

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

Crl. Misc. No.M-2695 of 2014 (O&M)

Date of decision : 04.08.2016

Harpreet Singh

.....Petitioner(s)

Versus

Punjab Agro Food Grain Corporation Ltd. and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. Arun Jindal, Advocate
for the petitioner.**

**Mr. Sanjeev Gupta, Advocate
for respondent no.1.**

Mr. Deep Singh, AAG, Punjab.

ANITA CHAUDHRY, J.

This petition has been filed under Section 482 Cr.P.C. for quashing the order dated 27.07.2013, passed by Addl. Sessions Judge, Sangrur in the appeal filed by the complainant titled as 'Punjab Agro Food Grain Corporation Limited Vs. Harpreet Singh.'

The petitioner has been charged under Section 406 IPC on a complaint made by Punjab Agro Food Grains Corporation Ltd. (for short the Corporation). The trial ended in acquittal on 24.10.2011. The complainant filed an appeal. Petitioner (accused) moved an application seeking dismissal of the appeal as it was not maintainable. His objection was that Section 372 Cr.P.C. was amended w.e.f. 31.12.2009 and the victim had no right to appeal and the amendment was prospective and since the FIR and the charge was framed much prior to 31.12.2009, therefore, the appeal by the complainant was not maintainable.

Arguments had been heard in the matter earlier and it was reserved for orders but while examining the file, I found that there was a reference to another appeal filed by the State. This fact was not disclosed by the petitioner nor the State was made a party. Directions were then given to the petitioner to implead the State. The State was made a party. Repeated adjournments had been taken by the petitioner and thereafter, probably for the reason that there was stay in operation.

The State had filed their reply.

Both the sides have been heard.

The counsel for the petitioner submitted that the FIR was lodged in August, 2002 and the challan had been filed in 2004 and the acquittal came in August, 2011 and the amendment in Section 372 Cr.P.C. is prospective in nature and the victim had no right to file appeal. The counsel asserts that the Division Bench Judgment rendered by the Chhatisgarh High Court would be applicable and not to the D.B. Judgment referred to by the trial Court.

The State as well as the complainant side had urged that the effort of the petitioner is to frustrate and delay the proceedings and the provisions are very clear and all the answers have been given in ***M/s. Tata Steel Ltd. Vs. M/s. Atma Tube Products Ltd. & Ors. 2013(2) CCC 623*** and there is no controversy.

There is no dispute that the FIR was lodged in 2002 and the challan was filed in 2004 and the acquittal came in August, 2011. The amendment was made in Section 372 Cr.P.C. and it was to apply w.e.f. 31.12.2009. In *Tata Steel's* case (supra) the question raised by the petitioner had been answered and it is necessary to refer to para no. 139 which reads

as under:-

"139. For the reasons assigned above, we sum up our conclusions and answer the questions as formulated in para 6 of this order, in the following terms:-

Question - (A) (i) The expression "victim" as defined in Section 2(wa) includes all categories of his/her legal heirs for the purpose of engaging an advocate under Section 24(8) or to prefer an appeal under proviso to Section 372 of the Code.

(ii) However, legal heirs comprising only the wife, husband, parent and child of a deceased victim are entitled to payment of compensation under Section 357(1)(c) of the Code. Similarly, only those dependents of a deceased victim who have suffered loss or injury as a result of the crime and require rehabilitation, are eligible to seek compensation as per the Scheme formulated under Section 357-A of the Code.

Question - (B) (iii) The 'complainant' in a complaint-case who is also a 'victim' and the 'victim' other than a 'complainant' in such case, shall have remedy of appeal against acquittal under Section 378(4) only, except where he/she succeeds in establishing the guilt of an accused but is aggrieved at the conviction for a lesser offence or imposition of an inadequate compensation, for which he/she shall be entitled to avail the remedy of appeal under proviso to Section 372 of the Code.

(iv) The 'victim', who is not the complainant in a private complaint-case, is not entitled to prefer appeal against acquittal under proviso to Section 372 and his/her right to appeal, if any, continues to be governed by the unamended provisions read with Section 378 (4) of the Code.

(v) those 'victims' of complaint-cases whose right to appeal have been recognised under proviso to Section 372, are not required to seek 'leave' or 'special leave' to appeal from the High Court in the manner contemplated under Section 378(3) & (4) of the Code.

Questions - (C) & (D) (vi) The right conferred on a 'victim' to present appeal under proviso to Section 372 is a substantive and independent right which is neither inferior to nor contingent upon the filing of appeal by the State in that case. Resultantly, the condition of seeking 'leave to appeal' or 'special leave to appeal' as contained in Section 378(3) & (4) cannot be imposed for the maintainability of appeal by a 'victim' under proviso to Section 372 of the Code.

Question - (E) (vii) In view of proviso to Section 372 an appeal preferred by a 'victim' against the order of acquittal passed by a Magistrate in respect of a cognizable offence whether bailable or non-bailable shall lie to the Court of Session, the State's appeal under Section 378(1)(a) of the Code against that very order shall also be entertained and/or transferred to the same Sessions Court.

Question - (F) (viii) The proviso to Section 372 inserted w.e.f. December 31, 2009 is prospective in application and only those orders which have been passed on or after December 31, 2009, irrespective of

the date of occurrence or registration of FIR or filing of complaint, shall be appealable at the instance of a 'victim' under the afore-stated proviso. Consequently, a revision petition preferred against an order of acquittal passed prior to December 31, 2009 cannot be converted into an appeal and shall be decided accordingly.

Question - (G) (ix) Subject to the exception carved out in para-138 of this order, the period of limitation for an appeal by a 'victim' under proviso to Section 372 of the Code shall be as under :-

(a) In case of acquittal -

(i)	Where appeal lies to the High Court	90 days	Date of order appealed against
(ii)	Where appeal lies to any other Court	60 days	Date of order appealed against

(b) Any other sentence or order -

(i)	to the High Court	60 days	The date of sentence or order
(ii)	to any other court	30 days	The date of sentence or order

The appellate Court had noted the conclusion and had rightly held that the appeal was maintainable.

I find no merit in the petition and is dismissed.

The parties are directed to appear before the trial Court on 12.08.2016.

04.08.2016
Sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No