

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 578-581 OF 2017

(Arising out SLP (Crl.) Nos. 4060-4063 of 2014)

STATE OF JAMMU & KASHMIR

Appellant (s)

VERSUS

KAMAL SINGH & ETC.

Respondent(s)

O R D E R

1) Leave granted.

2) These appeals are directed against the judgment and order dated 20.09.2013 passed by the High Court of Jammu and Kashmir at Jammu whereby the High Court dismissed the petitions filed by the appellant herein and upheld the order of the Special Judge Anti Corruption.

3) The facts of the case, in brief, are as follows:-

i) An FIR was registered at P.S. Vigilance Organization, Jammu against Mohd Bashir, Tehsildar, Jammu for possessing disproportionate assets.

ii) During investigation, it was found that the accused had acquired Plot No.23 situated at Friends Enclave, Humhama, Srinagar in the name of Kamal Singh (Benamidar) who happens to be his close friend/associate/confidante.

iii) A three storied house was constructed on the said plot. During the course of investigation, SP vigilance Organization, Jammu sealed the said house.

iv) Additional Sessions Judge, Anti Corruption Court, Jammu directed the investigating officer to unseal the house holding that during investigation, it is proved that the house is of Mohd. Bashir, the investigating officer has power to take action under law.

v) The request of SP to the Commissioner of Vigilance Organization for making an order of attachment in respect of the said house in question. SP placed the report of attachment before the Designated Authority. The Designated Authority who, after hearing the submissions made, confirmed the order of attachment.

vi) The respondents filed separate appeals against the order passed by the Designated Authority before the Appellate Court of Special Judge, Anti Corruption, Jammu.

vii) The Appellate Court set aside the order passed by the Designated Authority and released the attached property in favour of the respondents.

viii) Aggrieved by the order of the Court of Special Judge Anti Corruption, Jammu, the Vigilance Organization filed petitions before the High Court of Jammu and Kashmir.

ix) The High Court by impugned judgment dismissed the petitions and upheld the order of the Special Court.

x) Hence, the instant appeals, by way of special leave.

4) We have heard the learned counsel appearing for the appellant and learned senior counsel appearing for the respondents.

5) Learned counsel appearing for the appellant submits that the High Court has erred in holding that the order passed by the Designated Authority was in violation of Rule of Natural Justice inasmuch as proper opportunity had not been granted to the respondents who appeared before the Designated Authority and the finding that there was undue haste is wholly arbitrary and misconceived. He further submits that the High Court failed to appreciate that the order of Appellate Authority was misdirected on facts and law as the same suffers from serious illegality as the same is not passed in consonance with the provisions of law. He submits that the Designated Authority by providing full opportunity to both the parties and after perusal of record/evidence and after hearing the parties passed the order.

6) On the other hand, learned senior counsel for the respondents supported the order passed by the High Court and submits the High Court after considering the order of the Special Court which has been passed on appreciation of facts rightly dismissed the same.

7) Having heard the learned counsel appearing for the parties and after perusing the material available on record, we are of the opinion that the courts below have not complied with the procedural requirements as required under law.

8) Hence, the order passed by the High Court is not sustainable in the eyes of law and the same is set aside. We remit the matter before the concerned Court to deal with the

same afresh on merits, after affording an opportunity of hearing to both the parties.

9) These appeals are disposed of on the afore-stated terms.

..... J.
(PINAKI CHANDRA GHOSE)

..... J.
(ROHINTON FALI NARIMAN)

New Delhi;
March 24, 2017.

(Revised)
 COURT NO.6 SECTION IIC
 S U P R E M E C O U R T O F I N D I A
 RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).
 4060-4063/2014

(Arising out of impugned final judgment and order dated
 20/09/2013 in CRMA No. 09/2011 20/09/2013 in CRMA No. 10/2011
 20/09/2013 in NO. No. 11/2011 20/09/2013 in NO. No. 12/2011
 passed by the High Court Of J & K At Jammu)

STATE OF JAMMU & KASHMIR Petitioner(s)

VERSUS

KAMAL SINGH & ETC. Respondent(s)

(With office report)
 (for final disposal)

Date : 24/03/2017 These petitions were called on for
 hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
 HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. M. Shoeb Alam, AOR
 Ms. Fauzia Shakil, Adv.
 Mr. Ujjwal Singh, Adv.
 Mojahid Karim Khan, Adv.

For Respondent(s) Mr. Sunil Sethi, Sr. Adv.
 Mr. Amit K. Nain, AOR
 Mr. Sumit Nain, Adv.

Mr. D. Mahesh Babu, AOR
 Ms. Suchitra Hrangkhwal, Adv.
 Mr. Katubadi Ismail, Adv.

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

Leave granted.

The appeals are disposed of in terms of the signed
 order.

(R. NATARAJAN)
 Court Master

(SNEH LATA SHARMA)
 Court Master

(Corrected signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 578-581 OF 2017

(Arising out SLP (Crl.) Nos. 4060-4063 of 2014)

STATE OF JAMMU & KASHMIR

Appellant (s)

VERSUS

KAMAL SINGH & ETC.

Respondent(s)

O R D E R

1) Leave granted.

2) This appeal is directed against the judgment and order dated 20.09.2013 passed by the High Court of Jammu and Kashmir at Jammu whereby the High Court dismissed the petitions filed by the appellant herein and upheld the order of the Special Judge Anti Corruption.

3) The facts of the case, in brief, are as follows:-

i) An FIR was registered at P.S. Vigilance Organization, Jammu against Mohd Bashir, Tehsildar, Jammu for possessing disproportionate assets.

ii) During investigation, it was found that the accused had acquired Plot No.23 situated at Friends Enclave, Humhama, Srinagar in the name of Kamal Singh (Benamidar) who happens to be his close friend/associate/confidante.

iii) A three storied house was constructed on the said plot. During the course of investigation, SP vigilance Organization, Jammu sealed the said house.

iv) Additional Sessions Judge, Anti Corruption Court, Jammu directed the investigating officer to unseal the house holding that during investigation, it is proved that the house is of Mohd. Bashir, the investigating officer has power to take action under law.

v) The request of SP to the Commissioner of Vigilance Organization for making an order of attachment in respect of the said house in question. SP placed the report of attachment before the Designated Authority. The Designated Authority who, after hearing the submissions made, confirmed the order of attachment.

vi) The respondents filed separate appeals against the order passed by the Designated Authority before the Appellate Court of Special Judge, Anti Corruption, Jammu.

vii) The Appellate Court set aside the order passed by the Designated Authority and released the attached property in favour of the respondents.

viii) Aggrieved by the order of the Court of Special Judge Anti Corruption, Jammu, the Vigilance Organization filed petitions before the High Court of Jammu and Kashmir.

ix) The High Court by impugned judgment dismissed the petitions and upheld the order of the Special Court.

x) Hence, the instant appeal, by way of special leave.

4) We have heard the learned counsel appearing for the appellant and learned senior counsel appearing for the respondents.

5) Learned counsel appearing for the appellant submits that the High Court has erred in holding that the order passed by the Designated Authority was in violation of Rule of Natural Justice inasmuch as proper opportunity had not been granted to the respondents who appeared before the Designated Authority and the finding that there was undue haste is wholly arbitrary and misconceived. He further submits that the High Court failed to appreciate that the order of Appellate Authority was misdirected on facts and law as the same suffers from serious illegality as the same is not passed in consonance with the provisions of law. He submits that the Designated Authority by providing full opportunity to both the parties and after perusal of record/evidence and after hearing the parties passed the order.

6) On the other hand, learned senior counsel for the respondents supported the order passed by the High Court and submits the High Court after considering the order of the Special Court which has been passed on appreciation of facts rightly dismissed the same.

7) Having heard the learned counsel appearing for the parties and after perusing the material available on record, we are of the opinion that the courts below have not complied with the procedural requirements as required under law.

8) Hence, the order passed by the High Court is not sustainable in the eyes of law and the same is set aside. We remit the matter before the concerned Court to deal with the

same afresh on merits, after affording an opportunity of hearing to both the parties.

9) The appeal is disposed of on the afore-stated terms.

..... J.
(PINAKI CHANDRA GHOSE)

..... J.
(ROHINTON FALI NARIMAN)

New Delhi;
March 24, 2017.

ITEM NO.39

COURT NO.6

SECTION IIC

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).
4060-4063/2014

(Arising out of impugned final judgment and order dated
20/09/2013 in CRMA No. 09/2011 20/09/2013 in CRMA No. 10/2011
20/09/2013 in NO. No. 11/2011 20/09/2013 in NO. No. 12/2011
passed by the High Court Of J & K At Jammu)

STATE OF JAMMU & KASHMIR

Petitioner(s)

VERSUS

KAMAL SINGH & ETC.

Respondent(s)

(With office report)
(for final disposal)

Date : 24/03/2017 These petitions were called on for
hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. M. Shoeb Alam, AOR
Ms. Fauzia Shakil, Adv.
Mr. Ujjwal Singh, Adv.
Mojahid Karim Khan, Adv.

For Respondent(s) Mr. Sunil Sethi, Sr. Adv.
Mr. Amit K. Nain, AOR
Mr. Sumit Nain, Adv.

Mr. D. Mahesh Babu, AOR
Ms. Suchitra Hrangkhwal, Adv.
Mr. Katubadi Ismail, 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.

(R. NATARAJAN)
Court Master

(SNEH LATA SHARMA)
Court Master

(Signed order is placed on the file)