

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).1891 OF 2017
[ARISING OUT OF SPECIAL LEAVE PETITION
(CRIMINAL) NO.1966 OF 2017]

PREM SHANKAR AND ORS. . . . APPELLANT(S)

VERSUS

STATE OF U.P. & ANR. . . . RESPONDENT(S)

ORDER

1. Leave granted.
2. We have heard the learned counsels for the parties and have considered the matter.
3. The First Information Report ("FIR" for short) alleging offence under Section 376-D of the Indian Penal Code, 1860 ("IPC" for short) and under Section 8 and 9 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act" for short) was filed

on 26th May, 2015. The matter was settled. Thereafter, an application under Section 156(3) of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) was filed by the complainant on 31st July, 2015. Though a case was registered on the basis of the order passed on the said application and the matter was investigated by the Police, upon investigation, a closure report was filed. Thereafter, it appears that a third complaint was filed by the complainant on 5th November, 2015 in respect of the same occurrence which is alleged to have taken place in the intervening night of 25th and 26th May, 2015 in respect of which the earlier FIR and the application under Section 156(3) Cr.P.C. were filed. Cognizance was taken of the aforesaid complaint and summons were issued. The accused appellants moved the High Court for quashing of the said proceedings and the

High Court having refused to interfere this appeal has been filed.

4. Apart from the fact that the complainant and her second husband are involved in several criminal cases, including cases under Section 302 IPC, what transpires from the investigation of the FIR and the Police Report submitted therein is that during the time when the offence under Section 376-D IPC was alleged to be committed i.e. 8.00 p.m. and 3.00 a.m of the intervening night between 25th and 26th May, 2015 there were several phone calls made by the complainant to her second husband. The aforesaid fact which has been found on investigation would effectively demonstrate the falsity of the case lodged by the complainant making the same open to interference. The High Court having failed to do so we quash the impugned proceedings

against the accused appellants and allow this appeal by setting aside the order of the High Court.

.....,J.
(RANJAN GOGOI)

.....,J.
(NAVIN SINHA)

NEW DELHI
NOVEMBER 06, 2017

ITEM NO.52

COURT NO.3

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 (CRL.) NO(S). 1966/2017
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 03-01-2017
IN APP NO. 40309/2016 PASSED BY THE HIGH COURT OF JUDICATURE AT
ALLAHABAD)

PREM SHANKAR & ORS.

PETITIONER(S)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

RESPONDENT(S)

Date : 06-11-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s)

Mr. B.P. Singh Dhakray, Adv.
Mr. Shakti Singh Dhakray, Adv.
For Dr. Kailash Chand, AOR

For Respondent(s)

Mr. Soumen Talukdar, Adv.
Mr. R.D. Rathore, Adv.
Ms. S. Ramamani, AOR

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

Leave granted.

The appeal is allowed in terms of the signed
order.

[VINOD LAKHINA]

AR-cum-PS

[ASHA SONI]

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]