

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-433-DB of 2014

Date of Decision : March 17, 2015

Bhabhuti Singh

.....Appellant

VERSUS

State of Haryana and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Surinder Dagar, Advocate for
Mr. Jagjeet Beniwal, Advocate
for the applicant/appellant.

Mr. Randhir Singh, Additional A.G., Haryana
for respondent No.1-State.

None for respondent No.2, despite service.

T.P.S. MANN, J. (Oral)

Respondent No.2 was tried in a State case for committing offences punishable under Sections 420, 467, 468 and 471 IPC. Vide judgment dated 1.11.2013, the Judicial Magistrate 1st Class, Faridabad, after holding that the prosecution had failed to prove its case beyond reasonable doubt, acquitted respondent No.2 of the charges against him. Aggrieved of the acquittal of respondent No.2, the appellant, being the victim, filed Criminal Appeal No.24 dated 3.2.2014 before the Court of Sessions. The said appeal came up for hearing before the Additional Sessions Judge, Faridabad on 5.2.2014 when the appellant appeared and made statement that against the impugned judgment of acquittal passed by the trial Court, the appeal lay before the Hon'ble High Court and, accordingly, he be permitted to withdraw the appeal so as to file the same before this Court. In

view of the statement made by the appellant, the Additional Sessions Judge, Faridabad, vide order dated 5.2.2014, dismissed the appeal as having been withdrawn and consigned the file to the record-room. The appellant then filed the present appeal in which notice was issued. The State as well as respondent No.2 were duly served. The State is also represented but there is no representation on behalf of respondent No.2.

As per the provisions of Section 378(1) Cr.P.C., the appeal against the order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence would lie to the Court of Sessions and in all other cases, it would lie to this Court. As respondent No.2 was tried for offences under Sections 420, 467, 468 and 471 IPC, which are cognizable and non-bailable, the only remedy available to the appellant victim against the order of acquittal passed by the Magistrate was to file an appeal before the Court of Sessions. As such an appeal was duly filed by the appellant but due to wrong advice, he made a statement on 5.2.2014 before the Additional Sessions Judge to allow him to withdraw the same with liberty to file the appeal before this Court. Pursuant thereto, the Additional Sessions Judge dismissed the appeal as having been withdrawn.

Against the judgment of acquittal passed by the Magistrate and, that too, in respect of offences which are cognizable and non-bailable in nature, the appeal is maintainable in a State case to the Court of Sessions and not to the High Court. Under these circumstances, the appeal filed by the victim before the Court of Sessions ought to have been pursued by him, instead of withdrawing

the same so as to file an appeal to this Court. However, as against the order dated 5.2.2014 no challenge has been laid, this Court can exercise its reversional jurisdiction so as to go into the propriety of the order dated 5.2.2014.

Resultantly, the order dated 5.2.2014 passed by Additional Sessions Judge, Faridabad allowing the withdrawal of the appeal, preferred by the appellant/victim against the judgment dated 1.11.2013 passed by the Judicial Magistrate 1st Class, Faridabad is set aside. Consequently, Criminal Appeal No.24 dated 3.2.2014 filed by the appellant before the Additional Sessions Judge, Faridabad against the judgment dated 1.11.2013 passed by the Judicial Magistrate 1st Class, Faridabad is restored to its original number. The same be considered and decided, in accordance with law.

The appeal is, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

March 17, 2015
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(MAHAVIR S. CHAUHAN)
JUDGE