

\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 06th October, 2015

+ **CRL.M.C. No.5243/2014**

SURAT SINGH

..... Petitioner

Represented by: Mr. Sanjeev Salhan, Adv
versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Represented by: Mr. Izhar Ahmad, APP for
the State/R1.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J. (Oral)

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner assailed the order dated 20.09.2014 passed by learned Additional Sessions Judge – 04, South-East District, Saket Courts, New Delhi in Criminal Revision Petition No.15/2014 titled as *Dharam Godha vs Surat Singh*.

2. Consequent to service of notice upon respondent No.2 and appearance of his learned counsel on 19.03.2015, none appeared on his behalf on last date of hearing i.e. 15.07.2015. So is the position today. Therefore, this Court is compelled to dispose of the petition in his absence.

3. The complainant / respondent No.2 instituted a criminal complaint

case bearing No.1757/1 under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner and vide order dated 15.04.2014 same was dismissed in default and for non-prosecution. Consequently, the petitioner was acquitted.

4. Being aggrieved from the said order passed by learned Trial Court on 15.04.2014, respondent No.2/ complainant preferred the abovenoted Criminal Revision Petition which was converted into appeal and allowed vide order dated 20.09.2014.

5. Being aggrieved, petitioner has assailed the afore noted order of learned Revisional Court in this petition. Mr. Sanjeev Salhan, learned counsel for petitioner submitted that he argued before learned Revisional Court that said Court lacks jurisdiction to entertain the revision petition as the proper remedy available to the revisionist/ complainant was to move a leave to petition under Section 378 (4) of the Cr P C along with an appeal. Therefore, the revision was barred under Section 401 (4) of the Cr P C.

6. Learned counsel further argued that the victim and complainant are two different categories and that victim referred in the Code is not the similar to the word 'complainant'. He submitted that very limited right to file appeal was granted to the victim under proviso to Section 372 Cr P C and only in those case where the State does not prefer any appeal against the order of acquittal. He further argued that Section 378 of the Code prescribes a complete procedure to file appeal in cases of acquittal liberally interpreted of the term 'victim' while making the scheme of Section 378 Cr P C nugatory.

7. To strengthen his contentions, learned counsel for petitioner has

relied upon the decision of ***Subhash Chand vs State (Delhi Administration) 2013 (1) JCC 338*** wherein short point which arose for consideration before the Apex Court was whether in a complaint case, an appeal from an order of acquittal of the Magistrate would lie to the Sessions Court under Section 378 (1) (a) of the Code or to the High Court under Section 378(4) of the Code. In para 17 of the said decision, the Apex Court had observed that sub Section 4 to Section 378 of the Code make the provision for appeal against an order of acquittal passed in the cases instituted upon the complaint.

8. In view the arguments of learned counsel for petitioner and legal position, learned Revisional Court directed to convert the said revision petition into appeal and accordingly same was allowed, however, without allowing leave to appeal.

9. Learned counsel for petitioner submitted that learned Revisional Court has no jurisdiction to entertain the appeal against the acquittal order. The complainant had to file a Leave to Appeal before this Court and not before the Sessions Court. Moreover, the complainant did not file any application for leave before learned Revisional Court.

10. Learned counsel for petitioner further submitted that identical issue came up for consideration before this Court in Criminal Appeal No.972/2012 titled ***The Bhajanpura Cooperative Urban Thrift & Credit Society vs Sushil Kumar*** and Criminal Appeal No.1163 of 2012 titled ***The Bhajanpura Cooperative Urban Thrift & Credit Society vs Prabhu Dayal*** which were decided vide common judgment dated 03.09.2014 whereby this Court held as under:-

“10. At the outset, it may be mentioned that discussion would be restricted only to the remedy available in complaint cases instituted under Section 138 N.I. Act, in case they end up in acquittal i.e. whether to prefer appeal under Section 372 or 378(4) Cr.P.C.

13. In my considered view, the ‘complainant’ in the proceedings under Section 138 N.I.Act cannot be considered ‘victim’ in the letter and spirit of the definition of Section 2 (wa) of the Code and definition of ‘injury’ under Section 44 IPC cannot be imported into Section 138 N.I.Act. In every such proceedings at first instance, every complainant considers / claims himself / herself a ‘victim’. The complainants in these proceedings cannot be taken at par with those who put criminal law into motion to bring the offenders to book at whose hands, they have sustained ‘injury’ as defined in Section 44 IPC. The changes in Cr.P.C. were for ‘victims’ who were the worst sufferers in a crime and did not have much role in the Court proceedings. To avoid distortion of the Criminal Judicial System, they were given certain rights.

14. The controversy now is no longer res integra in view of the pronouncement of law by Supreme Court in ‘Subhash Chand vs. State (Delhi Administration)’, (2013) 2 SCC 17. It was a complaint case under Section 7 of Prevention of Food Adulteration Act, in which Subhash Chand was tried and he was acquitted by the learned Metropolitan Magistrate. The State filed criminal appeal before the Sessions Court under Section 378 (1)(a) Cr.P.C. Preliminary objection regarding maintainability of the appeal before the Sessions Court was rejected. That order was challenged before this Court (Delhi High Court) and it was held that Sessions Court had no jurisdiction to entertain the appeal. The order of the High Court was challenged before the Supreme Court who remanded the case to this Court for fresh decision after taking into consideration the provisions of Sections 378(1) and 378(4) of Cr.P.C. and the relevant provisions

of the Prevention of Food Adulteration Act. After remand, this Court held that the appeal filed by the State against an order of acquittal would lie to the Sessions Court under Section 378 (1) of the Cr.P.C. Again, this order was challenged by the accused before the Supreme Court and Supreme Court held :

“....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. 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....”

15. Of course, the scope of Section 372 Cr.P.C. and subsequent amendments in Cr.P.C. (Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009) did not come for consideration before the Supreme Court in this case. But it cannot be assumed that the Supreme Court was not aware of the existence of the provisions of Section 372. The Supreme Court further observed:

“Thus, whether a case is a case instituted on a complaint depends on the legal provisions relating to the offence involved therein. But once it is a case instituted on a complaint and an order of acquittal is passed, whether the offence is bailable or non-bailable, cognizable or non-cognizable, the complainant can file an application under Section 378 (4) for special leave to appeal against it in the High Court. Section 378 (4) places no restriction on the complainant....”

No distinction was made if the complainant was a private person or a public servant.”

11. The facts of the case in hand are squarely covered by the issues raised and decided in ***Bhajanpura Cooperative*** (*supra*).

12. Accordingly, the present petition is allowed. Consequently, the order dated 20.09.2014 passed by learned Additional Sessions Judge mentioned above, is hereby set aside.

13. Order *dasti*.

Crl. M.A. No.17924/2014 (Stay)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

OCTOBER 06, 2015

M