

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRR-3022-2014
Date of decision: 3.9.2015**

Ram Charan Sharma

...Petitioner

Versus

Subhash and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Kunal Dawar, Advocate for the petitioner.
Mr.Ashish Yadav, Addl. A.G., Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

Present criminal revision petition, at the hands of the complainant, is directed against the impugned judgment dated 1.7.2014 passed by the learned Sessions Judge, Faridabad, whereby his appeal against the impugned judgment of acquittal dated 4.3.2013 passed by the learned Judicial Magistrate 1st Class, Faridabad, was dismissed, upholding the acquittal of the respondent-accused.

Notice of motion was issued and pursuant thereto, learned counsel for respondent No.1 as well as learned counsel for the State put appearance.

Learned counsel for the petitioner submits that the FIR was registered at the instance of the petitioner, he being the complainant. Two doctors of the hospital, whose Managing Director is the petitioner, were injured in the incident, thus, petitioner would also fall within the category of victim, as defined under Section 2 (wa) of the Code of Criminal Procedure ('Cr.P.C.' for short) and his appeal was very much maintainable under

Section 372 Cr.P.C., which has been illegally dismissed by the learned Sessions Judge not on merits but only holding the same to be not maintainable. He further submits that although the learned Sessions Judge has rightly condoned the delay of 143 days in filing the appeal by the petitioner, yet the learned Sessions Judge fell in serious error of law, while passing the impugned judgment, dismissing the appeal of the petitioner only on its maintainability, whereas it should have been entertained and decided on merits.

Challenging the impugned judgment of acquittal passed by the learned Judicial Magistrate 1st Class, Faridabad, learned counsel for the petitioner contended that cogent and convincing evidence was brought on record, which was sufficient for recording the conviction of the accused, but the learned trial Judge failed to appreciate the evidence in correct perspective, because of which, the impugned judgment of acquittal has resulted in miscarriage of justice. Since the learned Sessions Judge dismissed the appeal of the petitioner not on merits but only on maintainability, serious prejudice was caused to the petitioner. In support of his contentions, learned counsel for the petitioner places reliance on a judgment of the Hon'ble Supreme Court in **M/s Haryana State Coop. Supply and Marketing Federation Ltd. v. M/s. Haryana State Coop. Supply and Marketing Federation Ltd., 2014 (2) RCR (Crl.) 532**. He prays for setting aside the impugned appellate judgment dated 1.7.2014 and remanding the case to the learned Sessions Judge, directing him to decide the case on merits, by allowing the present petition.

On the other hand, learned counsel for the State submits that although the petitioner was the complainant but the findings recorded by the

learned Sessions Judge, while dismissing the appeal of the petitioner on maintainability, do not seem to be suffering from any patent illegality. He prays for passing of an appropriate order.

However, nobody has put in appearance on behalf of the respondent No.1-accused.

Having heard the learned counsel for the petitioner as well as learned counsel for the State at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the instant case, present one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

Before proceeding further, it is appropriate to refer to the definition of 'victim' contained in Section 2 (wa) Cr.P.C., and the same reads as under:-

“victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.”

During the course of hearing, when a pointed question was put to the learned counsel for the petitioner as to how the petitioner falls within the definition of victim and why the appeal was not filed by any of the injured persons, he only submits that since the petitioner was the author of the FIR, hence the complainant, he would also fall within the definition of victim. Although the argument raised by the learned counsel for the petitioner seems to be attractive at the first blush, yet on deeper

consideration thereof, the same has been found to be without any substance, thus, it is noted to be rejected.

It is so said because every complainant in every fact situation, cannot be necessarily a victim also, as in the present case. No reason is forthcoming as to why the petitioner did not get the appeal filed from any of the injured when they were very much available. It is also not in dispute that petitioner was not injured but only the author of FIR. Thus, the learned Sessions Judge has rightly arrived at his judicious conclusion that the petitioner was not qualified to be a victim, as per the definition of victim enshrined in Section 2(wa) Cr.P.C., reproduced above, and the impugned judgments deserves to be upheld, for this reason also.

A bare reading of the impugned judgment would show that the learned Sessions Judge discussed each and every relevant aspect of the matter, before recording his cogent reasons in support of the impugned judgment. The relevant findings in this regard, recorded by the learned Sessions Judge in paras 18 to 20 of his impugned judgment, which deserve to be noticed here, read as under:-

“Now coming to the merits of the appeal, the present appeal has been preferred by the appellant under Section 372 Cr.P.C. As per the proviso added to Section 372 Cr.P.C. vide Act No.5 of 2009, the victim has been granted a right to prefer an appeal against the order of acquittal. The "victim" has been defined in Section 3(wa) of the Cr.P.C as under:

“(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.”

Now we are to see as to whether appellant Ram Charan

Sharma falls within the definition of “victim” or not.

The report under Section 173 Cr.P.C. in this case has been filed for the offence punishable under Sections 323, 452, 506 Indian Penal Code. As per the prosecution allegations, the accused-respondent alongwith his companions had caused injuries to the doctors by criminally trespassing in the hospital and also caused damage to the property of the hospital. This fact is not disputed that the hospital is owned by Keshav Nursing Home Pvt. Ltd. which is even evident from the complaint EX.PW/A moved by the appellant - complainant to the police.

This fact is not disputed that the present appellant is not the injured in this case nor he is the person who has been criminally intimidated. Learned counsel for the appellant has claimed that the appellant is a victim as the accused has criminally trespassed in the hospital and caused damage to the hospital property. He contended that as the appellant happens to be the Managing Director of the Company, so, he will be considered to be the victim but I do not find any substance in these contentions raised by learned counsel for the appellant. No doubt the appellant is a complainant in this case but the complainant who is not a victim has no right to prefer any appeal under Section "372 Cr.P.C. As already discussed, appellant Ram Charan Sharma has not suffered any injury in this case nor he is the person who has been criminally intimidated rather injuries have been caused to Ravinder Hooda and Dr. G.K. Sharma who are not the appellants. The hospital belongs to Keshav Nursing Home Pvt. Ltd i.e. a Private Limited Company. So, the victim in this case as a result of criminal trespassing and damage to the hospital property is Keshav Nursing Home Pvt. Ltd. and not appellant Ram Charan Sharma personally. The present appeal has been preferred by Ram Charan Sharma describing himself as a Managing Director of Keshav Nursing Home Pvt. Ltd. The present appeal has not been filed by Keshav Nursing Home

Pvt. Ltd., the company in its name. There is also no resolution of the Company authorizing Ram Charan Sharma to file the present appeal on its behalf. In these circumstances appellant Ram Charan Sharma does not fall within the expression of "victim" as defined in Section 3(wa) Cr.P.C. Consequently, the present appeal is not maintainable on his behalf under Section 372 Cr.P.C."

Coming to the judgment relied upon by the learned counsel for the petitioner, there is no dispute about the law laid therein. However, on close perusal of the cited judgment, the same has not been found of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533

It is not even the argued case on behalf of the petitioner that he suffered any kind of loss so as to bring himself within the definition of victim. The thrust of the argument raised by the learned counsel for the petitioner was that petitioner being the complainant, should have been treated as a victim also. However, the argument raised by the learned counsel for the petitioner has been found to be wholly misplaced and not worth acceptance.

The above-said view taken by this Court also finds support from three Full Bench judgments of different High Courts including this Court in the cases of **M/s Tata Steel Ltd. v. M/s Atma Tube Products Ltd. and others**, 2013 (2) RCR (Crl.) 1005 (P&H), **Santu Mahto v. State**

of Jharkhand, 2014 (4) RCR (Crl.) 837 (Jharkhand High Court) and Ram Phal v. State and others, 2015 (3) RCR (Crl.) 295 (Delhi High Court). Further, when the intention of the Legislature qua any particular provisions of law does not entertain any doubt, the Courts are not supposed to embark upon the said area which exclusively falls within the domain of the Legislature, by exceeding its jurisdiction. More than seven decades ago, privy council in the case of **Pakala Narayana Swamy v. Emperor AIR 1939 PC 47** observed that “in truth when the meaning of words is plain, it is not the duty of the Courts to busy themselves with supposed intentions.”

Once the petitioner did not suffer any kind of loss or injury, he does not qualify the definition of victim. Since the ingredients of the definition of victim were conspicuously missing in the present case, the learned Sessions Judge committed no error of law, while passing their impugned judgment and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant criminal revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present petition stands dismissed, however, with no order as to costs.

3.9.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE