

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

CRM No.A-1036-MA of 2011 (O&M)

Date of decision: September 25, 2018

Rekha Sharma

...Applicant

Versus

Krishan Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.K.Bagri, Advocate
for the applicant.

Mr.Bipan Ghai, Senior Advocate with
Mr.Deepanshu Mehta, Advocate
for respondents No.1 to 4.

Mr.Vikas Chopra, DAG, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Applicant-Rekha Sharma has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Krishan Kumar and other respondents, challenging the judgment dated 10.02.2007 passed by learned Judicial Magistrate Ist Class, Rewari vide which accused-respondents have been acquitted.

From the record, I find that challan was presented against Krishan Kumar and other accused in case FIR No.229 dated 12.06.1998 under Sections 406, 498-A, 323, 506 and 34 IPC by police of Police Station City Rewari. Learned JMIC, Rewari, after appreciating the evidence,

acquitted the accused of the charges framed against them by giving benefit of doubt vide judgment dated 10.02.2007. Against the said judgment, a revision was filed by the victim-complainant before Court of Session, Rewari and learned Addl. Sessions Judge, Rewari, vide judgment dated 06.07.2011, dismissed the same. Now, after amendment in Section 372 Cr.P.C. by adding proviso that appeal can be filed against acquittal by the victim, present appeal along with application seeking leave to appeal has been filed.

Notice of the application was issued. Learned counsel for respondents No.1 to 4 as well as learned State counsel appeared and contested the application.

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

At the time of arguments, learned counsel for accused-respondents argued that appeal against acquittal is not maintainable as the amendment has been inserted in the Cr.P.C. under Section 372 by way of proviso w.e.f. 30.12.2009 and this amendment is prospective in nature whereas accused-respondents have already been acquitted by learned Magistrate on 10.02.2007 i.e. much before the amendment came into effect. At that time, remedy of filing revision was available, which the victim had availed. Learned counsel for the applicant admitted that accused have been acquitted on 10.02.2007 and against that judgment, revision was filed, which was also dismissed.

I have gone through the record and find that accused have been acquitted vide judgment dated 10.02.2007 whereas amendment has come into effect from 30.12.2009. The Hon'ble Full Bench of this Court in **M/s**

Tata Steel Ltd. vs. M/s Atma Tube Products and others, 2013(2) RCR (Criminal) 1005, has held that provision to Section 372 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.

The above judgment fully applies to the facts of the present case. When the appeal is not maintainable, therefore, question of granting leave to appeal against acquittal does not arise.

In view of the above discussion, the present application stands dismissed being not maintainable.

September 25, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes