

NON-REPORTABLE

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

REVIEW PETITION (CRIMINAL) NO. 732 OF 2013

IN

**SPECIAL LEAVE PETITION (CRIMINAL) 5911 OF
2013**

KISHORE SAMRITE

.... PETITIONER

VERSUS

STATE OF M.P.

.... RESPONDENT

ORDER

The instant review petition has been filed for review of our order dated 8th August, 2013 dismissing Special Leave Petition (Criminal) No. 5911 of 2013 (Kishore Samrite vs. State of M.P.), in limine. The aforesaid special leave petition was filed challenging the order dated 6th May, 2013 passed by the Madhya Pradesh High Court in Criminal Appeal No. 27 of 2010

whereby the petitioner's prayer for stay of conviction under Section 435/149, 332/149, 427/149, 147 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was rejected. Review of the Order has been sought for mainly on the following grounds:

- “ii. BECAUSE as it has been stated herein above on 27.07.2012 the relevant order was passed for listing the another SLP of the Petitioner before a Bench of which Hon'ble Mr. Justice Chandramauli Kr. Prasad was not a member and again on 06.08.2013 similar order was passed in the Review Petition filed by the Petitioner i.e. just 2 days prior to the passing of the impugned order in the present case and considering the said orders passed the present SLP filed by the Petitioner ought not to have been heard on 08.08.2013 by the Bench since Hon'ble Mr. Justice Chandramauli Kr. Prasad was a member of the said Bench and instead the judicial norm and propriety required that the matter should have been listed before another Bench in order to maintain the consistency and the propriety and also in the interest of justice.
- iii. BECAUSE it is further relevant to point out that Shri Ardendumauli Kr. Prasad, Advocate was engaged by the Petitioner herein in 2005 for filing the Writ Petition before this Hon'ble Court and the said

petition was filed by his counsel through Shri Kishan Datta, Advocate On Record and the same was duly argued by his above noted counsel and hence considering this aspect also the petition should not have been heard by the Bench on 08.08.2013 and hence the impugned order deserves to be set aside and the SLP deserves to be heard afresh.

- iv. BECAUSE it would be more appropriate and proper and also in order to maintain the dignity of this Hon'ble Court if the present Review Petition is allowed and the SLP is heard afresh."

The petitioner has stated that Special Leave Petition (Criminal) No. 2817 of 2011 (Kishore Samrite vs. State of U.P. & Ors.) was listed on 27.07.2012 and on that date this Court passed the following order:

"List before a Bench of which Hon'ble Mr. Chandramauli Kr. Prasad is not a member."

Aforesaid special leave petition was filed by the petitioner challenging the Order dated 7th March, 2011 passed by the Allahabad High Court in Writ Petition No. 111 of 2011. Writ Petition No. 111 of 2011 was filed by the petitioner, an Ex.

Member of Legislative Assembly, acting as next friend, for issuance of a writ in the nature of Habeas Corpus for production of a young girl of 22 years and her parents alleging that Shri Rahul Gandhi, Member of Parliament, had confined them in illegal detention. He had also sworn an affidavit in support of the writ petition. It contained wild allegations/insinuations against Shri Rahul Gandhi and questioned the virtue and modesty of the young girl of 22 years. While dismissing the Writ Petition No. 111 of 2011, Allahabad High Court imposed an exemplary costs of Rs. 50,00,000/- (Rupees Fifty lakh only) on the petitioner.

This Court granted leave and ultimately dismissed the Criminal Appeal No. 1406 of 2012 arising out of Special Leave Petition (Criminal) No. 2817 of 2011, by judgment dated 18th October, 2012 (Kishore Samrite vs. State of U.P. & Ors. (2013) 2 SCC 398). While doing so, the Court observed as follows:

"61.1 Writ Petition No. 111 of 2011 was based upon falsehoods, was an abuse of process of court and was driven by malice and political vendetta. Thus, while dismissing this petition, we impose exemplary costs of Rs. 5

lakhs upon the next friend, costs being payable to Respondent 6.”

Petitioner filed application for review of the aforesaid Order and naturally, when the Review Petition (Criminal) No. 409 of 2013 in Criminal Appeal No. 1406 of 2012 was posted for consideration, Prasad J. declined to hear the review application. The said review petition has been dismissed by order dated 27th August, 2013.

It is relevant here to state that Prasad, J. did not hear the special leave petition as it concerned the petitioner but he did so on account of a counsel's representation in the matter before the High Court. Said counsel surely did not represent the petitioner in the special leave petition.

From the aforesaid it is evident that the subject matters in Special Leave Petition (Criminal) No. 5911 of 2013 and Review Petition (Criminal) No. 409 of 2013, which one of us (Prasad, J.) declined to hear, are not even remotely connected with the issue in the present case. Even at the cost of repetition, we may herein observe that those cases related to the allegation

made by the petitioner about the illegal detention of a young girl by Shri Rahul Gandhi and preventing her from filing a writ petition, whereas in the present case, petitioner sought stay of his conviction under Section 435/149, 332/149, 427/149, 147 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is relevant here to state that in the special leave petition, the petitioner has not even whispered these facts, which he has stated in the review petition. Therefore, there was no reason whatsoever for Prasad J. not to hear the special leave petition preferred against the order refusing to stay conviction.

As regards the plea that Shri Ardhendumauli Kr. Prasad argued in Writ Petition (Civil) No. 485 of 2005, which was dismissed by this Court on 30.09.2005, and hence one of us (Prasad J.) ought not to have heard the special leave petition filed by the petitioner against the order refusing to stay the conviction, it may be stated that Shri Ardhendumauli Kr. Prasad is the son of one of us, Prasad J. and had been practising in this Court much before the elevation of Prasad J. Shri Ardhendumauli Kr. Prasad was engaged by the petitioner in a

writ petition of 2005, which was dismissed by this Court on 30th September, 2005 i.e. about five years prior to elevation of Prasad J. Subject matter of that writ petition has nothing to do with this case. Further, nobody pointed out to the Bench when the special leave petition preferred against the refusal to stay the conviction was placed for consideration that Shri Ardhendumauli Kr. Prasad has represented the cause of the petitioner in any case. Moreover, the said case has no correlation at all with the present review petition. Notwithstanding that, had it been brought to the notice of the Court that the son of a Judge constituting the Bench represented the cause of the petitioner in an earlier proceeding, though nothing to do with the present case, perhaps Prasad J. would not have heard the matter. Petitioner has not done so. He had taken the chance and when the order has gone adverse to him, he is digging out fanciful reasons to seek review of the Order.

Nothing has been said on the merit of the case.

In the facts and circumstances of the present case, the grounds urged by the petitioner for review of the order lacks

bona fide and his attempt is to seek review of the order by resorting to untenable and malafide grounds. He seems to be in the habit of making false and wild allegations.

Accordingly, we do not find any merit in the present review petition and dismiss it with costs of Rs.5,00,000/- to be paid by the petitioner to the Supreme Court Employees Welfare Fund. The petitioner shall deposit the aforesaid amount within one month from the date of this order. If he fails to do the same within the time stipulated, the Registry of this Court shall inform to the District Magistrate, Balaghat (Madhya Pradesh), to recover the said amount from the petitioner as an arrears of land revenue and deposit the said amount in the Supreme Court Employees Welfare Fund without any delay.

.....J
[CHANDRAMAULI KR. PRASAD]

.....J
[KURIAN JOSEPH]

NEW DELHI
February 07, 2014.

SUPREME COURT OF INDIA



JUDGMENT

SUPREME COURT OF INDIA



JUDGMENT