

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

Crl. Misc. No. M-26227 of 2015

Date of Decision:-26.10.2016

Rajiv Manchanda

...Petitioner

Versus

Bharat Bhusan Kohli and another

..Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr.G.C.Shahpuri, Advocate for the petitioner.

Mr.Karam Singh, Advocate for respondent No.1.

Mr.Arun Kumar, AAG, Haryana.

HARI PAL VERMA J.(Oral)

Prayer made in the instant petition filed under Section 482 Cr.P.C. is for quashing of the order/judgment dated 03.01.2015(Annexure P-4) passed by the learned Addl. Sessions Judge, Yamuna Nagar at Jagadhri, whereby the revision petition filed by the complainant-respondent No.1 against the order dated 04.03.2013 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri was accepted and the case was remanded back to the concerned court for further proceedings.

Vide order dated 04.03.2013 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, the complaint filed by respondent No.1-complainant was dismissed in default. Against the order dated 04.03.2013, respondent No.1-complainant filed a revision petition which was allowed by the Revisionary Court vide judgment dated 03.01.2015. The case was remanded back to the learned Magistrate to take further proceedings from the stage where it reached before the impugned order was passed and the parties were directed to appear before the trial Court on 01.02.2015.

Learned counsel for the petitioner contends that learned Magistrate has taken cognizance of the matter and the summoning has been issued. It is only on account of non-appearance of respondent No.1-complainant, the complaint has been dismissed in default, which leads to acquittal of the petitioner, as provided under Section 256 Cr.P.C. He further contends that the only remedy available to the complainant was to file an appeal against the order before this Court under Section 378(4) Cr.P.C., but the same procedure has not been adopted.

Learned counsel for respondent No.1 fairly accepts the aforesaid plea and submits that respondent No.1-complainant may be given liberty to prefer an application seeking leave to appeal under Section 378(4) Cr.P.C.

Heard.

Taking into consideration the admitted position of the parties, present petition is allowed. Order/judgment dated 03.01.2015(Annexure P-4) passed by the learned Addl. Sessions Judge, Yamuna Nagar at Jagadhri is set aside and the respondent No.1-complainant is given liberty to challenge the order dated 04.03.2013 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, by filing application seeking leave to appeal under Section 378(4) Cr.P.C..

However, it is made clear in case such like application is filed the respondent No.1-complainant within one month from today, petitioner shall not raise the plea of limitation.

(HARI PAL VERMA)
JUDGE

26.10.2016
Anjal

Whether speaking/reasoned? *Yes*

Whether reportable? *Yes/No*