

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-4210-SB of 2013 (O&M)

Date of decision : 5.2.2018

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Major Singh

.....Appellant

vs.

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

....

Present: Mr. Karanjit Singh, Advocate for the appellant

Mr. Ramandeep Sandhu, Senior DAG, Punjab.

Mr. Gulshan Sharma, Advocate for respondents No. 2 and 3.

...

H. S. Madaan, J. (Oral)

Jagmel Singh @ Jasmel Singh and Jagraj Singh @ Saudagar Singh, both of them being accused in FIR No. 16 dated 2.2.2006 for offences under Sections 325, 323/34 IPC, registered with Police Station Bhadaur, were tried by Additional Chief Judicial Magistrate, Barnala, and vide judgment dated 18.3.2013, such accused were acquitted of the charges against them.

Feeling dissatisfied, complainant, Major Singh had preferred an appeal against such judgment of acquittal, which was disposed of by Additional Sessions Judge, Barnala, vide judgment dated

22.5.2013, coming to the conclusion that in view of the law laid down by Hon'ble Supreme Court in case titled as **National Commission for Women vs. State 2011 (1) SCC Criminal 774**, Act No. 5 of 2009, vide which proviso to Section 372 regarding maintainability of appeal against acquittal before the Court of Sessions was notified on 31.12.2009 and it has no retrospective effect therefore, it would not be made applicable to the incident which took place long before 31.12.2009, therefore, the appeal was dismissed in limine, being not maintainable.

The complainant has approached this Court by way of filing the present appeal against the judgment of acquittal passed by Additional Chief Judicial Magistrate, Barnala.

There has been delay of 159 days in filing the appeal. An application under Section 5 of the Limitation Act for condonation of delay had been moved, which has since been allowed and delay has been condoned vide order dated 29.8.2014.

Learned counsel for the appellant has submitted that Learned Additional Sessions Judge, has mis-interpreted the law on the point, taking the date of incident to be the relevant one, instead of date of the impugned order. In support of his contention, he has referred to citation **M/s Tata Steel Ltd. Vs, M/s Atma Tube Products Ltd. And others 2013 (2) RCR (Criminal) 1005**, by a Full Bench of this Court, wherein while dealing with question (F) (VIII), it has been observed that

“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.”

Learned counsel representing respondents No. 2 and 3 and the State counsel in all fairness, have conceded this legal point. Accordingly, the impugned judgment passed by Additional Sessions Judge, Barnala, is set aside and he is directed pass a fresh order in light of the settled judicial position on the subject.

The parties through counsel, are directed to appear before the Additional Sessions Judge, Barnala, on 6.3.2018.

A copy of the order be sent there for information and necessary compliance.

Disposed of accordingly.

5.2.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No