

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.M-17343 of 2015
Date of Decision: 18.11.2016

Bhagtu Ram

...Petitioner(s)

Versus

State of Haryana & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. R.K. Malik, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Sandeep Magra, Advocate for
Mr. R.S. Dhull, Advocate
for respondent no.2.

HARI PAL VERMA, J.

Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 is for quashing of order dated 6.12.2014 passed by the learned Presiding Officer, National Lok Adalat-cum-Additional Sessions Judge, Kaithal, whereby the appeal filed by the petitioner-complainant against the judgment dated 5.2.2014 passed by learned Judicial Magistrate Ist Class, Kaithal, acquitting the respondent-accused, was dismissed as withdrawn with liberty to file afresh before a competent Court.

Learned counsel for the petitioner has argued that the prosecution has proved its case beyond reasonable doubt, but still, learned

trial Court, vide order dated 5.2.2014, has illegally acquitted the respondent-accused by extending the benefit of doubt to him. The petitioner-complainant preferred an appeal against the aforesaid order dated 5.2.2014, acquitting the respondent-accused and learned lower Appellate Court issued notice therein and after hearing the parties, fixed the appeal for final arguments. However, on 6.12.2014, the aforesaid appeal was listed before 2nd Lok Adalat, but the same was dismissed as withdrawn, on the statement made by learned counsel for the petitioner-complainant, with liberty to file afresh before a competent Court, without giving any information or notice to the petitioner-complainant separately.

Learned counsel for the petitioner submitted that his counsel had no authority to withdraw the appeal and it is only the petitioner-complainant who was competent to withdraw the same. He further submitted that the petitioner did not know the fate of his appeal and it is only on 10.5.2015, when he visited the office of his conducting counsel, he came to know that his appeal has been withdrawn by his counsel.

Mr. Sandeep Magra, Advocate, appearing on behalf of respondent no.2-accused, has argued that learned trial Court has passed a well reasoned judgment and since the prosecution has failed to prove its case beyond reasonable doubt, respondent no.2-accused has rightly been acquitted of the charge framed against him by giving the benefit of doubt. He has further stated that the complainant had executed a power of attorney in favour of his counsel which specifically provides power to withdraw the appeal and therefore, his counsel was competent to withdraw the appeal.

On the other hand, learned State counsel, while supporting the arguments raised on behalf of respondent no.2, has argued that in view of judgment of this Court in the case of **M/s Tata Steel Limited v. M/s Atma Tube Products Limited & others 2013(2) RCR (Criminal) 1005**, the complainant had a remedy of appeal, as provided under Section 372 CrPC and accordingly, the complainant-petitioner had filed an appeal against the judgment of acquittal by executing power of attorney in favour of his counsel, who was duly authorized to file the appeal. The power of attorney executed by the petitioner in favour of his advocate also empowers the advocate to withdraw the appeal as well.

I have heard learned counsel for the parties.

On 6.12.2014, learned Presiding Officer, National Lok Adalat-cum-Additional Sessions Judge, Kaithal had dismissed the appeal as withdrawn with liberty file afresh before a competent Court. The said order reads as under:-

“File put up before 2nd National Lok Adalat held today. The learned counsel for the appellant-complainant made a statement recorded separately that he withdraw the present appeal with liberty to file afresh before the competent court. Heard. Keeping in view the statement of learned counsel for the appellant-complainant, the present appeal stands dismissed as withdrawn with the liberty to file afresh before the competent Court. File be consigned to record room after due compromise.

Sd/-
(Balbir Dhiman)
Member,
Lok Adalat.

Sd/-
(Rajan Walia)
National Lok Adalat-cum-
Addl. Sessions Judge,
Kaithal 6.12.2014.”

On the last date of hearing i.e. 15.11.2016, this Court has passed the following order:-

“Learned counsel for the petitioner seeks some time to satisfy this Court that once the complainant has filed appeal against acquittal, the matter cannot be resolved before the Lok Adalat without the presence of the complainant-appellant and his counsel has no authority to withdraw the appeal.

Adjourned to 18.11.2016.

To be shown in the urgent list.”

Learned counsel for the petitioner has not been able to satisfy this Court that once the complainant has filed appeal against acquittal, the matter cannot be resolved before the Lok Adalat without the presence of the complainant and his counsel has no authority to withdraw the said appeal. The order dated 6.12.2014 passed by the Lok Adalat refers to the statement recorded by the counsel for the complainant-petitioner. However, when learned counsel for the petitioner was confronted with the said order and was directed to produce the statement so recorded as well as to produce the copy of the power of attorney executed by the petitioner in favour of his conducting counsel before the lower Appellate Court, learned counsel for the petitioner-complainant has shown his inability and has rather, left on the Court to summon the record and peruse the same.

Once the petitioner has filed a petition under Section 482 CrPC before the Court of law, he has to stand on his own legs and if he can attach the copy of order dated 6.12.2014, it was equally incumbent upon him to place on record the copy of statement of the conducting counsel, as referred in the order dated 6.12.2014. The power of attorney executed by petitioner authorizes the counsel to withdraw the appeal as well.

Therefore, this Court does not find any reason to interfere in the impugned order dated 6.12.2014 passed by the Court below.

Accordingly, the present petition is dismissed.

November 18, 2016
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?	Yes / No
Whether reportable?	Yes / No