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Cr1.A.No. 761-762 OF 2000
ITEM No.1

Court No. 5

SECTION II
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRLMP Nos.8104-8105/2003 In
Criminal Appeal No. 761-762/2000

STATE OF J & K

Appellant (s)

VERSUS

ABDUL AHAD SHEIKH & ORS.

Respondent (s)

(For clarification/modification of court's order dated 04.09.2000
and with Office Report)

Date : 27/01/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU

HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. Anis Suhrawardy,Adv.

For Respondent (s)Ms. Manjula Gupta,Adv.
No.1

UPON hearing counsel the Court made the following
O R D E R

The Criminal Miscellaneous Petitions are disposed
of in terms of the signed order.

(Neena Verma) (Vijay Aggarwal)
Court Master Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL MISC. PETITION NOS.8104-8105 OF 2003

IN

CRIMINAL APPEAL NOS.761-762 OF 2000

State of Jammu and Kashmir
...Appellant

Versus

Abdul Ahad Sheikh and Ors.
...Respondents

O R D E R

The above applications have been filed for clarification of the earlier order passed by this Court dated 04.09.2000, in Criminal Appeal Nos.761-762 of 2000.

Notice was issued and respondents have been served.

Heard learned counsel appearing on either side.

The order of the High Court against which the above appeals in this Court came to be filed would go to show that the same was passed by the High Court while disposing of two criminal revision petitions, of which Criminal Revision Petition No.16 of 1999 has been filed by the State questioning the order of the Sessions Judge framing charge against A-2 to A-5 only under Section 323 RPC as against the claim of prosecution for a charge under Section 302 read with Section 149 RPC. So far as A-1 is concerned, he was framed under Section 302 RPC. At that stage Criminal Revision Petition No.19 of 1999 has been filed by A-1 contesting the order framing charge against him under Section 302 RPC.

While disposing of both the revisions, the learned Single Judge in the High Court not only directed the alteration of charge in respect of A-1 from Section 302 RPC into one under Section 304 (Part-I) RPC, but further accepted the claim of the State partially by directing the framing of charge against A-2 to A-5 under Section 304 (Part-I) read with Section 149 RPC instead of under Section 323 RPC, as framed by the Sessions Judge. Not satisfied, the State only pursued the matter before this Court. By the order dated 04.09.2000, the clarification of which is now sought for, this Court accepted the claim of the State only in respect of A-1 and directed A-1 to face charge under Section 302 RPC. Since A-2 to A-5 have not challenged the order of the High Court and in the appeals before this Court, the prosecution pursued only its claim to have the charge against A-1 framed under Section 302 and others (A-1 to A-5) under Section 302 read with 149 RPC, the fact that this Court while passing orders on 04.09.2000 accepted the said plea of the prosecution only in respect of A-1, does not mean that the order of the High Court directing A-2 to A-5 to be proceeded against for charges under Section 304 (Part-I) read with Section 149 RPC also got modified so as to set aside the same and restore the order of the Sessions Judge.

While so, the learned Sessions Judge appears to have entertained a doubt as to the consequences of the above orders and in assuming that the charges for which A-2 to A-5 are to be proceeded with, was only Section 323 RPC, as originally ordered by the Sessions Judge. It cannot be, in our view, a correct assumption and as the orders stand, as noticed supra, the accused A-2 to A-5 have to be proceeded under Section 304 (Part-I) read with Section 149 RPC, and A-2 to be proceeded against under Section 302 RPC. In fact, since the High Court has altered the charge framed by the Sessions Judge and directed A-2 to A-5, to be proceeded against only under Section 304 (Part-I) read with Section 149 RPC and that order remained unassailed by those accused, the assumption to the contra by the Sessions Judge is not correct and unwarranted.

The consequences which would inevitably follow out of the order of this Court dated 04.09.2000 would be that A-1 shall be proceeded against for charge under Section 302 RPC and A-2 to A-5 shall be proceeded against for charges under Section 304 (Part-I) read with Section 149 RPC.

The learned Sessions Judge shall proceed in the matter accordingly.

The criminal miscellaneous petitions are disposed of in the above terms.

.....J.

(DORAISWAMY RAJU)

.....J.

(ARIJIT PASAYAT)

New Delhi,
January 27, 2004.