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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 2497/2018 & CRL.M.A.8889/2018
MANOJ KUMAR BANSAL

..... Petitioner

Through : Mr. Ravindra Narayan and
Mr. Raghav Narayan, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through : Mr. Amit Chadha, APP for the State
with SI Omveer Singh, PS Nand
Nagri.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **14.01.2019**

1. After pronouncing the judgment of conviction of the petitioner under Sections 342/363 IPC, learned Metropolitan Magistrate forwarded the matter to learned ACMM, Shahdara, Delhi for passing appropriate order on the point of sentence vide order dated 05.05.2017 which reads thus:-

Present : Sh. Indresh Gupta Ld. APP for the State.
Complainant Sh. Sujata in person.
Accused Manoj Kumar with Sh. V.P. Tiwari Ld.
Counsel.
Record Perused.

Accused is already convicted for the offence punishable U/s 342/363 of IPC. Keeping in view the seriousness of the allegations, this Court is of opinion that the accused ought to receive the punishment more severe than this court has power to inflict. Accordingly, the Accused is hereby forwarded to the court of Sh. Gagan Deep Singh, Ld. ACMM, SHD, Delhi for passing

appropriate order on the point of sentence.

The Ahlmad is directed to send the complete file in all respects on or before NDOH i.e. on 06.05.2012 at 2:00 P.M.”

2. The matter was taken up by learned CMM Shahdara, Delhi on 27th April, 2018 when petitioner contended that he would like to approach the learned Sessions Judge for clarification in view of the provisions of Section 325 Cr.P.C.
3. The petitioner approached the learned District & Sessions Judge. It was contended that the learned Metropolitan Magistrate was not required to write the judgment in terms of sub Section (1) of Section 325. All that he was required, was to record his opinion and not his judgment before forwarding the matter to learned CMM. The finding of guilt was then to be recorded by the learned Chief Metropolitan Magistrate once the matter had been forwarded to him by the Metropolitan Magistrate. The judgement on conviction had to be recorded by the learned Chief Metropolitan Magistrate on the basis of evidence adduced before the learned Metropolitan Magistrate, that too after hearing the arguments afresh.
4. This contention did not find favour of the learned District & Sessions Judge. Vide order dated 12th March, 2018 the learned District & Sessions Judge has directed the learned CMM to pass order on quantum of sentence.
5. That is how petitioner is before this court by way of present petition under section 482 Cr.P.C.

In ***Ved Prakash vs. The State, 1994 JCC 271***, in the similar facts, a Bench of coordinate jurisdiction held thus :-

“13. What, then, is the correct position? The perusal of section 325 would go to show that whenever a Magistrate is

of opinion after hearing the evidence for the prosecution and the accused, that the accused is guilty, he may send up the records under two circumstances namely; (1) the punishment to be inflicted must be different in kind from that which he is empowered to inflict, and (2) the punishment must be more severe than that which he can inflict. Certainly, in no other circumstances can he send up the record under sub-section (1) of section 325. After the submission of the record, the case would be a continuation of the original trial and the Chief Metropolitan Magistrate would be under the same obligation to hear arguments and to write a judgment as in any ordinary case tried entirely by him. It is not sufficient for the Chief Metropolitan Magistrate to accept the opinion recorded by the Magistrate making the reference. He is rather required to form his own independent judgment and write according to the provisions of section 354 of the Code. It is just possible, upon hearing of the evidence of the prosecution and the accused, that the Chief Metropolitan Magistrate may opine that the accused is not guilty in which case it would be open to him to acquit the accused.

14. Under sub-section (1) of section 325 a Metropolitan Magistrate is not required to write a "judgment". All that is required from him is to record his "opinion" and not his satisfaction. The existence of a finding of guilty on the record would not militate against the powers of the Chief Metropolitan Magistrate and such a finding will not be binding on him. If a Magistrate projects his opinion in the form of a judgment of conviction as was done in the present case, order so recorded would neither prohibit the Chief Metropolitan Magistrate from dealing with the case under sub-section (3) of Section 325, nor constitute a conviction preventing any further trial. As pointed out in *Emperor v. Narayan Dhaku Bhil*, 1928 ILR Bombay 456, *Pagla Kahar v. Emperor* AIR 1946 Patna 412 and *Rang Bahadur v. The King* AIR 1949 Patna 317, in effect such an order of conviction will be mere surplusage, or just a legal nullity."

6. Accordingly, I am of the view that learned Chief Metropolitan Magistrate has not to hear only the arguments on quantum of sentence but has to hear the matter afresh on the basis of evidence adduced before the learned Metropolitan Magistrate and record his judgment by treating the judgment of learned Metropolitan Magistrate merely an opinion and reference. Ordered accordingly.

7. Petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

JANUARY 14, 2019

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