

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 623 OF 2017

K. RAJ KUMARAPPELLANT(S)

VERSUS

S. PAWAN KUMAR GUPTA AND ORS.RESPONDENT(S)

ORDER

A.K. SIKRI, J.

At the instance of M/s. Financial Software and Systems (P) Ltd. (complainant), case is registered (Crime No. 120/16) against one S. Pawan Kumar Gupta (respondent No.1 herein). There are allegations of criminal breach of trust committed by respondent No.1 by siphoning of huge funds from the ATMs by the employees of the complainant in which respondent No. 1 is also allegedly involved.

- 2) It is not necessary to state the allegations in that complaint in detail for the purposes of this appeal. It only needs to be pointed out that respondent No.1 apprehending his arrest in those

proceedings, applied for anticipatory bail. Though, his first bail application was dismissed on 14.06.2016, second bail application moved within few days thereafter, was allowed on 29.06.2016. The appellant herein was the concerned Additional Session Judge (presently working as XV Additional District Judge, Miyapur, Hyderabad) who had granted the said anticipatory bail. The complainant challenged the order of grant of anticipatory bail by filing criminal petition No. 12230 of 2016 in the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh. The High Court has passed the orders dated 25.10.2016 allowing the said petition and cancelling the anticipatory bail granted by the appellant, as the judicial officer. However, while doing so, following remarks are made by the High Court thereby adversely commenting upon the conduct of the appellant in granting the bail:

“First anticipatory bail was dismissed on 14.06.2016. As there was no change of circumstances, on 29.06.2016 when second anticipatory bail application was allowed. It seems the said judge who granted bail did not bother about the misappropriation of huge amount and has also not bothered about the serious allegations against the 1st respondent. Mechanically without any reasoning, passed the order, which is perverse, it gives the smell that the said judge has passed the order due to ulterior motive. It shows that either the judge is not competent to deal such matters or his integrity is doubtful.

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Since the learned judge who granted anticipatory bail to the 1st respondent/A.2 has not dealt the issue properly, let this judgment be placed before the portfolio judge, who is having jurisdiction at Hyderabad. I request the Administrative Judge to take note while recording ACR of said judge.

Accordingly, the Criminal Petition is allowed.”

- 3) The appellant feels aggrieved by the aforesaid comments and the action which is proposed to be taken. Therefore, in these proceedings, the appellant seeks expunging of the remarks which were adverse to him.
- 4) It is stated in the petition that, pursuant to this order, the Registrar (Vigilance) of the High Court has already called for his explanation. It is also stated that the appellant is working as a Judicial Officer for the last 25 years with unblemished record and on the contrary, his track record shows that rather he has qualitative and quantitative track record in rendering judgments and at the fag end of his career, the aforesaid remarks would tarnish his image.
- 5) Since the complainant and respondent No.1 have no role to play in the matter, we have heard counsel for the appellant and respondent No.2/State. It is not necessary to elaborate principles that have been laid down by this Court in catena of judgments

observing that the High Court should exercise greater judicial restraint and adopt greater care while making any strong remarks against the officer in lower judiciary, more so, when the said judicial officer against whom aspersions are made is not before the High Court to defend his order. (See **Braj Kishore Thakur v. Union of India & Ors.**, (1997) 4 SCC 65 and **K.P. Tiwari v. State of M.P.**, 1994 Supp. (1) SCC 540).

- 6) We proceed on the basis that the order passed by the appellant granting anticipatory bail to the respondent No.1 was not judicially correct, having regard to very serious allegations of misappropriating huge funds along with others. At the same time, there was no reason to make the remarks, without any supporting material, that the order of anticipatory bail was passed with ulterior motive or it shows that the integrity of the judicial officer is doubtful. It would have been more appropriate to have the matter investigated on administrative side in the first instance before jumping to such a conclusion. We, thus, allow this appeal by ordering expunging of the following remarks:

“...it gives the smell that the said judge has passed the order due to ulterior motive. It shows that either the judge is not competent to deal such matters or his integrity is doubtful.

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I request the Administrative Judge to take note while recording ACR of said judge.”

- 7) At the same time, we permit the High Court to get the matter examined, if it so desires, on administrative side by the Registrar (Vigilance) or the Administrative Judge by adopting any suitable procedure known to law and on that basis, proceed further, if it all required in law.
- 8) Appeal is disposed of in the aforesaid terms.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

**NEW DELHI;
MARCH 31, 2017**

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

Criminal Appeal No. 623 of 2017

(Arising out of SLP (Criminal) No. 643 of 2017)

(Arising out of impugned final judgment and order dated 25/10/2016 in CRLP No. 12230/2016 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh)

K RAJ KUMAR

Appellant

VERSUS

S. PAWAN KUMAR GUPTA AND ORS.

Respondent(s)

(With appln. (s) for exemption from filing c/c of the impugned judgment, permission to file additional documents, interim relief and office report)

Date: 31/03/2017 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHANFor Petitioner(s) Mr. B. Adi Narayana Rao, Sr. Adv.
Mr. Venkateswara Rao Anumolu, Adv.
Mr. Prabhakar Parnam, Adv.

For Respondent(s) Mr. Abhay Kumar, Adv.

Ms. Anitha Shenoy, Adv.
Ms. Srishti Agnihotri, Adv.
Ms. Dharani Subramanian, 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.(Nidhi Ahuja)
Court Master(Mala Kumari Sharma)
Court Master

[Signed order is placed on the file.]