

ITEM NO.56

COURT NO.17

SECTION II-B

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

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 30456/2024

(Arising out of impugned final judgment and order dated 05-08-2021 in CRR No. 507/2012 passed by the High Court at Calcutta)

HARSH BHUWALKA & ORS.

Petitioner(s)

VERSUS

SANJAY KUMAR BAJORIA

Respondent(s)

(WITH IA NO.158709/2024-CONDONATION OF DELAY IN FILING, IA NO.158707/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT AND IA NO.169588/2024 - IN TERMS OF ORDER DATED 29TH JULY, 2024 PASSED BY THIS COURT)

Date : 05-08-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. Siddharth Bhatnagar, Sr. Adv.
Ms. Sonia Dube, Adv.
Mr. Shatadru Chakraborty, Adv.
Ms. Kanchan Yadav, Adv.
Mr. Tanishq Sharma, Adv.
Ms. Saumya Sharma, Adv.
Ms. Pracheta Kar, Adv.
Mr. Aditya Sidhra, Adv.
Mr. Nadeez Afroz, Adv.
M/S. Legal Options, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

1. By the impugned judgment and order dated 5th August, 2021¹, the High Court of Judicature at Calcutta dismissed an application² under Section 482 of the Code of Criminal Procedure, 1973³ preferred by the petitioners. The High

1 impugned order, hereafter

2 CRR No.507 of 2012

3 Cr. PC, hereafter

Court was of the opinion that the respondent in the said application as the complainant having approached the jurisdictional Magistrate with a complaint under Section 200, Cr. P.C., he ought to be permitted to adduce evidence before charge is framed for arriving at a proper finding regarding the allegations.

2. This special leave petition dated 25th June, 2024 was presented on 11th July, 2024. Since the special leave petition was barred by time by 774 days, the petitioners applied for condonation of delay⁴.

3. The petitioners also applied for exemption from filing the certified copy of the impugned order⁵. It is stated in paragraph 3 thereof as under:

“3. That the petitioners have applied for the certified copy of the order dated 5.08.2021 (“impugned order”) passed by the Hon’ble High Court of Judicature at Calcutta in CRR No.507 of 2012. However, the petitioners are yet to receive the certified copy of the impugned order.”

4. The special leave petition was considered by us on 29th July, 2024. On that day, sensing that something was amiss, we made an order requiring the petitioners to file an application to bring on record document(s) in support of the statement made in paragraph 3, extracted supra.

5. An application⁶ in terms of the order dated 29th July, 2024 has since been filed on 2nd August, 2024, which is listed today for consideration.

6. Perusal of the said application does not reveal that an application for certified copy of the impugned order had been made any time prior to presentation of the special leave petition. In fact, the first time such an application was made is on 29th July, 2024. Obviously, it is a post-order incident.

4 I.A. No.158709 of 2024

5 I.A. No.158707 of 2024

6 I.A. No. 169588 of 2024

7. It is clear on the face of the records and it is also not disputed by Mr. Siddharth Bhatnagar, learned senior counsel appearing for the petitioners, in his usual fairness, that the petitioners made an absolutely incorrect, nay false, statement in paragraph 3 of I.A. No.158707 of 2024 that the High Court had not furnished the certified copy of the impugned order despite they having applied for the same.

8. We would have been entirely justified in directing the Registry to take suitable steps for initiation of proceedings before the criminal court against the petitioners but having regard to the fervent prayer made by Mr. Bhatnagar that the petitioners may not entirely be at fault, we refrain from so directing.

9. However, having regard to the skullduggery that was sought to be adopted, we see no reason to condone the grave lapse on the part of the petitioners and hear them on the merits of the special leave petition. The special leave petition, along with I.A. No.158707 of 2024, I.A. No.158709 of 2024 and I.A. No. 169588 of 2024, stands dismissed.

10. Before parting, we wish to set our house in order.

11. It has been our joint experience on the Bench of this Court (howsoever short it is) that in the vast majority of matters arising from the high courts and placed before us for decision, the special leave petitions are accompanied by applications seeking exemption from filing certified copies of the judgments and orders impugned in such petitions. Invariably, so to say, the Court accepts the statements made in such applications believing what have been stated therein as correct. This mild approach of the Court has generated a sense of belief among litigants that they can get away scot-free even by making statements which are far from the truth. It is high time that some sense of discipline is

instilled so that the Court is not taken for a ride.

12. Insofar as special leave petitions in criminal proceedings are concerned, Rule 3 of Order XXII of the Supreme Court Rules, 2013⁷ ordains that the petitions shall be accompanied by a certified copy of the judgment or order appealed from. Similar provision is found in Rule 4 of Order XXI of the 2013 Rules for special leave petitions pertaining to civil matters.

13. Rule 1 (19) of Order V of the 2013 Rules ordains that the Registrar may exercise the powers of the Court in relation to application for exemption from filing of certified copies of judgments, decrees, orders, certificates or orders granting certificate subject to the proviso that an application for exemption from filing of certified copy of the judgment or order accompanying a special leave petition shall be posted before the Court along with the special leave petition.

14. It has not come to our notice ever that the Registry insists, whenever an application for exemption from filing of the certified copy of the impugned judgment/order accompanies a special leave petition, on the requirement to annex to such application copy of the receipt that is issued by the concerned Department/Section of the high court to the applicant acknowledging that certified copy of such judgment/order has indeed been applied for. As in the present case, no such receipt was annexed to I.A. No.158709 of 2024 which required us to make the order dated 29th July, 2024 to ascertain the correct position on facts.

15. The revelation post-order dated 29th July, 2024 is striking, to say the least. We are minded to say that litigants, finding that the Court is lenient in relation to matters, *inter alia*, concerning filing of certified copy of the impugned judgment and order, seldom apply for and obtain such copy; more often than 7 2013 Rules, hereafter

not, it is the downloaded copy of the impugned judgment and order which is annexed to the special leave petition. It is common knowledge that a high percentage of special leave petitions come to be dismissed/disposed of on the first day of listing, without the petitioner actually filing such certified copy. Even, no undertaking is obtained from any litigant to file the certified copy of the impugned judgment and order as and when the same is furnished to him by the concerned Section/Department of the high court.

16. We are pained to note that despite there being specific provisions in the 2013 Rules requiring a special leave petition to be accompanied by the certified copy of the impugned judgment and order, such provisions are observed more in the breach. Such a situation should not to be allowed to persist; so long the rules exist, there has to be substantial compliance. Even if the certified copy is not available on the date of presentation of a special leave petition, proof of application for such copy has to be adduced for the court to consider the prayer for exemption.

17. With this in view, we propose to issue a practice direction to the following effect:

“If any special leave petition, arising out of civil proceedings as well as criminal proceedings, is accompanied by an application for exemption from filing certified copy of the judgment and/or order under challenge, such application must have, as an annexure, the receipt that has been generated/provided by the concerned Section/Department of the high court as acknowledgment of receipt of an application from the applicant for certified copy of the impugned judgment and/or order and the reason for seeking exemption; further, it must have an averment that the application for certified copy has not lapsed owing to non-filing of requisites or otherwise; also, the application must contain an undertaking of the

applicant to place the certified copy of the impugned judgment and/or order on record as soon as possible after the same is furnished to him by the concerned Section/Department of the high court.”

Ordered accordingly.

18. This practice direction has to be observed by all litigants who propose to file special leave petitions both on the civil side as well as on the criminal side with effect from 20th August, 2024.

19. The Secretary General, Supreme Court of India is requested to bring this order to the notice of all concerned by issuing an appropriate Circular.

(RASHMI DHYANI PANT)
COURT MASTER (SH)

(SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)