

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

REVIEW PETITION (CRL.) NO(s). 147 OF 2011 IN APPEAL(CRL) 1288/2004
(FOR PREL. HEARING)

RAJBIR Petitioner(s)

VERSUS

STATE OF U.P. Respondent(s)

(With appln(s) for permission to file additional documents)

Date: 15/04/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner (s) Mr. S.C. Maheshwari, Sr. Adv.
Mr. R.K. Shulka, Sr. Adv.
Mr. Jabar Singh, Adv.
Mr. M.P.S. Tomar, Adv.
Ms. Sandhya Goswami, Adv.

For Respondent (s)

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

The review petition is allowed. Order dated 24.01.2011 passed by this Court in Criminal Appeal No. 1288 of 2004 is recalled and that Criminal Appeal is restored to its original number.

With the observations given in the signed order, the Appeal is disposed of.

(Rajesh Dham)
Court Master

(Indu Satija)
Court Master

(signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

REVIEW PETITION(CRL) NO.147 OF 2011
IN
CRIMINAL APPEAL NO. 1288 OF 2004

RAJBIR PETITIONER (S)

VERSUS

STATE OF U.P. RESPONDENT (S)

O R D E R

This Review Petition has been filed seeking review of this Court's Order dated January 24, 2011 whereby Criminal Appeal No. 1288 of 2004, filed by the petitioner in this Review Petition, was dismissed.

One of the grounds on which the petitioner in this Review Petition has sought review of the aforesaid Order dated January 24, 2011 is that the criminal appeal has been dismissed by the High Court though no counsel had appeared for the appellants before the High Court. It is alleged that this vitiates the High Court's judgment dated 26.03.2003.

:1:

To support his contention, the petitioner in the Review Petition has relied upon the Judgment of this Court in Md. Sukur Ali Vs. State of Assam, reported in JT 2011 (2) SC 527 = 2011 (2) SCALE 730. In that judgment, this court held that in a criminal case if the counsel for the accused does not appear the appeal should not be dismissed in his absence but the Court should appoint an amicus curiae to appear on his behalf.

In a subsequent judgment rendered by a three Judge Bench of this Court in Rekha Vs. State of T. Nadu TR. Sec. To Govt. & Anr. reported in 2011 (4) SCALE 387, this Court has observed :-

"Right to liberty guaranteed by Article 21 implies that before a person is imprisoned a trial must ordinarily be held giving him full opportunity of hearing, and that too through a lawyer, because a layman would not be able to properly defend himself except through a lawyer.

The importance of a lawyer to enable a person to properly defend himself has been elaborately explained by this Court also in A.S. Mohd. Rafi Vs. State of Tamilnadu, reported in AIR 2011 SC 308. As observed by Mr. Justice Sutherland of the U.S. Supreme Court in Powell Vs. Alabama, 287 U.S. 45 (1932) "Even the intelligent and

educated layman has small and sometimes no skill in the
:2:
science of law", and hence, without a lawyer he may be
convicted though he is innocent.

Hence, we are of the opinion that this review petition
deserves to be allowed. We order accordingly. Order dated
24.01.2011 passed by this Court in Criminal Appeal No. 1288
of 2004 is recalled and that Criminal Appeal is restored to
its original number.

Heard learned counsel for the appellant-Rajbir.

On the facts of the case, since none appeared for the
alleged accused-Rajbir in his criminal appeal, following our
judgment in Md. Sukur Ali Vs. State of Assam (supra), we
set aside the impugned judgment of the High Court qua
Rajbir. We dispose of Criminal Appeal No. 1288 of 2004 by
remanding the matter to the High Court for a fresh decision
in accordance with law after giving an opportunity to Rajbir
(the appellant in Criminal Appeal No. 1288 of 2004) of being
heard, either through his counsel, if he nominates one, or,
if he does not nominate anyone, through an amicus curiae
appointed by the Court.

:3:
It appears that Rajbir is on bail pursuant to the
interim order passed by this Court. We direct that Rajbir
shall continue to remain on bail till the decision of the
High Court in the case remanded to it.

With these observations, the Appeal is disposed of
accordingly.

.....J.
[MARKANDEY KATJU]

APRIL 15, 2011

[GYAN SUDHA MISRA]

: 4 :