

MOHD. ASLAM @ BHURE

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v

STATE OF U.P. AND ORS.

MARCH 22, 2007

[K.G. BALAKRISHNAN, CJ., G.P. MATHUR AND R.V. RAVEENDRAN, JJ.]

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Code of Criminal Procedure, 1973:

S.11(1)—Establishment of Special Court—Consultation with High Court—Requirement of—Notification by State Government transferring a case from Special Court, Rai Bareilly to Special Court, Lucknow—Notification not issued in consultation with High Court—High Court holding that Special Court, Lucknow has no jurisdiction as notification was not issued in consultation with High Court—SLP dismissed by Supreme Court—Review Petition—Held, it is for the State Government to take appropriate steps in the matter, if it so desires, by issuing a fresh notification—The earlier order passed by Supreme Court dismissing Special Leave Petition does not require any re-consideration—There is no error apparent on face of record nor do facts and circumstances warrant any interference with earlier order—Constitution of India, 1950—Article 137—Review—Government of Uttar Pradesh Notification No. 5175/VII/Nyaya-2-739/87 dated 8.10.1993.

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In the wake of demolition of the disputed structure at Ayodhya, popularly known as “Ram Janma Bhumi/Babri Masjid”. Crime No. 197/92 and crime No. 198/92 were registered against the ‘Kar Sewaks’. Later, 47 more cases came to be registered at different places in the State. Investigation of these cases was ultimately entrusted to the Central Bureau of Investigation. As regards Crime No. 198/92, by Notification dated 8.7.1993, the State Government, after consultation with the High Court, shifted the place of sitting to the Court of Special Judicial Magistrate, Rai Bareilly. On 8.9.1993, the State Government, in consultation with the High Court, issued a notification establishing a Special Court of Judicial Magistrate First Class, at Lucknow, for the area comprising the entire State, to try and inquire into and commit to the Court of Session all cases arising out of Crime No. 197/92 and 47 other cases in which investigations were made and charge-sheets were filed by CBI. A list of the cases was appended to the Notification, but no mention

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- A was made therein as regards Crime No. 198/92, which already been assigned to the Court of Special Judicial Magistrate, Rai Bareilly, by Notification dated 8.7.1993. On 8.10.1993 the State Government issued another Notification purporting to amend the earlier Notification dated 8.9.1993 and to insert therein crime No. 198/92 as item no. 49. When the revision petitions were
- B filed before the High Court against the charges framed by the Sessions Judge, the Single Judge of the High Court set aside the order of the Sessions Judge so far as it related to Crime No. 198/92 covered by Notification dated 8.10.1993 on the ground that the said Notification was illegal and invalid for want of consultation with the High Court as required under s.11(1) Cr.P.C. An intervener filed an SLP before the Supreme Court challenging the order
- C of the High Court. The SLP was dismissed. The said intervener filed the present review petition. Meanwhile a writ petition was filed before the High Court, seeking a direction to the State Government to issue a fresh notification after consultation with the High Court, for amendment of Notification dated 9.9.2003 to confer jurisdiction on Special Court, Lucknow to try or inquire into and commit to the Court of Session the matter relating
- D to crime No. 198/92. The High Court declined to issue any direction. The SLP against the order of the High Court was dismissed which gave rise to Review Petition No. 1648/2005.

Dismissing the review petitions, the Court

- E **HELD:** Parties before the High Court conceded that there was no consultation by the State Government prior to the issuance of the Notification dated 8.10.1993. The Single Judge dealt with the matter elaborately and came to the conclusion that there was no consultation with the High Court of Allahabad, and before issuance of the Notification, the State Government should
- F have consulted the High Court. It was also an admitted fact that in the Schedule annexed to the Notification dated 9.9.1993, Crime No. 198/92 was not included. The same may be a technical mistake on the part of the State Government. The Single Judge was also of the view that the same could be rectified by the State Government by issuing a fresh notification after consultation with the High Court. It is for the State Government to take appropriate steps in the
- G matter, if it so desires, by issuing a fresh notification. The earlier order passed by this Court dismissing the Special Leave Petitions do not require any re-consideration. There is no error apparent on the face of the record nor do the facts and circumstances warrant any interference with the earlier orders.

[Para 17] [346-C-F]

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CRIMINAL APPELLATE JURISDICTION : Review Petition (Crl.) Nos. 163-166 of 2003. A

(Under Article 137 of the Constitution of India).

IN

Special Leave Petition (Crl.) Nos. 5499-5502 of 2002. B

From the Judgment and Order dated 12.2.2001 of the High Court of Judicature Allahabad, Lucknow Bench in Crl. R. Nos. 199, 201, 211 and 255 of 1997.

With Review Petition (C) No. 1648 of 2005. C

IN

SLP (C) No. 456 of 2002.

O.P. Sharma, Anoop G. Choudhary, Nanita Sharma, Vivek Sharma, Bankim Kulshreshta, Siva Nand, Shakil Ahmed Syed, June Choudhari, Mohd. Taiyab Khan, and Firasat Ali Siddiqui for the Appellant. D

Gopal Subramaniam, ASG, Arun Jaitely, R.G. Padia, Dayan Krishnan, P. Parmeswaran, Maninder Singh, Gaurav Sharma, Rahul Ajatshatru, S.W.A. Qadri, R.K. Dubey, Jamshed Khan, Kamendra Mishra, S.N. Bhat, Sanjay V. Kharde, Chandan Ramamurthi for the Respondents. E

The Order of the Court was delivered by

K.G. BALAKRISHNAN, C.J. 1. Petitioner in these Review Petitions seeks review of the order passed by this Court on 29-11-2002 whereby the Special Leave Petitions filed by the petitioner were dismissed. The SLPs were directed against an order dated 12.2.2001 passed by a Single Judge of the Allahabad High Court at Lucknow. The challenge was only with reference to a part of that order by which the learned Single Judge had held that the Notification issued by the Government of Uttar Pradesh on 8.10.1993 was invalid for want of consultation with the High Court under sub-section (1) of Section 11 of the Criminal Procedure Code. F G

2. At the outset, we may observe that the petitioner herein is neither a complainant nor an accused in any of the criminal cases filed by the State H

A in this matter. Petitioner is an intervener who has no connection with any of the crimes registered by the Police.

3. The facts of the case, in short, are as follows :-

B On 6th December, 1992, the disputed structure, popularly known as “Ram Janam Bhoomi/Babri Masjid” at Ayodhya was demolished by a group of persons. It was a protected structure and consequent upon demolition of this structure, the following two cases were registered on the same day : (i) Crime No. 197/1992 under Sections 395, 397, 332, 337, 238, 295, 297, 153A IPC was registered by the Police Station Ram Janam Bhoomi, District Faizabad, against unnamed Kar Sevaks in regard to an incident which allegedly took place at 12.15 PM on 6th December, 1992; and (ii) Crime No. 198 of 1992 was also registered by the Police wherein eight persons were implicated as accused under Sections 153A, 153B, 505, 147, 149 IPC. There were also allegations of widespread commission of robbery, rioting and mischief and other minor offences by different groups of persons against the media and 47 crimes were registered for offences punishable under Sections 392, or 394, or 395, 147, 427, 336, etc.

E 4. The investigation of the crime registered as 197/92 was entrusted to the Central Bureau of Investigation (C.B.I.) on 13.12.1992, upon which the CBI re-registered the case as R.C. No. 8(S)/92-SIU.V-New Delhi.

F 5. The investigation of Crime No. 198/92 was taken over by CB CID of the State of Uttar Pradesh on 10.12.1992. On 16.12.1992, the State of Uttar Pradesh, in consultation with the High Court of Allahabad, established a Special Court of Judicial Magistrate First Class with its place of sitting at Lucknow, to try the case relating to Crime No. 198/1992. The CB CID of the State filed the final report under Section 173 of the Criminal Procedure Code. Crime No. 198/92 had been registered against all the eight accused persons named in the First Information Report, for the offences under Sections 153A, 153B, 505, 147 and 149 IPC. The Special Judicial Magistrate at Lalitpur took cognizance of the case on 1.3.1993. By Notification dated 8.7.1993, the State Government, after consultation with the High Court, shifted the place of sitting of the Court of Special Judicial Magistrate from Lucknow to Rae Bareilly.

H 6. By Notification dated 26.8.1993, the Government of India, with the consent of the Government of Uttar Pradesh entrusted the investigation of Crime No. 198/92 and cases arising from same facts/transaction to the CBI.

The CBI re-registered the Crime No. 198/92 as R.C. 1(s)/93 and the other 47 related cases as R.C. Nos. 2(s)/93 to 48(s)/93. On 8.9.1993, the Government of Uttar Pradesh, in consultation with the High Court, issued a Notification establishing a special court of Additional Chief Judicial Magistrate at Lucknow, for trial of cases arising out of demolition of the disputed structure at Ayodhya, investigated by CBI. Another Notification dated 8.9.1993 was issued by the Governor of Uttar Pradesh, in exercise of power under Section 11(1) of Cr.P.C., in consultation with the High Court of Allahabad establishing a Special Court of Judicial Magistrate, First Class, for the area comprising the entire State, with place of sitting at Lucknow, to try or enquire into and commit to the Court of Sessions all cases arising out of Crime No. 197/92 and 47 other cases in which investigations were made or charge sheets were filed by CBI. A list of these cases was appended to the Notification. But no mention was made as regards Crime No. 198/92, the investigation of which had already been entrusted to the CBI vide Notification dated 26.8.1993.

7. The CBI on 9.9.1993 moved an application before the Special Judicial Magistrate, Rae Bareilly, seeking permission for further investigation under Section 173(8) Cr.P.C., in Crime No. 198/92 and by order dated 10.9.1993, the learned Magistrate, Rae Bareilly, granted permission to the CBI for further investigation of the above case.

8. One Shri Vijay Verma was appointed by the High Court as the Additional Chief Judicial Magistrate (Special Court) at Lucknow on 5.10.1993 for trial and disposal of cases investigated by CBI pertaining to demolition of disputed structure at Ayodhya. The CBI filed a consolidated charge-sheet dated 4.10.1993 before the Additional Chief Judicial Magistrate, Lucknow, against 40 persons, that is, those implicated in Crime No 198/92 as well as others who were accused persons in Crime No. 197/92 and also in the 47 other cases registered by the Police Station at the Ram Janam Bhoomi.

9. On 8.10.1993, the Govt. of Uttar Pradesh issued Notification No. 5175/VII/Nyaya-2-739/87. The Notification read as follows :

“In exercise of the powers under Proviso to sub-section (1) of Section 11 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) read with Section 21 of the General Clauses Act, 1897 (Act No. 10 of 1897), the Governor is pleased to make the following amendment in the Notification No. 442/VII-Nyaya-2-739/87, dated Lucknow: September 9, 1993.

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AMENDMENT

In the Schedule to the aforesaid notification after item 48, the following item column-wise inserted, namely:-

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S.No.	Crime No.	Police Station	Sections
49.	198/92	Ram Janam Bhumi	153-A,153-B, 505 IPC

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By Order,

A.K. SRIVASTAVA

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10. By this Notification, the Govt. purported to have transferred the case registered as Crime No. 198/92 from the Rae Barelli court to the court of the Additional Chief Judicial Magistrate at Lucknow. Consequent upon the Notification dated 8.9.1993, the CBI filed a consolidated charge sheet before the Special Court of Addl. Chief Judicial Magistrate at Lucknow, who took cognizance of the offences on 11.10.1993.

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11. It may be remembered that the Special Judicial Magistrate at Rae Barelli had given permission to the CBI for further investigation on 10.9.1993 and that court sought a report regarding progress of the investigation from CBI on 18.10.1993. CBI informed the Special Judicial Magistrate, Rae Barelli, on 6.12.1993 about the filing of consolidated charge sheet at Lucknow. In view of it, the Magistrate at Rae Barelli, directed the transfer of the records to Addl. Chief Judicial Magistrate, Lucknow.

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12. The Additional Sessions Judge (Ayodhya Matters), Lucknow, by order dated 9.9.1997 framed charges in S.C. No. 344/1994 (corresponding to Crime no. 197/1992) and S.C. No. 749/1996 (corresponding to Crime No. 198/1992). Feeling aggrieved, different sets of accused filed Cr.R.P. Nos. 199, 201, 211 and 295 of 1997. The said revision petitions were allowed in part by a learned Single Judge, by common order dated 12.2.2001. The learned Single Judge upheld the order dated 9.9.1997 passed by the Special Judge, Lucknow, for framing charges in 48 cases (referred to in the Schedule to Notification dated 9.9.1993). The learned Single Judge, however, set aside the said order 9.9.1997 of the Special Judge in so far as it related to Crime No. 198/1992

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covered by the Notification dated 8.10.1993 on the ground that the said Notification was illegal and invalid for want of consultation with the High Court required under Section 11(1) of Cr.P.C. The High Court further held :

“This notification being illegal and without jurisdiction is invalid. Therefore it could not confer jurisdiction upon the Special Court of A.C.J.M. Lucknow to try or inquire into and commit to the Court of Sessions case Crime No. 198 of 1992. Therefore, the said Special Court of A.C.J.M. at Lucknow had no jurisdiction to try, enquire into and commit case Crime No. 198 of 1992. Since committal of accused persons relating to case Crime no. 198 of 1992 by order dated 27.8.1994 passed by the Special Court of A.C.J.M. at Lucknow was illegal, subsequent proceedings in the Court of Special Judge (Ayodhya Prakaran) including the impugned order dated 9th September, 1997 for framing of charges as far as the accused persons of case Crime No. 198 of 1992 are concerned are illegal, without jurisdiction and are liable to be set aside.”

13. The High Court, however, observed that the mistake in issuing the said Notification dated 8.10.1993 is curable and it is open to the State Government, if it so desires, to rectify the matter by issuing a fresh notification after consultation with the High Court in accordance with law.

14. The petitioner challenged the said order of the High Court in S.L.P. (Crl.) Nos. 5499-5502/2002. This Court dismissed the S.L.Ps. by order dated 29.11.2002. The petitioner seeks review of the said order dated 29.11.2002.

15. We may next refer to Review Petition (C.) No. 1648/2005. On the ground that the State Government had not taken steps to issue a fresh notification in place of the Notification dated 8.10.2003 (which was held by the High Court to be invalid), one Kuldip Nayar and others filed W.P. No. 2367 (M/B) of 2001 in the Allahabad High Court, seeking a direction to the State Government to take steps forthwith to issue a fresh notification after consultation with the High Court, for amendment of the Notification dated 9.9.2003, to confer jurisdiction on the Special Court, Lucknow, to try or enquire into and commit to the Court of Sessions, the matter relating to Crime No. 198/1992. The said petition was disposed of by the Allahabad High Court by order dated 21.5.2001 holding that it was not a case for issuing any direction to the State Government as the matter was one within the discretion of the State Government. The petitioner who was not a party before the High Court filed S.L.P. (C.) No. 456/2002, seeking leave to challenge the said order.

- A The said Special Leave Petition was also dismissed by this Court by a common order dated 29.11.2002.

16. This Court, while disposing of the Special Leave Petitions, observed that the State Government in consultation with the High Court has constituted a Special Court at Rae Bareilly for trying the cases in relation to Crime No. 198/1992 and no person, much less the petitioners in public interest, can claim any Special Court at any particular place for trial of any particular criminal case.

- C 17. We are only concerned with the limited question whether the learned Single Judge was justified in holding that the Notification dated 8.10.1993 was invalid on the ground that the said Notification was issued by the State Government without consultation with the High Court of Allahabad. Parties before the High Court conceded that there was no consultation by the State Govt. prior to the issuance of the Notification dated 8.10.1993. The learned Single Judge dealt with the matter elaborately and came to the conclusion that there was no consultation with the High Court of Allahabad and before issuance of the Notification the State Govt. should have consulted the High Court. It was also an admitted fact that in the schedule annexed with the Notification dated 9.9.1993 (4421/XII Ayodhya/739/87), Crime No. 198/92 was not included. The same may be a technical mistake on the part of the State Government. The learned Single Judge was also of the view that the same could be rectified by the State Government by issuing a fresh notification after consultation with the High Court. It is for the State Government to take appropriate steps in the matter, if it so desires, by issuing a fresh notification. We are of the opinion that the earlier order passed by this Court dismissing the Special Leave Petitions does not require any re-consideration. There is no error apparent on the face of the record nor do the facts and circumstances warrant any interference with our earlier order. The Review Petitions are without any merit and dismissed accordingly.

18. We, however, find a typographical error in the Order dated 29.11.2002 requiring correction. The word "Lalitpur" at line 8 of the Order shall be read as "Lucknow".

- G R.P.

Review Petitions dismissed.