NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 648 OF 2018
(Arising out of SLP (Crl.) No.2082 of 2016)

OSAMA AZIZ AND ANR. .....Appellant(s)

:Versus:

STATE OF UTTAR PRADESH AND ORS. ....Respondent(s)

J U D G M E N T

A.M. Khanwilkar, J.

1. This appeal, by special leave, filed by the appellants in-person, is against the judgment and orders dated 10th January, 2013 and 19th March, 2013 passed by the High Court of Judicature at Allahabad, Lucknow Bench, in Case U/S 482/378/407 No.60 of 2013. The first order dated 10th January, 2013 is obviously an interlocutory order but also

rejecting reliefs (i) to (iv) claimed in the petition filed by the appellants. The petition came to be finally disposed of by the High Court vide judgment and order dated 19th March, 2013. Accordingly, both these orders have been assailed in the present appeal. The copy of the petition filed before the High Court has not been included in the appeal paper book. However, from the impugned order dated 10th January, 2013, it is noticed that the first prayer in the petition filed before the High Court was to direct the investigating agency to include Section 307 of Indian Penal Code ("IPC", for short) in the charge-sheet filed against three persons before the Trial Court in Crime No.419 of 2010, P.S. Wazirganj, Lucknow. The second prayer is to include other relevant sections of IPC or other Acts against the accused in the aforementioned crime. The third prayer is to frame proper charges against Jameeruddin Siddiqui (ex-ADJ). Fourth prayer is to take cognizance against the Emergency Medical Officer of Adarsh Karavas on 24th June, 2010. The fifth prayer is to discover all the accused on the basis of the clue given in paragraph 8 of

the Counter Affidavit. The sixth prayer is to grant reasonable time for completion of investigation and seventh prayer is to pass any other or further orders in favour of the appellants. In the impugned order dated 19th March, 2013, the prayers mentioned in the subject petition filed by the appellants before the High Court have been reproduced as under:

> "2. By means of the instant petition, the petitioners have challenged the investigation pending in Case No. CB 447 of 2010, arising out of case crime no. 419 of 2010 (State Vs. Airaz Siddiqui & Others), police station Wazirganj, Lucknow investigated by the C.B. CID, Luckonw and has made following prayer-
> "(i) It is prayed to include section 307 of IPC on the charge sheet submitted in Crime No. 419 of 2010, police station Wazirganj, Lucknow.
> (ii) It is prayed to impose other relevant sections of IPC or other Acts against accuseds in crime no. 419/2010, police station Wazirganj, LKO that Lordship deems fit, just and proper for assaulting in Judicial Custody even after Hon'ble High Court Security Instructions.
> (iii) It is prayed to frame proper charges against Jameeruddin Siddiqui (exADJ).
> (iv) It is prayed to take cognizance against the concerned Emergency Medical Officer of Adarsh Karavas on 24/06/2010.
> (v) It is prayed to regard para 8 of Counter Affidavit as a key to discover all the accused.
> (vi) It is prayed to grant reasonable time for the completion of Investigation as Lordship deems, just, fit and proper.
> (vii) It is prayed to pass any other order in favour of the petitioners."

2. As regards reliefs (i), (ii) and (iii), the same stood disposed of in terms of the impugned order dated 10th January, 2013,

and rest of the reliefs were considered and answered by the High Court vide impugned order dated 19th March, 2013.

3. In substance, the reliefs claimed in the petition filed before the High Court were in reference to the criminal case registered against private respondents and other accused, being Crime No.419 of 2010. In the order dated 10th January, 2013, the High Court noted that the charge-sheet was already filed in respect of the said crime before the competent Court against three accused for offences punishable under Sections 147, 323, 504 and 353 of IPC and the Court was informed by the AGA that investigation against other accused was still going on. It is in that context the High Court observed at the end of the impugned order dated 10th January, 2013 that so far as reliefs (i), (ii) and (iii) are concerned, the appellants may approach the Trial Court. This is one aspect to which our attention has been drawn by appellant No.1, who has appeared in-person. As regards this grievance of the appellants, we are in agreement with the High Court that the appellants are free to pursue their legal remedies before the

Trial Court for inclusion of Section 307 of IPC in Crime No.419 of 2010. Needless to observe that even if charge-sheet in respect of the said offence has been filed, it is open to the Trial Court at the appropriate stage to frame the charge for offence under Section 307 of IPC if the material on record justifies framing of such a charge, including to amend the charges and also to proceed against other persons appearing to be guilty of offence. None of the observations made by the High Court in the impugned orders will be any impediment for the Trial Court to do so. This must assuage the apprehension of the appellants that even if there is evidence to indicate commission of offence under Section 307, such a charge has not been framed against the concerned accused. We leave that question open to be considered by the Trial Court on its own merits and in accordance with law.

4. As regards relief (iv), the High Court, in its impugned order dated 10th January, 2013, has noted that the same pertained to some other case unconnected with Crime No.419 of 2010, arising from an independent act of commission and

omission in the discharge of duty for which no criminal proceeding is pending in the Court. As a result, the High Court declined to issue any direction in respect of prayer clause (iv). As regards prayer clause (v), the High Court observed that the same will be considered after submission of the progress report by the concerned Investigating Officer in respect of Crime No.419 of 2010. Thus, the Court finally disposed of reliefs (i) to (iv) with the observation that no further action is needed in respect of the said reliefs.

5. The matter was then taken up by the High Court on 19th March, 2013, for considering the remaining reliefs (v) to (vii). The grievance made by the appellants before the High Court has been considered in the following words:

> "The petitioner has made only seven reliefs in his petition. Since final order has already been passed with regard to the abovementioned four reliefs, only relief no. 5 to 7 needs to be considered. Admittedly police has filed charge sheet in this case. So far as relief No. 5 is concerned, it relates to discover the accused persons during investigation and if the police has not submitted charge sheet against them, the petitioner himself can adduce evidence before the trial court. Thereafter the accused persons may be summoned in exercise of the power under Section 319 Cr.P.C. Relief no. 6 has also become infructuous as by means of this prayer, the petitioner prayed for relief to complete the investigation

within a stipulated period, therefore, it has rendered infructuous by submission of the charge sheet.

4. It is submitted by the petitioner that the investigation is per se incorrect because as per the conclusions of the investigation, there were so many persons, who committed the offence but charge sheet has been filed only against three accused persons under Section 147 IPC also. It is further submitted that to constitute an offence under Section 147 IPC at least five persons should have been charge-sheeted. No other ground was pressed into service by the petitioner in his argument.

5. Learned A.G.A. has submitted that in this case prayer has been made to interfere in the investigation and to issue certain directions to the Investigating Officer and these prayers have rendered infructuous as police has already submitted charge sheet.

6. It transpires from the perusal of the record that in this case F.I.R. was lodged at case crime no. 419 of 2010 at police station Wazirganj, district Lucknow with the allegation that accused Airaz Ahmad Siddiqui, Advocate with the intention to create his influence in the area had lodged a false report under Section 147, 323, 336, 504 & 506 IPC, police station Chowk, district Lucknow at case crime no. 24 of 2009 after taking the police under his pressure and in collusion with police got a false charge sheet submitted in court. Feeling aggrieved by the said charge sheet, the petitioner moved a petition under Section 482 Cr.P.C. before this Court, which was dismissed with the direction to the court concerned to dispose of the bail application of the petitioner in the light of Lal Kamlendra Pratap Singh Vs. State of U.P. reported in [2009 (3) ADJ 322 (SC)]. When the petitioner was present for his bail before the court concerned, then the accused persons, namely, Airaz Ahmad Siddiqui, Iraj Ahamad Siddiqui, his father Jamaruddin (Ex. ADJ), Aamir Nakvi, Advocate, Pradeep, Advocate Saraan Kahn, Advocate, Sahil, Advocate and a friend of Iraj Ahmad Zuber and Tarik along with other persons entered into the court room and started beating him with kick and fists and Danda while the petitioner was in judicial custody. At that time, Presiding Officer was present in Court. He made an effort for his rescue. His mother made an effort for the rescue of the petitioner then Iraz Ahmad also caused her injuries. Thereafter the police force was called and the

accused persons ran away from there and the petitioner was sent for medical examination to District Jail, Lucknow. After investigation, police submitted charge sheet only against three accused persons and the petitioner was not satisfied with the investigation. Result of the investigation was to the effect that several persons took part in the incident but their identity could not be ascertained, hence charge sheet was filed against three accused persons.

Since the investigation has already been completed and charge sheet has been filed, therefore, the submission of the petitioner that the investigation is per se illegal because charge sheet has been filed only against three persons under Section 147 IPC, which could not have been filed against less than five persons. But this Court is not satisfied with this argument as the investigation has revealed that offence was committed by several persons but the identity of other co-accused persons could not be ascertained, therefore, there was no illegality in submission of charge sheet under Section 147 IPC. The offence was committed by an unlawful assembly and identity of only three accused persons could be ascertained, who were members of unlawful assembly, therefore, submission of charge sheet including Section 147 IPC only against three accused persons cannot be said to be illegal in any manner. But keeping in view the facts of the case, the petitioner may raise his grievance before the court concerned.

But keeping in view the manner in which, the offence has committed by the Advocates, this Court considers it necessary to issue certain directions because the offence in this case was committed in a court room while Presiding Officer was sitting and that too by Advocates, who are also the part of the system. No one can be permitted to pollute the pious stream of justice delivery system.

7. Hence, it is provided that if the petitioner raise his grievance before the learned Magistrate concerned, the same shall be considered and decided by the court below in accordance with law as expeditiously as possible. This Court is also conscious about the security of the petitioner, hence, this Court considers it necessary to issue certain direction to ensure the safety of the petitioner. Therefore, it is hereby directed that the Senior Superintendent of Police, Lucknow shall provide sufficient security to the petitioner for his appearance before the court below on each date fixed from

> his residence to the court and thereafter from the court to his residence so long as danger to his security persists. The District Judge shall also supervise that the petitioner is provided sufficient security to pursue the matter before the court and shall also ensure that no hindrance, by any person, is created in his right to move the court for getting justice.
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> 8. In view of the above, though the petition is hereby dismissed but direction as indicated above are issued in the interest of justice.
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> 9. Ordered accordingly."

We must clarify that we have reproduced the aforequoted portion from the impugned order dated 19th March, 2013 only to highlight the relevant portion. We may not be understood to have affirmed any observation therein or on the merits of the controversy.

6. According to the appellants, the observation so made by the High Court will come in their way in pursuing the criminal case. We are not impressed by the said grievance inasmuch as the High Court had itself made it clear that all aspects will have to be considered by the Trial Court at the appropriate stage. The High Court was cognizant of the fact that the allegations against the persons involved in the commission of crime were very serious. The High Court has then observed that as charge-sheet has been filed only against three persons,

all contentions available to the appellants could be raised before the Trial Court for being decided in accordance with law.

7. We reiterate that the none of the observation made by the High Court will come in the way of the appellants in pursuing the criminal cases and for taking the same to its logical end, in accordance with law. The Trial Court shall consider every aspect of the matter that will be brought to its notice by the appellants, on its own merits, objectively.

8. Besides this, no other aspect is required to be considered by this Court even though in the prayer clause of the special leave petition, the appellants have asked for reliefs much beyond the lis that was before the High Court in Petition No.60 of 2013. Notably, in the prayer clause of the memo of special leave petition, no relief has been claimed to assail the impugned judgment and orders of the High Court as such. What has been prayed is as follows:

> "It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

A. Direct an Agency other than the State to discover the extent of assault of petitioners in Court room in Case Crime No.419/2010 of P.S. Wazirganj, Lucknow, Uttar Pradesh.

B. Punish and penalize Respondent Nos.4 and 5 for polluting the judiciary as Additional Government Advocate and Central Government counsel after becoming accused of unlawful assembly.

C. Judge the bails of Respondent Nos.5 and 6 in view of MB 6794 of 2011 and MB 5461 of 2011 as compared to the Bail No.4320 of 2011 of Respondent No.4 from the High Court, in Case Crime No.419/2010 of P.S. Wazirganj, Lucknow.

D. And pass such further order(s), as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

We may overlook this aspect as the appellants are pursuing this appeal in-person.

9. Accordingly, we dispose of this appeal with the observations made hitherto. While parting with the case, we may observe that if the trial of subject Crime No.419 of 2010 has still not commenced, all concerned must take necessary steps in that behalf and ensure that the trial is concluded expeditiously.

10. A copy of this order be brought to the notice of the Trial Court by the Public Prosecutor appearing before the Trial

Court, within two weeks from the date of its receipt. It will also be open to the appellants to produce a copy of this order before the Trial Court, if so advised.

11. Ordered accordingly.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Dr. D.Y. Chandrachud)

New Delhi;
April 27, 2018.