

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

CRM No.A-2324-MA of 2017 (O&M)

Date of decision: August 07, 2018

Nirmal Singh

...Applicant

Versus

SSP U.T. Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.S.Saini, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Nirmal Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against SSP U.T. Chandigarh and other respondents, challenging the order dated 04.08.2017 passed by learned Judicial Magistrate Ist Class, Chandigarh, vide which the respondent has been discharged.

It is mainly stated in the application that learned JMJC, Chandigarh has erred in dismissing the complaint of the complainant and thus order is not sustainable in the eyes of law. It is, therefore, prayed that leave to appeal be granted.

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

From the record, I find that a complaint was filed by Nirmal

Singh under Sections 404, 403, 406, 427, 420, 323, 506 and 120-B IPC.

After summoning of the accused, the case was dismissed for want of prosecution by learned JMIC, Chandigarh vide order dated 04.08.2017. As the complaint was under Sections 404, 406 IPC etc., which are to be tried as a warrant trial case, the dismissal of the complaint in warrant trial case does not amount to acquittal of the case. As per Section 256 Cr.P.C., dismissal of complaint after summoning of the accused in a summons case, amounts to acquittal of accused but in warrant trial case, the dismissal of complaint, in no way, amounts to acquittal. Otherwise also, in the impugned order, it is written that accused Victor stands discharged. As the accused has not been acquitted but discharged in warrant trial case, therefore, in no way, it can be held as acquittal. When the accused has not been acquitted, then the filing of appeal against acquittal is not maintainable. 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. However, the applicant is at liberty to file revision/petition under Section 482 Cr.P.C., whichever remedy is available to him.

August 07, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No