

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1843-MA of 2014

.....

Date of decision:31.1.2017

Parmeshwari

...Applicant

v.

Mukesh and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. P.K. Ganga, Advocate for the applicant.

Mr. Raman Chawla, Advocate for the respondents.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Mukesh and others-respondents seeking grant of leave to file appeal against the impugned order dated 9.1.2013 passed by learned Judicial Magistrate Ist Class, Hisar, vide which the complaint filed under Sections 420, 467, 468, 471 and 120-B IPC has been dismissed for want of prosecution.

It has been mainly submitted in the application that the applicant has led sufficient evidence and the learned trial Court summoned the accused vide order dated 26.2.2010. During the pendency of the case, the counsel for the applicant could not appear before the learned trial Court on 9.1.2013 and the complaint of the applicant was dismissed for non-

prosecution vide impugned order dated 9.1.2013. It has, therefore, been prayed that this application seeking leave to file appeal may be allowed and leave be granted to the applicant to file appeal.

Notice of motion was issued to the respondents.

Mr. Raman Chawla, learned Advocate has put in appearance on behalf of the respondents and contested this petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that in the present case, as argued, the respondents were summoned under Sections 467 and 471 read with Section 120-B IPC on a complaint filed by the present applicant/complainant which means that it is a warrant trial case and not a summons case. The said complaint was dismissed by the learned Judicial Magistrate Ist Class, Hisar vide order dated 9.1.2013. Section 256 Cr.P.C., which deals with the summons case, will not apply in the present case as the complaint in question is to be triable as warrant trial case. Therefore, the dismissal of the complaint in default does not amount to acquittal of the accused. Hence, the appeal against acquittal does not lie and no ground is made out for grant of leave to file the appeal. However, as the present applicant has already filed the revision petition before the Court of Session, which has already been withdrawn by the learned counsel for the revisionist i.e. the present applicant by making a statement on 11.8.2014. At that time also, the counsel had given the statement asking for the liberty to file a revision petition before the competent Court i.e. Hon'ble High Court, but instead of

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filing the revision petition, this appeal has been filed, which is not maintainable.

Therefore, finding no merit in the application, the same is dismissed. However, the applicant is at liberty to avail alternative remedies available to her, if so advised.

January 31, 2017.

(Inderjit Singh)
Judge

hsp

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