in terms of the signed reportable judgment.

[O.P. SHARMA] [RAJINDER KAUR]

AR-CUM-PS COURT MASTER

(Signed reportable judgment is placed on the file)