

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

**Crl. Revision No.3538 of 2013
Date of decision : 27.04.2015**

Gurbachan Singh

.....Petitioner(s)

versus

Jugraj Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Argued by: Mr. P.K.S. Phoolka, Advocate
for the petitioner.

None for the respondent.

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ANITA CHAUDHRY, J.

A short issue arises in this petition filed at the instance of the accused.

It would be necessary to first give the backdrop. A complaint under Section 138 of the Negotiable Instruments Act was filed by Jugraj Singh respondent. The complainant failed to appear after the accused had been summoned. The complaint was dismissed for non-prosecution on 19.10.2011. The accused was acquitted. The complainant filed a Criminal Revision on 09.01.2012. Notice

was sent to the accused and after hearing both the sides, the order dismissing the complaint was set aside and the complaint was restored to its original number, vide order dated 03.10.2013.

The order dated 03.10.2013 passed by the Addl. Sessions Judge, Bathinda has been assailed in this revision by the accused on the plea that an appeal against acquittal was only maintainable and that too before the High Court and the judgment rendered in ***M/s. Tata Steel Ltd. Vs. M/s. Atma Tube Products Ltd. & Ors. 2013(2) CCC 623 (P&H)*** was referred before the Additional Sessions Judge, who failed to follow it.

Notice was sent to the respondent but none had appeared for the respondent. Service had been effected on 31.01.2014 and one last opportunity was granted to enable the respondent to appear and argue. The proceedings had also been stayed before the trial Court. Still there has been no appearance.

Record perused.

The amendment in Section 372 Cr.P.C. was made w.e.f. 31.12.2009. The complaint was dismissed for non-prosecution on 19.10.2011. The complaint was dismissed at the stage when the complainant had led its entire evidence, the statement of the accused under Section 313 Cr.P.C. had

been recorded and the accused had examined three witnesses in defence. The question is whether the complainant had the right of appeal as against the order of acquittal passed by the Magistrate or a revision should have been preferred by him. A reading of the impugned order shows that the revisional Court had noticed the amendment made in the Code of Criminal Procedure and also the judgment rendered in M/s Tata Steel (supra) but still proceeded to decide the revision referring to various judgments and holding that it would be too harsh to non-suit the petitioner merely on account of absence for one date.

The revision filed at the instance of the complainant has been allowed by the Addl. Sessions Judge when the same was not maintainable. There was a remedy of appeal. The amendment in the Criminal Procedure Code came into effect on 31.12.2009, therefore, as on the date of acquittal passed on 19.10.2011, the complainant had the right of appeal under Section 372 Cr.P.C.

The petitioner is aggrieved as the revision has been allowed and the order passed by the Magistrate has been set aside. Looking to the facts, I am of the view that the order passed by the Magistrate could not stand. The complaint could not have been dismissed only on account of absence on one date of hearing specially when the

complainant had led his entire evidence and only arguments were to be led. The trial Court could have adjourned the case for one date or could decide the case on merits.

There are two courses available now. The first would be to set aside the order passed by the revisional Court and ask the parties to appear before the revisional Court and giving direction to first decide on the maintainability of the revision but Tata Steel's case (*supra*) gives an answer. To do substantial justice to the parties, it would not be appropriate to send the matter back to the revisional Court to decide the maintainability of the revision. It would be sheer waste of time for the parties engaged.

The second course, would be more appropriate and that is to consider the issue here. Considering the stage of the case and only one absence, I am of the view that the order ultimately passed by the revisional Court was correct. Both the parties had been heard. The exercise of revisional jurisdiction by the Court below was wrong but that is of no legal significance. The order is otherwise sound. There is no infirmity in the order.

Finding nothing vitiating in the impugned order, the revision petition is dismissed. The parties are directed to appear before the trial Court on the date fixed before it.

Since the matter had been delayed, the trial Court would decide the case as expeditiously as it can.

**(ANITA CHAUDHRY)
JUDGE**

27.04.2015
Sunil