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

+ CRL.REV.P. 623/2012

NARENDER PAL

..... Petitioner

Through: Mr.Sukhbir Singh, Advocate

versus

SANJEEV CHAUHAN

..... Respondent

Through: Mr.P.S.Kem, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

20.01.2016

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1. The petitioner has impugned the order dated 30.08.2012 whereby the learned ASJ held the appeal filed by the present petitioner to be not maintainable.

2. In brief, the case of the petitioner is that he filed a complaint case under Section 138 of Negotiable Instrument Act before learned MM wherein the respondent Sanjeev Chauhan was named as an accused. The accused has been acquitted by the learned Trial Court vide judgment dated 05.05.2011. Aggrieved by the acquittal of the accused, the present petitioner as victim, filed an appeal before the learned ASJ, taking recourse to Section 372 Cr.P.C. The learned ASJ held the appeal to be not maintainable for the reason given in para 6 of the impugned judgment, which is extracted hereunder :-

'6. I have gone through the provisions of Sec.372 CrPC as amended in 2009 as well as Sec.378(4) CrPC. As per provisions of Sec.378(4) CrPC, as appeal against the order of

acquittal passed in criminal complaint can be filed only before concerned High Court after seeking Special Leave to Appeal and as such the appeal against the impugned judgment/order passed in criminal complaint case filed by the appellant/complainant is not maintainable under Sec.372 Cr.P.C. as amended in 2009 because the provisions of Sec.372 Cr.P.C. as amended in 2009 and 378(4) Cr.P.C. are to be interpreted harmoniously. If the present criminal appeal against the impugned judgment/order of acquittal in a criminal complaint case is held to be maintainable under Section 372 Cr.P.C., then the provisions of Sec.378 (4) Cr.P.C. would be rendered nugatory and useless which could never be the intention of the legislature when Section 372 Cr.P.C. was amended in 2009. No doubt, during the course of arguments, ld. Counsel for the appellant/complainant has also relied upon two cases reported as R.P.G. Transmission Ltd. vs. Sakura Seimitsu (P) Ltd. & Ors. [2005 (2) LRC 173 (Delhi)] and Devi Das S.Mardolkar vs. Harichandra Mandrekar [2009 (1) DCR 592] decided by Hon'ble High Court of Bombay, but both these cases are not much helpful to the present appellant/complainant. In this respect, reference can be made to a case reported as Kalpna Tyagi vs. Sneha Lata [2003 (III) AD (Delhi) 187] wherein it has been held that once complaint case under Section 138 NI Act is dismissed in default and consequently accused is acquitted, then no revision is maintainable and only appeal under Section 378 Cr.P.C. can be filed.'

3. The order passed by learned ASJ has been impugned before this Court mainly on the ground that under proviso to Section 372 Cr.P.C., the complainant in a case under Section 138 NI Act falls in the category of 'victim' and has a right to prefer an appeal against the order acquitting the accused to the Court where an appeal ordinarily lies against the order of conviction of that Court.

4. Mr.Sukhbir Singh, learned counsel for the petitioner has submitted that the appeal by a victim was maintainable before the Court of Sessions

against an order of acquittal for the reason that had it been a case of conviction, the appeal could have been filed only before the Court of Sessions, hence the order impugned needs to be interfered with by this Court in exercise of its revisional jurisdiction. Learned counsel for the petitioner has relied upon *The U.E. coop.Urban (SE) T&C Society Ltd., Rohtak vs. Chaman Singh in Crl.Misc. No.70-MA of 2011 decided on 04.03.2011*, *Suman vs. State of Haryana & Ors. in CRM A-999 – MA of 2011 decided on 23.02.2012*, *Punjab State Civil Supplies Corporation Ltd. Vs. Mahavir Rice Traders & Ors. CRM No.456 MA of 2009 (O&M) decided on 24.03.2011*, *Gorakh Singh vs. State of Haryana & ORs. CRA No.A-267-MA-2011 decided on 13.02.2012*, *Ashok Kumar vs. State & Anr. in S.B.Crl.Leave to Appeal No.193/2011 decided on 01.05.2012*, *Arjun Lal Jain vs. Heera Lal Teli & Anr. in S.B.Criminal Leave to Appeal No.89/2011 decided on 16.04.2013* and *Surjit Kaur vs. Rajwant Kaur & Ors. in Crl.Misc.No.4-MA of 2009 (O&M) decided on 14.05.2012* in support of his contentions.

5. I have considered the submissions made on behalf of the petitioner and carefully gone through the record.

6. The question involved in this revision petition is as to whether an order of acquittal in a case under Section 138 NI Act, the proviso to Section 372 of Code of Criminal Procedure has the applicability or the case is governed by Section 378 (4) Code of Criminal Procedure.

7. Proviso to Section 372 of Code of Criminal Procedure, 1973 inserted by the amendment Act of 2009 w.e.f. 31st December, 2009, reads as under: -

"Section 372. No appeals to lie unless otherwise provided.-

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[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]"

8. Sub-section 4 of Section 378 of Code of Criminal Procedure, 1973, provides:

"Section 378 .Appeal in case of acquittal.-

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(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court."

9. The question that has been raised by learned counsel for the petitioner is about the maintainability of appeal before the Court of Session by the complainant in a complaint case.

10. In the case ***Subhash Chand v. State (Delhi Admn.)***, (2013) 2 SCC 17 this question has been considered by the Supreme Court wherein it was held as under:

*"In view of the above, 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. In the instant case the complaint alleging offences punishable under Sections 16(1) & (1-A) read with Section 7 of the PFA Act and the Rules is filed by complainant Shri Jaiswal, Local Health Authority through Delhi Administration. **The appellant was acquitted by the Metropolitan Magistrate, Patiala House Courts, New Delhi. 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. Therefore, the impugned order [Criminal Misc. Case No. 427 of 2009, decided on 7-1-2011 (Del)] holding that this case is not governed by Section 378(4) of the Code is quashed and set aside. In the circumstances the appeal is allowed."

11. In view of the legal position clarified by the Supreme Court, I do not consider necessary to refer to the decisions of Punjab & Haryana High Court and Rajasthan High Court relied upon by learned counsel for the petitioner.

12. The case of the present petitioner being governed by Section 378 (4) Cr.P.C., the appeal against acquittal in a complaint case could not have been preferred by the complainant before the Court of Sessions.

13. Finding no manifest error of exercise of jurisdiction or procedure in the impugned order, no interference is warranted by this Court in exercise of its power in revisional jurisdiction.

14. The revision petition is dismissed.

PRATIBHA RANI, J.

JANUARY 20, 2016

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