

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Revision No. 1144 of 2012 (O&M)
Date of Decision: 01.10.2015.**

Ashok Kumar

.....Petitioner

Vs.

Jagdish Ram alias Jagdish Rai

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. K.B.Raheja, Advocate
for the petitioner.

None for the respondent.

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SABINA, J.

Petitioner has filed this petition under Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging the order dated 9.2.2012.

Learned counsel for the petitioner has submitted that the respondent had filed the complaint against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short) with regard to dishonour of cheque dated 20.10.2006 in the sum of ₹ 3,00,000/-. The said complaint was dismissed by the Trial Court vide order dated 18.2.2008. Respondent challenged the said order by way of an appeal and the Appellate Court allowed the appeal and remanded the case to the Trial Court for a fresh decision vide impugned order dated 9.2.2012. Learned counsel for the petitioner has further submitted that the appeal could have been filed only before this Court and the appeal filed by the respondent before the Sessions Court was not

maintainable. In support of his arguments, learned counsel has placed reliance on '**Subhash Chand versus State (Delhi Administration) 2013(1) R.C.R. (Criminal) 1013**, wherein it was held as under:-

“In view of the above, we conclude that a complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court. He cannot file such appeal in the Sessions Court. In the instant case the complaint alleging offences punishable under [Section 16\(1\)\(1A\)](#) read with Section 7 of the PFA Act and the Rules is filed by complainant Shri Jaiswal, Local Health Authority through Delhi Administration. The appellant was acquitted by the Metropolitan Magistrate, Patiala House Courts, New Delhi. The complainant can challenge the order of acquittal by filing an application for special leave to appeal in the Delhi High Court and not in the Sessions Court. Therefore, the impugned order holding that this case is not governed by [Section 378\(4\)](#) of the Code is quashed and set aside. In the circumstances the appeal is allowed.”

None has appeared on behalf of the respondent.

Section 378 Cr.P.C. reads as under:-

378. Appeal in case of acquittal.

(1) Save as otherwise provided in sub- section (2) and subject to the provisions of sub- sections (3) and (5),-

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an

appeal to the Court of Sessions from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

- (b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court² [or an order of acquittal passed by the Court of Session in revision.]*

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, [the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal-

- (a) to the Court of Sessions, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence:*
- (b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order*

of acquittal passed by the Court of Sessions in revision.]

(3) [No appeal to the High Court] under sub- section (1) or sub- section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub- section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the application under sub- section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub- section (1) or under sub- section (2).

The present case relates to a complaint under Section 138 of the Act. As per Section 378 (4) Cr.P.C., the complainant could have approached this Court seeking leave to appeal against the order of acquittal passed by the Trial Court. However, the appeal filed by the respondent before the Sessions Court was not maintainable.

Accordingly, this petition is allowed. Impugned order dated 9.2.2012 is set aside.

**(SABINA)
JUDGE**

October 01, 2015
Gurpreet