

**231 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM No.M-8026 of 2013

Date of Decision: February 23, 2015

Gurcharan Singh Patwari

.... Petitioner

vs.

Raj Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. H.P.S. Ghuman, Advocate for the petitioner.

Mr. K.S. Hissowal, Advocate for the respondent.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh J.(Oral)

The petitioner has challenged the order dated 07.02.2013 (Annexure P-4) passed by Addl. Sessions Judge, Patiala, vide which the order dated 28.08.2012 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Nabha was set aside and the case was remanded back for framing of the charges after passing a speaking order.

In short, the complainant had filed a criminal complaint No.70/1-09-06 against the present petitioner, titled as "Raj Singh vs. Gurcharan Singh Patwari", under Sections 341, 323, 452 and 506 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') before the learned Judicial Magistrate 1st Class, Nabha.

After summoning the accused under Sections 341, 323, 452 and 506 read with Section 34 IPC, pre-charge evidence was recorded. After recording the pre-charge evidence, charges were framed under Sections 341, 323 and 506 IPC while the accused (petitioner herein) was discharged for the offence punishable under Section under Section 452 IPC, vide order dated 28.02.2012.

The said order was challenged before the learned Addl. Sessions Judge, Patiala by both the parties, in which learned Addl. Sessions Judge, Patiala gave the following directions:

“After going through the record of the case, this court is of confirmed and considered view that the impugned order dated 28.02.2012 passed by the Magistrate is a perverse order, since the same does not exhibit any application of mind on the part of the Magistrate to the evidence adduced in pre-charge stage. The Magistrate has not assigned any reason for charging the accused for particular offences and at the same time for discharging the accused under Section 452 of IPC.

In these circumstances, this court is of the confirmed and considered view that interest of justice requires that, the impugned order be set aside with the direction to the Ld. Magistrate to apply fresh mind to the evidence adduced by the complainant in pre-charge stage, considering the contentions advanced on behalf of the parties and thereafter pass a speaking order before proceeding either to discharge or charge sheet the accused as it may consider fit.

Both the revision petitions are disposed of accordingly.”

The grouse of the learned counsel for the petitioner is that a speaking order is not required to be passed at the time of framing of the charges.

I am of the view that there may be case when the Appellate Court may dispose of the case after issuing directions for passing a speaking order. There is no illegality in passing a speaking order.

It has been further argued that the Appellate Court had directed the trial court to pass a speaking order before proceeding either to discharge or charge-sheet the accused, as it may consider fit. Though, the language is not happily worded but the appellate court meant that both the parties be heard on the point of charge and thereafter, speaking order should be passed as considered appropriate under the law.

In view of the matter, the present petition is disposed of with the observations that the trial court shall hear both the parties on the point of charge and thereafter pass a speaking order in accordance with law.

February 23, 2015
sarita

(KULDIP SINGH)
JUDGE