

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.4045 of 2013 (O&M)
Date of decision: March 31, 2016.

Aruna Rani

... **Petitioner**

v.

Veena Jagota and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Kanwal Goyal, Advocate for the petitioner.

Mr. APS Rehan, Advocate for respondent No.1.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral):

Impugned in the present revision is the judgment dated 3.12.2013 passed by the first appellate court whereby the judgment dated 23.11.2011 rendered by the lower court has been set aside and the matter has been remanded to it for hearing the parties on pre-charge evidence.

It comes out that the respondent No.1 filed a criminal complaint against the present petitioner and others under Sections 323, 324, 325, 427, 506, 120-B IPC. In the said case, the accused were summoned; pre-charge evidence was recorded and after recording pre-charge evidence and after hearing both the parties, the learned Magistrate vide order dated 23.11.2011 held that the complainant must have brought sufficient evidence on record which could lead to conviction of the respondents. The learned Magistrate held that the evidence produced by the complainant is not free from material contradictions, therefore, the

accused were discharged and the complaint was dismissed.

Aggrieved of the said order, the complainant preferred a revision which was decided by learned Additional Sessions, Jalandhar (FTC) on 3.12.2013. The learned Additional Sessions Judge took the view that in view of the judgment of the Apex Court in R.S. Nayak v/s A.R. Antulay, AIR 1986 SC 2045 only prima facie case was to be seen, therefore, the case was remanded to the Magistrate to re-hear the parties on pre-charge evidence and decide the case in accordance with the parameters laid down by the Apex Court in R.S. Nayak's case (supra).

I am of the view that the approach of the first appellate court is wholly illegal. The Magistrate has taken a view on the basis of evidence available on the record. If the first appellate court finds that the view of the lower court is incorrect and is liable to be set aside, then in place of remanding the case, the order of learned Magistrate could have been set aside after discussing the merits of the same. Merely by applying one authority, the first appellate court could not direct the Magistrate with certain parameters. In this view of the matter, the impugned order dated 3.12.2013 passed by the first appellate court is set aside. The learned Additional Sessions Judge, Jalandhar is directed to decide the said revision on merits after considering the entire evidence and the case law on the point.

Learned counsel for the petitioner states that one of the accused/respondent, namely, Meenakshi @ Upasana has gone to Australia after her discharge in this case. She is allowed to appear through her counsel in the first appellate court for the purpose of hearing arguments in the revision.

The parties through their counsel are directed to appear before

the successor court of Shri B.K. Sharma, learned Additional Sessions Judge, Jalandhar on 27.4.2016.

March 31, 2016.
kadyan

[Kuldip Singh]
Judge