

STATE OF JAMMU AND KASHMIR

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v.

SHAM LAL AND ORS.

MAY 10, 1996

[DR. A.S. ANAND AND S.B. MAJMUDAR, JJ.]

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*Constitution of India, 1950 :*

*Articles 226 and 136—Stay of criminal proceedings—F.I.R. against the respondent for offence under s.5(2) of Prevention of Corruption Act, 1988 and offences under Jammu and Kashmir State Ranbir Penal Code—Writ petition filed in High Court for quashing the F.I.R.—Single Judge while issuing notice, granted ex-parte order staying further investigation till next date—On the next date case adjourned but stay order was vacated—In letters patent appeal Division Bench of the High Court, without notice to the State Government, directed the Single Judge to reconsider the order appealed and till then stayed the investigation—Held, on the plainest consideration of justice, the Division Bench of the High Court was obliged to hear State Government before passing the order, more so, since the order challenged before the Division Bench was passed after hearing the Government—Order of the Division Bench staying the investigation is not sustainable and is set aside—Investigation shall be expedited.*

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*Prevention of Corruption Act, 1988 :*

*S.5(2)—Misappropriation of public money—F.I.R. Investigation—Writ petition for quashing investigation—Single Judge initially stayed investigation but on next date vacated the stay order—In letters patent appeal, Division Bench directing the Single Judge to reconsider the order and till then staying the investigation—Held, order of Division Bench not sustainable.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 675 of 1996.

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From the Judgment and Order dated 9.8.95 of the Jammu & Kashmir High Court in L.P.A. (W) No. 212 of 1995.

K.T.S. Tulsi, Additional Solicitor General and Ashok Mathur for the Appellants.

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A R. Sasiprabhu, Ashok K. Mahajan and Ramesh Babu. M.R. (NP) for the Respondents.

The following Order of the Court was delivered :

Leave granted.

B On discovering that there had been embezzlement worth crores of rupees, by way of misappropriation and misutilisation of government funds meant for purpose of food grains and other essential commodities by the employees of Jammu & Kashmir Cooperative Supply and Marketing Federation Ltd. (JAKFED for short), the Commissioner/Secretary to the Government, Agriculture Production Department filed a complaint with the Crime Branch of the Police in 1994. FIR 40/1994 came to be registered on the basis thereof. Subsequently, the complaint/FIR was transferred to the Vigilance Organisation by the Government and the Vigilance Department registered FIR No. 3/95 on its basis for offences under Section 5(2)

C PCA and some other offences under RPC and took up the investigation in hand. During the preliminary stage of investigation by the Vigilance Department, the respondents filed a writ petition in the High Court for quashing of FIR 3/95 and as interim relief sought the stay of investigation into the criminal case. Notice was issued and the learned single Judge also passed an ex-parte order staying further investigation till the 'next date'.

E The State, appellant herein, filed a counter to the writ petition as well as objections to the stay petition.

F On 12.7.95 the writ petition came up for hearing before the learned single Judge. Request for adjournment of the case was made on behalf of learned counsel for the writ petitioners, which appears to have been opposed on behalf of the State. The hearing of the writ petition was adjourned. Since, the earlier stay order was to last till the 'next date', arguments were, however, heard on the question of extension of the stay order. The learned single Judge after taking into account the objections and arguments raised at the bar was pleased to refuse extension and he vacated the stay order dated 27.5.95 During the course of the order, the learned single Judge observed :

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H "This is a matter where an unusual relief is being claimed by the petitioners for staying the very investigation in an FIR which involves commission of offences under the Prevention of Corrup-

tion Act and the Penal Code. In my view, the extension of the stay order passed on 26th May 1995, by which investigation process in the FIR was order to be stayed, is likely to defeat the ends of justice and the purpose for which the FIR was lodged. The process of investigation relating to the commission of serious offences cannot, in the ordinary course be allowed to be stalled. It is always however, open to a party, at a stage after the completion of the investigation that he may approach a court of competent jurisdiction for an appropriate relief, if he feels that he is aggrieved in any manner by the result of the investigation. A

It is because of the aforesaid reasons that, even while I propose to adjourn the case because of the request of Shri Mohd. Aslam Bhat, I am not inclined to extend the further operation of the interim directions of this court dated 26th May 1995. In that view of the matter, therefore, I direct that the aforesaid interim directions shall stand vacated forthwith. C

The writ petitioners, respondents herein, challenged the order of the learned Single Judge dated 12.7.95 through a Letters Patent Appeal. The Division Bench disposed of the LPA and the learned single Judge was required to *reconsider* the order dated 12.7.95 and till then the *investigation was directed to remain stayed*. In actual effect, therefore, the order dated 12.7.95 was set aside and the stay application remanded for fresh consideration by the learned single Judge. The operative part of the order reads: D

"Considering the matter in totality, we are of the view that this appeal can be disposed of at this preliminary hearing stage without notice to the respondents in view of the innocuousness of the order proposed to be passed. Noticing that the stay order dated 26.5.95 was to hold valid till the matter was to be considered by the writ court on the next date and keeping in regard that prayer for adjournment had been made on the personal grounds of learned counsel for the petitioners, we deem it appropriate to direct that the stay matter shall be reconsidered and counsel for the petitioners heard and appropriate orders passed whereon. Order accordingly any till the matter is considered again by the writ court, investigation against the petitioner shall not proceed in FIR No. 3/95." F

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A The State is aggrieved of this Order, hence this appeal by special leave.

Apart from the question that it is rather doubtful whether a Letters Patent Appeal would lie against an order vacating an ex- parte interim order of stay, we find that the impugned order of the Division Bench is

B otherwise also unsustainable. We say it with respect to the learned Division Bench that it was not a proper manner of disposing of the Letters Patent Appeal. The Letters Patent Appeal has been "allowed" at the preliminary stage, without issuance of any notice to the appellant and without even admitting it. It could not be done. According to the Division Bench, the

C issuance of notice was not considered necessary "in view of the innocuousness of the order proposed to be passed". We cannot agree with the view of the High Court. The order of the Division Bench is not an 'innocuous' order. The Division Bench has in actual effect set aside the order of the single Judge dated 12.7.95 and *remanded* the case for *reconsideration*,

D without expressly saying so. The Division Bench also restored the order dated 27.5.95 by staying the investigation in FIR 3/95. Such an order could not be made by the Division Bench with hearing the parties. On the plainest consideration of justice, in our opinion the Bench was obliged to hear the opposite party i.e. the appellant herein before passing the impugned order more so since the impugned order before the Division Bench had been

E made after hearing the appellant, herein. We do not wish to express any opinion on the merits of the controversy in the writ petition but find that the order staying the investigation by the Division Bench in the manner in which it has been done is not at all sustainable. The grievance of the appellant that it has been seriously prejudiced by the impugned order is well founded.

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This appeal accordingly succeeds and is allowed. The impugned order of the Division Bench is set aside and the order of the learned single Judge dated 12.7.95 is restored. The investigation shall be expedited.

G The writ petition shall be decided on its own merits, in accordance with the settled law on the subject, after hearing the parties, expeditiously.

R.P.

Appeal allowed.