

# SUPREME COURT OF INDIA

Shri Hanumant Dinkar Arjun

Vs.

Shri Suresh R.Andhare

CrI.A.No.25 of 2009

(Abhay Manohar Sapre and Dinesh Maheshwari,JJ.,)

03.05.2019

## JUDGMENT

**Abhay Manohar Sapre,J.,**

1. This appeal is filed against the final judgment and order dated 15.07.2008 passed by the High Court of Judicature at Bombay in Criminal Revision Application No.309 of 2008 whereby the High Court dismissed the criminal revision application filed by the appellant (complainant) herein.
2. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short point.
3. The appellant filed a complaint under Sections 166, 167, 201 to 204 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") read with Section 25 of the Bombay Police Act, 1951 (for short, "BP Act") against respondent No. 1 herein before the Judicial Magistrate First Class, Indapur.
4. This complaint was filed on the basis of certain adverse observations made by the 1st Additional Sessions Judge, Baramati in his order dated 26.02.2003 passed in Session Case No. 99/2000 against respondent No.1 by which four accused persons were convicted for commission of offence punishable under Section 302/34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.2000/- each.
5. According to the appellant, in the light of the certain adverse observations made in the said order by the Additional Sessions Judge against respondent No.1-Sub-Inspector of Police, who investigated the said case, a prima facie case for initiating criminal action against him is made out.
6. The Courts below, however, declined this prayer made by the appellant and the High Court by the impugned order upheld the order declining the prayer giving rise to filing of the present appeal by way of special leave in this Court by the appellant- complainant.

7. It is not disputed by the parties that the accused persons have filed criminal appeal in the High Court against the order dated 26.02.2003 and the same is pending in the High Court.

8. If that be so, then, in our opinion, the order dated 26.02.2003, which is the basis of the complaint in question, is sub judice in the criminal appeal.

9. In other words, when the order, which is the foundation for filing the complaint in question itself is sub judice, the appellant is required to await the final outcome of the criminal appeal filed by the accused persons.

10. It is for this reason, we are not inclined to entertain this appeal and while disposing of the same grant liberty to the appellant to move afresh for raising his grievance in question depending upon the outcome of the criminal appeal filed by the accused persons against the order dated 26.02.2003.

11. We, however, make it clear that we have not expressed any opinion on the merits of the case, which is subject matter of the complaint.

12. With these observations, this appeal stands disposed of finally.