



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2024
[arising out of SLP (Cr1.) No. 9625/2023]

PAWAN AGARWAL APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH RESPONDENT(S)

O R D E R

1. Leave granted.

2. The appellant is an accused in First Information Report¹/Case Crime No. 311 of 2010 registered with Police Station Mugalpura, District - Moradabad, Uttar Pradesh for the offence(s) punishable under Sections 420, 406, 307, 323, 504, and 506 of the Indian Penal Code, 1860².

3. Challenging the proceedings following registration of the FIR, the appellant had invoked the writ jurisdiction of the High Court of Judicature at Allahabad by moving a petition under Article 226 of the Constitution of India³. *Vide* order dated 21.07.2010, an Hon'ble Division Bench of the High Court passed, *inter alia*, the following order:

“
Till the next date of listing or till submission of charge sheet whichever is earlier, the arrest of the petitioner, namely, Pawan Agarwal who is wanted in Case Crime No. 311 of 2010, under Section 420, 406, 307, 323, 504, 506 I.P.C. P.S.

1 FIR 'for short'

2 IPC 'for short'

3 Criminal Misc. Writ Petition No. 12974 of 2010

Mugalpura, District Moradabad shall remain stayed of course subject to the restraint that the petitioner shall fully cooperate with the investigation and shall appear as and when called upon to assist in the investigation."

4. The aforesaid interim protection came to an end with the filing of a charge-sheet in terms of the provisions of Section 173 (2) of the Code of Criminal Procedure, 1973⁴ on 14.08.2010, upon completion of investigation.

5. Aggrieved, the appellant approached the High Court this time by presenting an application under Section 482 of the Cr. P.C. He laid a challenge to the charge sheet dated 14.08.2010. Upon hearing the application, a learned Single Judge of the High Court *vide* order dated 19.08.2011 admitted the same and directed that no coercive action shall be taken against the appellant till the next date of listing.

6. What transpired immediately thereafter is not too clear. However, what is clear is, and that is also the stand of the State, that the interim order dated 19.08.2011 stood automatically vacated in view of the decision of this Court in *Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation*⁵ but the application under Section 482 of the Cr. P.C. remained pending.

7. Following such a development, the appellant once again approached the High Court with an application for an order under Section 438 of the Cr. P.C. Such application came to be

4 Cr. P.C. 'for short'

5 (2018) 16 SCC 299

dismissed as not maintainable, *vide* the impugned judgment and order dated 24.07.2023, on the ground that the appellant's application under Section 482 of the Cr. P.C. for quashing the charge-sheet was still pending and, in view thereof, it was not open to him to seek an order for pre-arrest bail by applying under Section 438 of the Cr. P.C. The High Court granted liberty to the appellant to pursue his pending application for quashing in accordance with law.

8. The judgment and order dated 24.07.2023 having been challenged before this Court, the appellant was granted interim protection by an order dated 17.08.2023. He was, however, required to participate diligently in the proceedings before the trial Court, till such time this Court considered the matter next.

9. Learned counsel for the appellant has invited our attention to a development during the pendency of this appeal. Referring to a judgment and order dated 29.02.2024 in *High Court Bar Association, Allahabad vs. State of U.P. & Ors.*⁶, he submits that a Constitution Bench of this Court has overruled the decision in *Asian Resurfacing (supra)*. He further submits that the Constitution Bench has specifically held that Article 142 of the Constitution of India does not empower this Court to ignore the substantive rights of the litigants, that there cannot be automatic vacation of stay granted by the High Court and that blanket directions cannot be issued in the exercise of jurisdiction under Article 142. He also draws our pointed

attention to paragraph 38 of the said decision where it has been held that if trials have been concluded as a result of the automatic vacation of stay based only on the decision in *Asian Resurfacing (supra)*, the orders of automatic vacation of stay shall remain valid.

10. The development is, indeed, significant. In our reading, the sequitur of the observations made by the Constitution Bench in *High Court Bar Association, Allahabad (supra)*, in the context of this appeal, is that if the trial has not been concluded following an automatic vacation of stay per *Asian Resurfacing (supra)*, such automatic vacation of stay would be invalid and stand inoperative. Concededly, in the present case, trial has not been concluded; and having regard to overruling of the decision in *Asian Resurfacing (supra)*, the order of stay granted by the High Court on the application under Section 482 of the Cr. P.C., vide order dated 19.08.2011, would revive meaning thereby that, no coercive action can be taken against the appellant till such time his application under Section 482 of the Cr. P.C. is next considered by the High Court. We place on record our inability to be *ad idem* with learned senior counsel for the respondent - State, and hold to the contrary.

11. In view of the legal position, discussed above, we do not see any reason to decide whether the High Court was justified in its approach of dismissing the application under Section 438, Cr. P.C. on the ground of maintainability. The appeal stands disposed of by holding that the interim order dated 19.08.2011 granted by the High Court has become operative from the date

Asian Resurfacing (supra) stands overruled and shall govern the parties till such time the High Court, on being approached either by the respondent - State or by the informant, vacates/varies the said order permitting coercive action to be taken against the appellant. We reserve the liberty of the respondent - State, as well as the informant, to approach the High Court for appropriate relief.

12. Recording the aforesaid, the appeal is disposed of in the above terms without disturbing the impugned order.

13. We clarify that observations made in this order are for the purpose of disposal of the present appeal, and should not be construed as findings and observations on the merits of the case pending before the High Court or the trial court.

14. Pending application(s), if any, shall stand disposed of.

.....J.
(DIPANKAR DATTA)

.....J.
(K.V. VISWANATHAN)

NEW DELHI;
MARCH 01, 2024.

ITEM NO.37

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No. 9625/2023

(Arising out of impugned final judgment and order dated 24-07-2023 in CRMABA No. 12886/2022 passed by the High Court of Judicature At Allahabad)

PAWAN AGARWAL

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH

Respondent(s)

(IA No. 154713/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 154715/2023 - EXEMPTION FROM FILING O.T.

IA No. 154712/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 01-03-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) Mr. Ivan, AOR
Mr. Vivek Mathur, Adv.
Mr. Alok K Singh, Adv.
Mr. Siddharth Agarwal, Adv.

For Respondent(s) Ms. Garima Prashad, Sr. A.A.G.
Mr. Sudeep Kumar, AOR
Mr. Aviral Saxena, Adv.

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

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(Signed order is placed on the file)