

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-8945-2015 (O&M)

Date of decision: 31.07.2015

Vivek Montrose and another

..... Petitioners

Versus

Manoj Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Johan Kumar, Advocate for the petitioners.

R.P. NAGRATH, J. (ORAL)

CRM-23480-2015

Application is allowed as prayed for.

In deference to the order dated 29.05.2015, copy of summoning order dated 20.01.2014 (Annexure P-5) be taken on record, subject to all just exceptions.

CRM-M-8945-2015

The petitioners have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. seeking to set aside the order dated 10.03.2015 (Annexure P-4) passed by the learned Sessions Judge, Faridabad whereby revision against the order dated 23.09.2014

(Annexure P-2) passed by the learned Judicial Magistrate Ist Class, Faridabad vide which the complainant filed by complainant/respondent-Manoj Kumar was dismissed in default due to his non-appearance, was accepted.

I have heard learned counsel for the petitioners and perused the paper-book quite carefully.

The only ground of attack to the impugned order is that the Revisional Court was not competent to entertain and decide the revision as the dismissal of complaint in default due to non-appearance of complainant would amount to acquittal and that order could only be challenged before this Court under Section 378, sub-section (4) Cr.P.C. Learned petitioners' counsel has heavily relied upon the judgment of Delhi High Court in **Mata Din and others Vs. Ram Babu and another, 1986 (1) RCR (Criminal) 584** and specific reference to the observations made in paragraph 19 of the said judgment.

It was held in **Mata Din's case (supra)** as under:-

“19.Obviously any order which results in acquittal of the accused cannot but be a final order and as such Section 362 of the Code would be at the once attracted and operate as a bar to its recall or alteration in any manner. Evidently Sections 249 & 256 of the Code are designed to deal with different situations. Section 249 relates to warrant cases where the offence is compoundable or non-cognizable and the Magistrate is empowered thereunder to discharge

the accused, when the complainant is absent whereas Section 256 comes into play after the process is issued against the accused in a summons case and the accused is present in court but the complainant is not present. Obviously, therefore, the consequences and incident flowing from the order of dismissal of the complaint under these two sections are bound to be different and there is no parity between them. It may also be pertinent to notice here that the only remedy of a complainant, who is aggrieved by an order of acquittal whether on merits or as a sequel to dismissal of the complaint under Section 256, is clearly by way of appeal under Section 378, sub-section (4) of the Code.....”

Section 256 Cr.P.C. deals with the summons cases and it is the settled principle that dismissal of complaint for non-appearance of the complainant would amount to acquittal but that is not a situation in the offences triable as a warrant case. The complaint was instituted for the offences under Sections 420/406/467/468/471/120-B IPC and order dated 20.01.2014 (Annexure P-5) reveals that the summoning order was passed for offence under Sections 420/120-B IPC which is definitely triable as a warrant case. So only the revision was maintainable against the order of the trial Magistrate and not the appeal.

The Revisional Court, in the impugned order dated 10.03.2015 (Annexure P-4) observed as under:-

“6. A perusal of the record shows that complainant had been appearing on each and every date of hearing and non-appearance of the complainant on 23.9.2014 was not intentional. Even otherwise the law is also well settled that dispute between the parties should not be adjudicated upon technicalities and in fact the same should be decided on merits.”

The order of discharge after the recording of pre-charge evidence on merits or may be due to absence of complainant after the summoning of accused persons can be challenged in revisional jurisdiction which was rightly entertained by the Revisional Court and decided on its own merits.

In view of the above discussion, the instant petition is dismissed.

July 31, 2015

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**(R.P. NAGRATH)
JUDGE**