

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-506-MA of 2014 (O&M)

.....

Date of decision:12.8.2015

Daulat Sharma

...Applicant

v.

Vishwajeet Gautam and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Shiv Kumar, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/appellant has filed an appeal against the order dated 10.2.2014 passed by learned Judicial Magistrate Ist Class, Faridabad, vide which the complaint filed by the complainant has been dismissed in default. Along with the appeal, criminal miscellaneous application has been filed under Section 378(4) of the Code of Criminal Procedure ('Cr.P.C.' for short) seeking leave to file an appeal against the order.

I have heard learned counsel for the applicant and have gone through the record.

The impugned order dated 10.2.2014 nowhere shows that the accused have been acquitted in this case. The complaint filed by the complainant was under Sections 419, 420, 406, 467, 468, 471 and 120-B

IPC. The complaint case was a warrant trial case and not a summons case.

At the time of arguments, learned counsel for the applicant argued that the respondents earlier appeared before the trial Court and thereafter the case was fixed for pre-charge evidence. As the complaint was dismissed in default and there is no order regarding acquitting the accused and the case was at the preliminary stage i.e. fixed for the evidence for the purpose of framing charge, therefore, at the most the accused can be held as discharged. Against this order dismissing the complaint in default, there is no provision to file an appeal as dismissing the complaint in default does not amount to acquittal of the accused as it being a warrant trial case. Therefore, this appeal is not maintainable. Therefore, the question of grant of leave to file an appeal does not arise.

The criminal miscellaneous application is dismissed being not maintainable. However, the applicant will be at liberty to avail the appropriate remedy like revision or petition under Section 482 Cr.P.C. whatever available as per law. However, if the applicant avails the remedy which will be available to him as per law, the Court concerned may consider the period spent for pursuing this remedy for the purpose of condonation of delay.

August 12, 2015.

(Inderjit Singh)
Judge

hsp