

(2010) 12 AHC CK 0184

Allahabad High Court

Case No: Criminal Revision Defective No. 595 of 2010

Shekhar Tewari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Dec. 20, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 147, 148, 149, 201
- Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 - Section 3(1)

Hon'ble Judges: Bala Krishna Narayana, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Bala Krishna Narayana, J.

Heard Sri Dilip Gupta, learned Counsel for the revisionist and learned A. G. A. for the State.

2. From the facts stated in the affidavit accompanying this application in revision it appears that upon the application moved by the revisionist in S. T. Nos. 349, 350 and 351 of 2010; State Versus Shekhar Tiwari arising out of Case Crime No. 299 of 2009, P. S.-Dibiyapur, District-Aurraiya under Sections 323, 342, 457, 364, 302, 201, 120B, 147, 148, 149 and 506 I. P. C. before the Additional Sessions Judge/Special Judge, Ayodhya Prakran, Lucknow in which the revisionist along with other co-accused is being tried for the aforementioned offences with the prayer that the trial of the revisionist in Case Crime No. 300 of 2008 u/s 3(1) of U. P. Gangsters and Anti Social Activities (Prevention) Act hereinafter referred to as the Act, P. S.-Dibiyapur, district-Aurraiya pending in the Court of Special Judge, Gangster Act, Kanpur Nagar be given precedence over the trial of S.T. Nos. 446, 447 of 2009 or the said trial be heard by the Court of Special Judge, Gangster Act, Kanpur being rejected by the Special Judge, Ayodhya Prakran, Lucknow by the order dated 23.12.2009 the revisionists and other co-accused filed two writ petitions before the Lucknow Bench

of this Court being Writ Petition No. 7096 (M/B) of 2010 and Writ Petition No. 7097 (M/B) Of 2010 and the learned Single Judge of this Court by his order dated 23.7.2010 directed that the record of writ petition be placed before the Hon"ble Chief Justice/Senior Judge for nomination of the Division Bench for hearing the matter. Accordingly the matter was heard by a Division Bench of this Court at Lucknow and this Court by an order dated 7.10.2010 allowed the writ petitions and after setting aside the order of the Additional Sessions Judge/Special Judge, Ayodhya Prakran, Lucknow this Court directed the Additional Sessions Judge/Special Judge, Ayodhya Prakran, Lucknow to transmit the record of all the aforementioned Sessions trials arising out of Case Crime No. 299 of 2008 registered at P. S.-Dibiyapur, Auraiya to the Court of Special Judge, Gangster Act, Kanpur Nagar within a week so that the said Sessions trials may be decided by him. Against the order of this Court dated 7.10.2010 the State as well as the complainant, Smt. Shashi Gupta filed SLP (Crl.) Nos. 22789 - 22790 of 2010 and 9490 - 9491 of 2010 before the Honble Apex Court in which the Apex Court passed the following order on 23.11.2010:

Issue notice.

In the meantime, the operation and implementation of impugned judgment of High Court, shall remain stayed.

3. Learned Counsel for the revisionists submitted that after passing of the order dated 23.11.2010 the Public Prosecutor and the complainant Shashi Gupta moved two applications 167-Kha and 169-Kha before the Special Judge, Gangster Act, Kanpur Nagar with a prayer that the record of Sessions Trials be remitted back to the Special Judge, Ayodhya Prakran, Lucknow for trial on the ground that the operation and implementation of the order passed by the Division Bench of this Court has been stayed by the Hon"ble Apex Court. The Special Judge, Gangster Act, Kanpur upon a total misinterpretation of the interim order of the Apex Court by the impugned order allowed the said application and illegally directed that the records of Sessions Trial No. 349, 350 and 351 of 2010 be transmitted to Special Judge, Ayodhya Prakran, Lucknow so that the trial of the aforesaid cases be concluded expeditiously.

4. Learned Counsel for the revisionists next submitted that the Apex Court while staying the operation of the judgment of the Division Bench of Lucknow Bench has not issued any direction for transmitting the records of the aforesaid Sessions Trials from the Court of Special Judge, Gangster Act, Kanpur Nagar to the Court of Special Judge, Ayodhya Prakran, Lucknow for being decided by the said court and the direction issued in this regard by Special Judge, Gangster Act, Lucknow is totally without jurisdiction. Placing reliance upon the judgment of Hon"ble Apex Court in [Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras](#), he further submitted that the stay of the order of the Division Bench by the interim order of the Apex Court did not result in wiping out the order

of the Division Bench from existence and after passing of the interim order by the Apex Court the order of the Division Bench had only become in-operative.

5. He lastly submitted that in case if ultimately the Special Leave petitions preferred against the order of the Division Bench are dismissed and if in the mean time in pursuance of the impugned order the Special Judge, Ayodhya Prakran, Lucknow concludes the trial of the aforesaid three cases, the whole exercise would become infructuous.

6. After having considered the submissions advanced by the learned Counsel for the revisionist and perused the impugned order as well as the materials brought on record, I am of the view that the prayer made in this application in revision essentially involves interpretation of the interim order passed by the Apex Court on 23.11.2010 in SLP (Crl.) Nos. 22789 -22790 of 2010 and 9490 - 9491 of 2010 and it will be more appropriate for the revisionist to seek clarification of the order dated 23.11.2010 from the Hon"ble Supreme Court.

7. List after eight weeks.