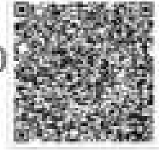

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-8943-2023 (O & M)
Date of Decision:01.08.2024

Kirpal Singh Kooner

... Petitioner

Versus

State of U.T., Chandigarh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Gautam Dutt, Advocate,
for the petitioner.

Mr. J.S. Toor, Addl.P.P., for U.T., Chandigarh.

****

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for setting aside a part of the judgment/directions contained in Para 36 of the judgment dated 20.01.2023 passed by the Judicial Magistrate Ist Class, Chandigarh (Annexure P-1) in FIR No.406 dated 09.11.2012 under Sections 323, 452, 506 and 34 IPC, Police Station Sector 31, Chandigarh wherein while acquitting the accused observations have been made that due to unfair and faulty investigation conducted by both the investigating officers and the SHO concerned i.e. the petitioner, the right to life and liberty of the accused persons provided under Article 21 of the Constitution was curtailed and their acts amounted to the commission of offences under Sections 166-A and 167 IPC and that the copy of the judgment be sent to the Senior Superintendent of

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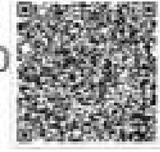

Police, Chandigarh for necessary action with a further prayer that FIR No.0015 dated 27.01.2023 under Sections 166A and 167 IPC, Police Station Sector 31, Chandigarh be quashed being an abuse of the process of the law.

2. The brief facts of the case are that an FIR No.406 dated 09.11.2012 under Sections 323, 452, 506 and 34 IPC, Police Station Sector 31, Chandigarh, came to be registered by one Geeta Joshi. As per the allegations in the FIR, accused persons, namely, Anil Sood, S.K. Parmar, P.K. Mahajan, Satish Kumar and Gopal Mittal had come outside her house, removed the flower pots and uprooted trees and had assualted her while using unparliamentary language.

The investigation was initially conducted by SI Raghbir Singh.

On the representation of the accused, an enquiry was conducted by the DSP, Crime Branch, Jagbir Singh who after considering the statements of the complainant, accused and the first investigating officer, prepared a report stating that only a quarrel had taken place between two parties and the complainant had not been manhandled. A copy of the report dated 04.03.2013 was exhibited as DA in the subsequent Trial.

Meanwhile, SI Gurmeet Singh (PW-7) was appointed as the second investigating officer by the then SHO Jaspal Singh on 05.05.2013.

On 31.07.2013, SHO Jaspal Singh was transferred and Inspector Kirpal Singh (petitioner) took charge as SHO, Police Station Sector 31, Chandigarh. A copy of the transfer orders dated 31.02013 is attached as Annexure P-3 to the petition.

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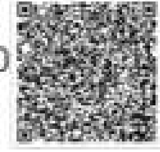

Meanwhile, the report under Section 173(2) Cr.P.C. under Sections 323, 452, 506 and 34 IPC was presented on 07.11.2013 without considering the enquiry report dated 04.03.2013.

An application for discharge was moved by the accused on the basis of the enquiry report of the DSP. On 11.11.2014, the said application was dismissed by the Trial Court on the grounds that the enquiry conducted by the DSP was not binding on the Trial Court and the accused could not be discharged only on the basis of the findings of the said DSP. A copy of the order dated 11.11.2014 is attached as Annexure P-4 to the petition.

Consequent to the dismissal of the discharge application, charges were framed against the accused under Sections 323, 452, 506 read with Section 34 IPC on 14.11.2014.

3. On conclusion of the Trial, while the accused persons were acquitted, an observation was made in Para 36 of the judgment that an unfair and faulty investigation had been conducted by both the investigating officers and the SHO concerned thereby violating the fundamental right to life and liberty of the accused under Article 21 of the Constitution of India and therefore, the proceedings ought to be initiated against the said accused. A copy of the judgment is attached as Annexure P-1 to the petition. The relevant extract containing the observations are as under:-

> *"35. Further, under section 173 Cr.PC, the statutory duty is given to officer incharge of the police station to submit report before magistrate whether offence appear to have been committed and if so by whom. But in the present case, the SHO*

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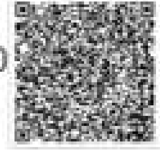

concerned without verifying the contents regarding the complaint and without going through the contents of the DDR No.70, dated 7.11.2012 which was submitted with the challan has forwarded the challan for the trial before the court in a casual manner. He was duty bound to verify the facts regarding the case and thereafter, he should submit the challan before the magistrate. But in the present case, SHO concerned has not shown his inclination to verify the facts and submitted the report before magistrate in a very casual manner and against provisions of law.

36. Due to the above mentioned unfair and faulty investigation conducted by both the investigating officers and the SHO concerned, the accused persons fundamental right of life and liberty as provided under 21 of the constitution was curtailed for more than nine years and have to face the trial before the court. The precious period of life after retirement which the accused persons have to spend with their families has gone wasted by appearing in the trial of the case for more than 9 years. Despite the fact came in inquiry that no alleged offence have been committed, Both the investigating officers namely SI Raghubir Singh and SI Gurmeet Singh and the SHO concerned namely Kirpal Singh have knowingly disobeyed the directions of the law regulating the manner in which they shall have to conduct the investigation by submitted the cancellation report against the accused persons as per the inquiry report Ex.D3 conducted by the DSP but they have framed an incorrect document knows or having reason to believe that the same to be incorrect with intent to cause injury to the accused persons. The above mentioned act of both the investigating officers and the SHO concerned attributes the commission of offence u/s 166-A, 167 of IPC. The offence u/s 166-A IPC is cognizable offence. The copy of this

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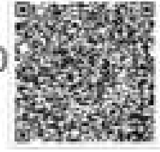

judgment be sent to the SSP Chandigarh, through proper channel to take legal action against the above mentioned delinquent officials as per law and to sensitize the SHOs and investigating officers working under him regarding the fair investigation and civil and fundamental rights of individuals. He is directed to submit his report before the this court on or before 01.02.2023. one copy of this judgment be separated and put up before the undersigned on date fixed. The accused persons are also at liberty to take civil and criminal recourse against delinquent officials and other persons as per law.

37. In view of the discussion above, this court is of the considered view that the story of the prosecution regarding the alleged occurrence is highly doubtful and the prosecution has miserably failed to prove the guilt of the accused beyond reasonable shadow of doubt. Accordingly, all the accused persons are entitled for the benefit of the acquittal. All the accused persons are hereby acquitted from the charges so levelled against them. Case property if any, be dealt as per law. File be consigned to record room after due compliance".

4. On the receipt of the aforementioned judgment and on a perusal of the observations made in Para 36, FIR No.0015 dated 27.01.2023 under Sections 166A and 167 IPC, Police Station Sector 31, Chandigarh, came to be registered against the petitioner, SI Raghbir Singh, the first investigating officer and SI Gurmeet Singh, the subsequent investigating officer. A copy of the FIR No.0015 dated 27.01.2023 is attached as Annexure P-2 to the petition.

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5. It is the observation contained in Para 36 of the judgment dated 20.01.2023 (Annexure P-1) and the consequential FIR (Annnexure P-2) which are under challenge in the present petition.

6. The learned counsel for the petitioner contends that disparaging remarks passed in the impugned order on the basis of which the subsequent FIR was registered are in violation of the High Court Rules (Chapter 1 Part H Rule 6). He contends that the remarks had been made against the petitioner without following the principle of *audi alteram patrem* inasmuch as the petitioner was required to be heard before the said remarks had been made pursuant to which the FIR had been registered. Reliance is placed on the judgments in ***'State of Punjab and anr versus M/s Shikha Trading Co., 2023 (136) CutLT 739, State (Govt. of NCT of Delhi) versus Pankaj Chaudhary and others, 2019(5) RCR (Criminal), Astha Modi versus State of Haryana and another, (CRM-M-38422-2019 decided on 08.11.2023) and Dr. Mrs. Naresh Saini versus State of Haryana and another, (CRM-M-22310-2014 decided on 29.08.2017)'.*** Even otherwise, the DSP report exonerating the accused had been considered by the Trial Court while hearing the application for discharge of the accused and the said application came to be dismissed after duly considering the said report. Therefore, it could not be said that the accused persons had suffered irreparable harm leading to the commission of offences in question by the petitioner and others. He, therefore, contends that the observations contained in Para 36 of the judgment

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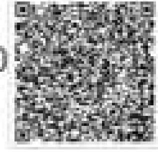

dated 20.01.2023 (Annexure P-1) and the consequential FIR No.0015 dated 27.01.2023 (Annexure P-2) were liable to be quashed.

7. The learned counsel for the respondent-U.T., Chandigarh, on the other hand, contends that no fault could be found with the procedure adopted by the Trial Court in initiating the proceedings against the petitioner and his co-accused. It is only during the course of the Trial that the Court came to the conclusion that conduct of the petitioner and his co-accused in not bringing on record the enquiry report dated 04.03.2013 Ex.DA had amounted to the commission of offences under Sections 166-A and 167 IPC. Therefore, the present petition was liable to be dismissed.

8. I have heard the learned counsel for the parties.

9. Before proceeding further, it would be apposite to examine The High Court Rules (Chapter 1 Part H Rule 6) which reads as under:-

> *"**6. Criticism on the conduct of police and other officers:-**It is undesirable for Courts to make remarks censuring the action of police Officers unless such remarks are strictly relevant to the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that when they have worked up a case, they are regarded with distrust by the courts; that the smallest irregularity is magnified into a grave misconduct and that every allegation of ill-usage is readily accepted as true. That such allegations may sometimes be true it is impossible to deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officer to believe*

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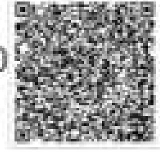

anything and everything against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct of any Government servant he should send a copy of his judgment to the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving in reference to the Home Secretary's circular letter No. 920-J-36/14753, dated the 15th April, 1936. Similarly, Sessions Judges shall also send a copy of their judgment containing criticism of the work and conduct of police officers to the District Magistrate. They shall also send a copy of the judgment direct to the High Court accompanied by a covering letter giving reference to the High Court circular letter No. 1585-Gaz./XXXI-2, dated the 14th February, 1936".

10. The judgments referred to by the learned counsel for the petitioner are discussed hereunder:-

The Hon'ble Supreme Court of India in ***'State of Punjab and anr versus M/s Shikha Trading Co., 2023 (136) CutLT 739'***, *held as under:-*

14. Further, we notice the directions of the High Court not to be in the light of settled principles of law, for the order does not qualify the tests laid down by this Court in State of UP v. Mohammad Naim AIR 1964 SC 703 (four-Judge Bench), in regards to passing remarks against a person, whose conduct is being scrutinised before them i.e., "whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself; whether there is evidence on record bearing on

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that conduct, justifying the remarks; whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct."

15. These principles stand reiterated and followed in various judgments such as R.K. Lakshmanan v. A.K. Srinivasan (1975) 2 SCC 466 (three-Judge Bench); S.K. Viswambaran v. E. Koyakunju (1987) (two- Judge Bench); Samya Seet v. Shambhu Sarkar (2005) 6 SCC 767 (three-Judge Bench); State of Madhya Pradesh v. Narmada Bachao Andolan (2011) 12 SCC 689 (three-Judge Bench) and K. G. Shanti v. United Indian Insurance Co. Ltd and Ors (2021) 5 SCC 511 (two-Judge Bench).

16. It is apparent from record that, neither was the officer made party to the dispute, nor was he given an opportunity to show cause, and further, nothing on record reflected the officer holding an animus against the respondent, before such adverse directions were passed against him.

17. By way of this appeal, we have been asked to exercise powers, inherent in this Court, to expunge remarks reproduced supra against the said officer, from record. It would be appropriate to consider the various principles in respect of passing adverse remarks against an officer- be it judicial, civil (as in the present case) or police or army personnel, and expunction thereof.

18. The three principles laid down in Naim (supra) deal with what is required of the court, prior to, finding it fit to pass adverse remarks.

18.1 It has been reasserted time and again that remarks adverse in nature, should not be passed in ordinary circumstances, or unless absolutely necessary which is

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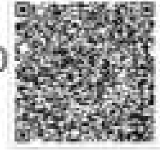

further qualified by, being necessary for proper adjudication of the case at hand[8].*

[8 Niranjan Patnaik v. Sashibhusan Kar (1986) 2 SCC 569, two-Judge Bench; Abani Kanta Ray v. State of Orissa (1995) Supp (4) SCC 169, two-Judge bench; A.M. Mathur v. Pramod Kumar Gupta (1990) 2 SCC 533; two-Judge Bench]*

18.2 Remarks by a court should at all times be governed by the principles of justice, fair play and restraint[9]. Words employed should reflect sobriety, moderation and reserve[10*].*

[9 Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi, (1987) 1 SCC 227; three-Judge Bench]*

[10 K.G. Shanti (supra)]*

18.3 It should not be lost sight of and per contra, always be remembered that such remarks, "due to the great power vested in our robes, have the ability to jeopardize and compromise independence of judges"; and may "deter officers and various personnel in carrying out their duty". It further flows therefrom that "adverse remarks, of serious nature, upon the character and/ or professional competence of a person should not be passed lightly"[11].*

[11 E. Koyakunju (supra)]*

19. Keeping the above principles in mind, the power to expunge remarks may be exercised by the High Court and this Court: –

19.1 With great caution and circumspection, since it is an undefined power[12];*

[12 Dr. Raghubir Saran v. State of Bihar, AIR 1964 SC 1; two-Judge Bench]*

19.2 Only to remedy a flagrant abuse of power which has been made by passing comments that are likely to cause harm or prejudice[13];*

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[13 Dr. Raghbir Saran (supra)]*

19.3 In respect of High Courts exercising such power, it has been observed:

19.3.1 The High Court, as the Supreme Court of revision, must be deemed to have power to see that courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it [14].*

[14 Panchanan Banerji v. Upendra Nath Bhattacharji (AIR 1927 All 193, as referred to in Sashibhusan Kar (supra)]*

19.3.2 Though in the context of Judicial officers, this Court has observed that "The role of High Court is also of a friend, philosopher and guide of judiciary subordinate to it. The strength of power is not displayed solely in cracking a whip on errors, mistakes or failures; the power should be so wielded as to have propensity to prevent and to ensure exclusion of repetition if committed once innocently or unwittingly. "Pardon the error but not its repetition". This principle would apply equally for all services. The power to control is not to be exercised solely by wielding a teacher's cane[15]-[16*].*

[15 Manu Sharma v. State (NCT of Delhi), 2010 6 SCC 1; two-Judge Bench]*

[16 'K' A Judicial Officer (supra)]*

20. The impugned directions issued by the High Court in registration of criminal investigation against an officer, unquestionably against the above-referred

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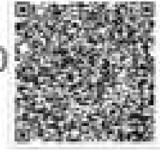

> *settled principles of law, having a demoralizing effect on the well-meaning officers of the State. It is clear that the impugned directions were passed upon an incorrect and erroneous appreciation of the record. 21. Consequent to the above discussion, we find it a fit case to, in accordance with the principles summarised hereinabove, expunge the observation made and the directions issued by the High Court extracted supra (para 5) vide impugned order dated 08.12.2010 in CWP No. 19909 of 2010 titled as M/s Shikha Trading Co. v. The State of Punjab and anr. Further, proceedings initiated, if any, pursuant thereto, including the FIR shall stand closed with immediate effect.*

The Hob'ble Supreme Court in '***State (Govt. of NCT of Delhi) versus Pankaj Chaudhary and others, 2019(5) RCR (Criminal) 133',*** held as under:-

> *42. By perusal of the impugned judgment of the High Court, we find that the High Court has not recorded a finding that "it is expedient in the interest of justice to initiate an inquiry into the offences punishable under Sections 193 and 195 IPC against the police officials and under Section 211 IPC against the prosecutrix". Without affording an opportunity of hearing to the police officials and based on the materials produced before the appellate court, the High Court, in our view, was not right in issuing direction to the Registrar General to lodge a complaint against the*

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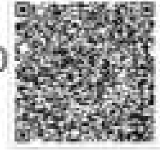

police officials and the said direction is liable to be set aside.

43. The High Court erred in brushing aside the evidence of the prosecutrix by substituting its views on the basis of submissions made on the sequence of events in FIR No.558/97 and the report of the Joint Commissioner of Police (Ex.-DW6/A) and the report of the Deputy Commissioner of Police. The High Court erred in taking into consideration the materials produced before the appellate court viz., the alleged complaints made against the prosecutrix and other women alleging that they were engaged in prostitution. Even assuming that the prosecutrix was of easy virtue, she has a right of refuse to submit herself to sexual intercourse to anyone. The judgment of the High Court reversing the verdict of conviction under Section 376(2)(g) recorded by the trial court cannot be sustained and is liable to be set aside.

44. For the conviction under Section 376(2)(g) IPC, the accused shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may be extended to imprisonment for life. After the amendment by Act 13 of 2013 (with retrospective effect from 03.02.2013), the minimum sentence of ten years was increased to twenty years as per Section 376-D and in the case of conviction, the court has no discretion but to impose the sentence of minimum twenty years. However, prior to amendment, proviso to Section 376(2) IPC provided a discretion to the court that "the court may,

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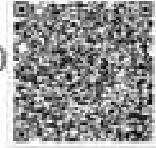

> *for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than ten years." Though the court is vested with the discretion, in the facts and circumstances of the case, we are not inclined to exercise our discretion in reducing the sentence of imprisonment of ten years imposed upon the respondents-accused.*
>
> *45. In the result, the impugned judgment of the High Court is set aside and the appeal preferred by the State is allowed. The verdict of conviction of accused-respondent Nos.1 to 4 (CA No.2299/2009) 30 under Section 376(2)(g) IPC and also the sentence of imprisonment of ten years imposed upon them is affirmed. The respondents-accused Nos.1 to 4 shall surrender themselves within a period of four weeks from today to serve the remaining sentence, failing which they shall be taken into custody. We place on record the valuable assistance rendered by the counsel Mr. Praveen Chaturvedi who has been nominated by the Supreme Court Legal Services Committee to argue on behalf of the respondents/accused.*

This Court in the case of ***'Astha Modi versus State of Haryana and another, (CRM-M-38422-2019 decided on 08.11.2023)'*** has held as under:-

> *9. Examination of the impugned order shows that after noting the affidavit filed by the petitioner,*

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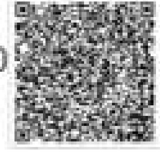

> *learned Sessions Judge has failed to follow the settled procedure of calling upon the petitioner, whose work and conduct is under scrutiny. She is not a party to the proceedings, no notice has been issued to her to explain nor has she been afforded with any opportunity of hearing before damning her. The Sessions Court has not adhered to tests laid down by the Apex Court and has made adverse remarks against the petitioner's conduct, which are unwarranted and uncalled for. This Court, therefore, has no hesitation in coming to the conclusion that the remarks recorded by the Sessions Court, deserve to be expunged.*
>
> *10. Accordingly, the castigating remarks recorded by the Sessions Judge in order dated 27.09.2018, Annexure P-7, against the petitioner are expunged from the record and they shall not be taken into consideration for any intent or purpose.*

This Court in '***Dr. Mrs. Naresh Saini versus State of Haryana and another, (CRM-M-22310-2014 decided on 29.08.2017)'***, held as under:-

> *Upon hearing learned counsel for the rival parties, I find that the remarks have been made by the trial Court, in Para 56 of its judgement, which read thus:-*
>
> > *"56. As sequel to above discussion, it is held that the prosecution has miserably failed to prove its case on any of the points with cogent, and reliable evidence beyond the shadow of doubt, rather, the defence of the accused that he*

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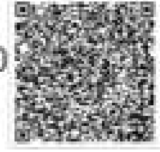

> *has been falsely implicated by PW11 in collusion with then CMO, by manipulating and concocting all the proceedings of trap and arrest of the accused for this crime is proved to be well founded and thus also goes to prove that it is a case of false implication with malafide intention and thus a fit case where the accused is entitled for acquittal without any blemish whatsoever and thus stands acquitted accordingly. His bail bonds stands discharged. As far as the plea raised by defence counsel that PW-11 along with all the guilty to brought to books for this case, is concerned, since the outcome of this judgment leads to multifarious actions against so many persons, the accused is at liberty to initiate whatever action he wants or can approach the court of law for the same as per the procedure provided under the law and this Court refrains itself to do so at this stage, though it goes without saying that it is fit case where criminal action is required to be initiated against all involved in this malicious prosecution of the accused. File be consigned to record room".*

The record nowhere shows that the learned Special Judge had given a show-cause notice or called for explanation of the petitioner before making the remarks against her, in Para 56 of its judgement above. It is a well settled legal position that no person can be condemned unheard. Therefore, the rule of audi alteram patrem must be followed. Perusal of Para 56 above and the entire judgment nowhere show that the petitioner was at all given a notice of hearing before making disparaging remarks against her. The nature of remarks are such that are bound to effect the petitioner in her career and society. After all, the trial Court ought to have considered that the petitioner has been occupying the position of a CMO in a Government organization and cannot be condemned in the

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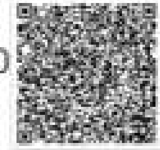

manner that has been done that too without hearing her. In that view of the matter, this petition must succeed.

To sum up, this petition must be allowed. Remarks made against the petitioner, in Para 56 of judgment dated 23.03.2012 passed by Additional Sessions Judge-cum-Special Judge, Karnal are ordered to be deleted".

11. A perusal of The High Court Rules (Chapter 1 Part H Rule 6) (supra) would show that if the conduct of police officers and other officers is to be criticized or any action is to be taken against an officer, then the procedure mentioned in Rule 6 is to be followed i.e. a copy of the judgment is required to be sent to District Magistrate who would forward it to the Registrar, High Court, accompanied by a covering letter given in reference to the Home Secretary's Circular dated 15.04.1936. No such procedure had been followed in the instant case and the Trial Court while acquitting the accused directed that a copy of the judgment of acquittal containing the observations be sent to the Senior Superintendent of Police, Chandigarh to take legal action against the delinquent officials as per law. This procedure followed by the Trial Court is unknown to law.

12. Further, a perusal of the judgment in ***State of Punjab and anr. Versus M/s Shikha Trading Co. (supra), State (Govt. of NCT of Delhi) versus Pankaj Chaudhary and ors. (supra), Astha Modi versus State of Haryana and another (supra) and Dr. Mrs. Naresh Saini***

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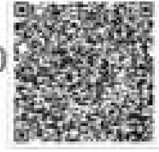

versus State of Haryana and another (supra) would show that prior to the taking of any action against any official, he must be given an opportunity of hearing to explain his position. The same having not been done in the instant case would render the proceedings initiated against the petitioner and others nugatory.

13. In view of the aforementioned discussion, the observations contained in Para 36 of the judgment dated 20.01.2023 passed by the Judicial Magistrate Ist Class, Chandigarh (Annexure P-1), the consequential FIR No.0015 dated 27.01.2023 under Sections 166-A and 167 IPC, Police Station Sector 31, Chandigarh (Annexure P-2) and all subsequent proceedings arising therefrom stand quashed qua the petitioner.

14. The present petition stands disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

August 01, 2024
sukhpreet

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No

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