

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. M-10224 of 2010
Date of decision : 24.02.2015**

Jia Lal

...Petitioner

versus

Municipal Council/Committee, Dasuya

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Satbir Rathore, Advocate,
for the petitioner.

Mr. Amit Singh, Advocate,
for the respondent.

RITU BAHRI, J.

This petition under Section 482 Cr.P.C., is for quashing of order/judgment dated 17.11.2009 (Annexure P-8) passed by the Additional Sessions Judge, Hoshiarpur, whereby he has set aside the judgment of acquittal dated 29.01.2008 (Annexure P-7) passed by the Judicial Magistrate Ist Class, Dasuya and directed the trial Court to decide the matter afresh.

A complaint under Section 172-A and 228 of the Punjab Municipal Act, 1911 (for short 'the Act') was filed by the Municipal Committee, Dasuya-respondent against the petitioner alleging that public land bearing Khasra No.127 measuring 24 Kanals 14 Marlas, situated at Mission Road, Dasuya belonged to the Municipal Committee, Dasuya. Jia Lal-accused/petitioner had encroached upon some area of the said land on roadside to the west of Gian Chand. A notice under Section 172-A of the Act

was served upon the accused-petitioner calling him to remove the unlawful encroachment from the public land. However, he failed to do so. Hence, the complaint.

The trial Court, vide order dated 30.09.2003, summoned the accused-petitioner to face the trial. Thereafter, on conclusion of pre-charge evidence, charge under Section 172-A of the Act was framed against the accused-petitioner, to which, he pleaded not guilty and claimed trial.

The trial Court, after going through the evidence led by the parties, dismissed the complaint on the ground that the same was silent about the extent of possession of the accused-petitioner over the property, which is owned by the Municipal Committee-complainant. In the site plan, Ex.A-4, no measurement of encroachment done by the accused, has been shown by the complainant. It was further held that the complainant was required to get the spot demarcated through the revenue officials in order to prove that the encroachment done by the accused was in Khasra No.127 and not in *lal lakir*. Trial Court had further held that in the notice, Ex.A-5, no show cause notice had been given by the complainant to the accused to explain his position and the Committee had clearly assumed that encroachment had been made by the accused-petitioner. Notice under Section 172-A of the Act was held to be defective and complaint was dismissed.

In revision against this judgment, the Additional Sessions Judge, Hoshiarpur, has held that as per copy of Jamabandi for the year 1997-98, Ex.A-2, Khasra No.127 vests in Municipal Committee, Dasuya. As per the site plan, Ex.A-4, the portion in possession of the accused was shown in green colour. After issuing notice dated 02.08.2000, Ex.A5, a report was called from the police, which enquired into the matter. As per report, Ex.A-

6, sent by Deputy Superintendent of Police, Sub Division, Dasuya, Jia Lal-accused and Gian Chand could not produce any document of their ownership with regard to the property bearing Khasra No.127. Ultimately, the judgment of the trial Court was set aside and the matter was remanded back to the trial Court to decide the same afresh. The parties were directed to appear before the trial Court on 01.12.2009.

Learned counsel for the petitioner has placed reliance on the judgment delivered by the Allahabad High Court in **Vinay Kumar Vs. State of U.P.**, 2008 (1) RCR (Criminal) 451, to contend that in a Magisterial trial under Section 138 of Negotiable Instruments Act, if the accused had been acquitted, the complainant had a right to file special leave to appeal before the High Court under Section 378 (4) Cr.P.C. and no revision was maintainable before the Sessions Judge.

A perusal of the aforesaid judgment shows that against an order of acquittal passed in a case instituted upon a complaint, the appeal against that acquittal was maintainable before the High Court under Section 378 (4) Cr.P.C. Further, Section 401 (4) Cr.P.C. has been examined, which lays down that if an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of such a party, who could have appealed.

In the facts of the present case, a complaint made by the Municipal Committee, Dasuya, was dismissed by the trial Court and the accused-petitioner was acquitted of the charge framed against him. Against this judgment of acquittal, an appeal was maintainable before the High Court as per Section 378 (4) Cr.P.C. and if, no appeal was filed, then as per Section 401 (4) Cr.P.C., no proceedings by way of revision was to be entertained at

the instance of the party, who could have appealed. The Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal H.,** 2010 (2) RCR (Criminal) 851, has reiterated the same principle in a proceeding under Section 138 of Negotiable Instruments Act. In para No.14 of this judgment, it was observed as under:-

“14. It may be noted here that Section 143 of the Act makes an offence under Section 138 triable by a Judicial Magistrate First Class (JMFC). After trial, the progression of further legal proceedings would depend on whether there has been a conviction or an acquittal.

In the case of conviction, an appeal would lie to the Court of Sessions under Section 374 (3) (a) of the Cr.P.C.; thereafter, a revision to the High Court under Section 397/401 of the Cr.P.C. and finally, a petition before the Supreme Court, seeking special leave to appeal under 136 of the Constitution of India. Thus, in case of conviction, there will be four levels of litigation.

In the case of acquittal by the JMFC, the complainant could appeal to the High Court under Section 378 (4) of the Cr.P.C., and thereafter for special leave to appeal to the supreme Court under Article 136. In such an instance, therefore, there will be three levels of proceedings.”

The revisional jurisdiction of a Court against judgment of acquittal came up for consideration before the Hon'ble Supreme Court in **Ram Briksh Singh and others Vs. Ambika Yadav and another,** (2004) 7 Supreme Court Cases 665. In this case, the High Court while exercising revisional jurisdiction in a murder case under Section 302/34 IPC, had set aside the judgment of acquittal and remanded the case back for retrial, as the material evidence had been overlooked by the trial Court. In para Nos. 5 and 6 of this judgment, it was observed as under:-

“5. More than half a century ago, in *D.Stephens v. Nosibolla*, AIR 1951SC 196, this Court held that revisional jurisdiction when it is invoked against an order of acquittal by a private complainant is not to be lightly exercised, it could be exercised only in exceptional cases to correct a

manifest illegality or to prevent gross miscarriage of justice and not to be ordinarily used merely for the reason that the trial court has misappreciated the evidence on record.

6. In *K. Chinnaswamy Reddy v. State of A.P.*, AIR 1962 SC 1788, a note of caution was appended so that the High Court does not convert a finding of acquittal into one of conviction by the indirect method of ordering retrial when it cannot directly convert a finding of acquittal into a finding of conviction in view of specific statutory prohibition. While noticing that it is not possible to lay down the criteria for determining exceptional cases which would cover all contingencies for exercise of revisional power, some cases by way of illustration were mentioned wherein the High Court would be justified in interfering with the finding of acquittal in revision. The High Court would be justified to interfere where material evidence is overlooked by the trial Court.”

As per Section 401 (3) Cr.P.C., while exercising revisional jurisdiction, the High Court cannot convert a finding of acquittal into one of conviction. But, at the same time, while exercising the revisional jurisdiction, the matter can be remanded back to the trial Court for a fresh decision.

In the present case, the Additional Sessions Judge, Hoshiarpur, while exercising revisional jurisdiction, has returned a finding that before making complaint under Section 172-A of the Punjab Municipal Act, 1911, a notice was sent to the accused-petitioner and thereafter, a report, Ex.A-6, was sent by the Deputy Superintendent of Police, Dasuya, according to which, property bearing Khasra No.127, belonged to the Municipal Committee, Dasuya. The accused-petitioner was found to be in possession of the said property as per site plan, Ex.A4. Ultimately, the matter was remanded back to the trial Court for deciding the same afresh.

After going through the detailed judgment dated 17.11.2009 (Annexure P-8) passed by the Additional Sessions Judge, Hoshiarpur, this

Court is of the view that no interference is required therein, as the matter has merely been remanded back for a fresh decision and the petitioner shall have his subsequent remedies, as provided under Section 378 (4) Cr.P.C.

Resultantly, the present petition is dismissed.

(RITU BAHRI)
JUDGE

24.02.2015
ajp