

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1436 OF 2008
[Arising out of SLP(Crl.) No. 5646/2007]

SHAMINDER SINGH ... **APPELLANT(S)**

:VERSUS:

STATE OF U.P. AND ANR. ... **RESPONDENT(S)**

ORDER

Leave granted.

Appellant is before us aggrieved by and dissatisfied with the judgment and order dated 13.3.2007 passed by a learned Single Judge of the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No. 5156/2007, whereby and whereunder the application filed by

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the appellant under Section 482 of the Code of Criminal Procedure was disposed of directing:

“The 482 application is disposed of by providing that in case the applicant appears or is produced before the courts concerned and applies for bail in Complaint Case No. 111 of 2004 under section 323, 504, 506 IPC, P.S. Edmadadaulla, Distt. Agra, his bail prayer shall be dealt with as per the seven Judges' decision of this Court dated 15.10.2004 passed in Criminal Misc. Application N. 2154 of 1995 (Smt. Amarwad and another vs. State of U.P.) reported in 2004 (57) ALR 390.

The non-bailable warrant issued against the applicant shall be kept in abeyance for fifteen days only.”

In view of the order proposed to be passed by us we feel it necessary to dwell upon the factual matrix of the matter.

Appellant was working as Senior Divisional, Signal and

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Telecom Engineer in the Northern Railways. An incident is said to have occurred in his chamber on 27.5.2002 at about 11.00 a.m.. Allegedly, respondent No.2 was handed over to the Railway Protection Force Staff posted there. Another incident is said to have taken place in the office of Inspector K.K. Sharma and ASI Prem Kumar. Respondent No.2 is said to have handed over to the Delhi Police. However, no First Information Report was lodged.

On 29.5.2002, the appellant having come to know that the RPF Staff have handed over the respondent No.2 to the Delhi Police, wrote a letter to the Deputy Commissioner of Police, Delhi Police, to let him know as to whether any action had been taken on the First Information Report lodged by the RPF officers, so as to enable him to initiate departmental proceeding against him.

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Respondent No.2 thereafter lodged a First Information Report at about 2100 hours on 29.5.2002 alleging that the appellant along with Inspector K.K. Sharma and Prem Kumar of RPF attacked him with a 'danda' and threatened to kill him.

A final report therein was submitted by the Agra Police which was accepted by the learned Addl. Chief Judicial Magistrate, Agra. However, a criminal revision application was filed by the respondent No.2 which was allowed by an order dated 28.1.2004 directing the learned Magistrate for giving an opportunity to respondent No.2 to adduce evidence in support of his protest petition. Pursuant to and/or in furtherance of the said direction, the protest petition was taken on record and the respondent No.2 was permitted to examine the witnesses, whereafter cognizance under Sections 323, 504 and 506 of I.P.C. was taken.

According to the appellant, he was not aware of the proceedings initiated against him or the summons issued by the learned Magistrate. He came to know thereabout only when non-bailable warrant of arrest was issued.

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He filed a criminal miscellaneous application under Section 482 of Cr.P.C. which by reason of the impugned judgment has been dismissed.

It is evident that the appellant's application was not disposed of on merit and no reason has been assigned as to why no case for exercise of the High Court's jurisdiction under Section 482 of Cr.P.C. has been made out.

Keeping in view the facts and circumstances of this case, we are of the opinion that interest of justice would be subserved if the impugned order is set aside

and the High Court is requested to consider the appellant's application under Section 482 of Cr.P.C. on its own merit. We direct accordingly. The appeal is allowed.

As Respondent No.2 is appearing in-person, we would request the High Court to hear out the case on a specified date and dispose of the same as expeditiously as possible.

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The interim order passed by this Court shall continue during the pendency of the matter before the High Court.

.....J
(S.B. SINHA)

.....J
(CYRIAC JOSEPH)

NEW DELHI,
SEPTEMBER 8, 2008.