

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

**Criminal Misc. No.12180 of 2017 (O&M)
Date of Decision: August 16, 2018**

Shashank Jha

.....PETITIONER(s).

VERSUS

State of Haryana and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by : Mr. Naresh Jain, Advocate
for the petitioner (s).

Ms. Dimple Jain, AAG, Haryana.

Mr. Manish Soni, Advocate
for respondent No.2-complainant.

SURINDER GUPTA, J.

The only question, which arise for consideration in this petition is as to whether the Court of Sessions could treat the appeal filed before it as criminal revision.

The petitioner was convicted by the trial Court (Judicial Magistrate 1st Class, Gurgaon) for offence punishable under Section 174-A of Indian Penal Code and was sentenced to undergo imprisonment for the period already undergone (2 months and 20 days) by him.

Not satisfied, the complainant filed appeal seeking enhancement of sentence and in that appeal, he moved application to convert the appeal as criminal revision petition as learned counsel for the

petitioner/convict had raised objection that criminal appeal seeking enhancement of sentence was not maintainable.

Learned counsel for the petitioner while challenging the order passed by learned Sessions Judge, Gurgaon has argued that treating of criminal appeal as criminal revision, has put the petitioner to prejudice. If the appeal was not maintainable, the appellate Court could dismiss the same and respondent No.2 could be allowed liberty to file a criminal revision. He, however, has not disputed that respondent No.2 could file revision while seeking enhancement of sentence as awarded by the trial Court.

In this case, the revision against order of trial Court could be filed before the Court of Sessions. It appears that respondent No.2 had filed appeal against that order while seeking enhancement of sentence as awarded to the respondent under a bonafide belief that he could file appeal instead of revision.

Allahabad High Court in case of ***Mahesh Kumar Vs. State*** **1978 Cr. L.J. 390**, observed as follows:-

“The purpose of all rules of procedure obviously is to enable justice to be done. As such, every procedure which advances the dispensation of justice should be considered permissible unless it is prohibited. So in a purely procedural matter like the present one, what has been seen was not whether there was a specific provision in the Code of Criminal Procedure authorising the learned Sessions Judge to treat a revision application as an appeal but whether there was anything in the Cr.P.C. to bar him from doing so. It is not disputed that there is nothing in the Cr.P.C. to bar a revision application being treated as an appeal or vice versa. As such, I am of the

opinion that the learned Sessions Judge could and ought to have allowed the application for treating the revision as an appeal after allowing the applicant to suitable amend their application.”

The Court, may act on principle that every procedure shall be understood as permissible till it is shown to be prohibited by law. Converting an appeal into a revision is a procedural aspect which has nothing to do with the merit of the appeal or revision, which will be seen at the time of its final disposal.

This argument of learned counsel for the petitioner that respondent No.2 could be directed to withdraw the appeal or the same could be dismissed as not maintainable and then he could file a revision, has no merit and is not as per the spirit of the procedural powers of the Court which can always be resorted to unless specifically prohibited by any provision of the Code. Every Court is a Court of Justice and cannot be made to feel helpless in the matter of procedures only because there is no specific provision made in that regard in the Code. Section 401 (5) of the Code specifically provides that Court is satisfied that an appeal lies against an order but revision has been filed under erroneous belief that appeal lies, the same can be treated as an appeal. No doubt, there is no specific provision under this Section to treat the revision as appeal but this Court is not oblivious of the fact that criminal Court is not expected to fold their hands and show their helplessness in matters of procedure, whenever the Code is found silent. It has been repeatedly observed by this Court and by the other Hon'ble High Courts that Code was not enacted to meet each and every situation which may arise in future. In case of *Sakiri Vasu Vs. State of*

U.P., 2008(2) SCC 409, it was held that Magistrate will have the powers to grant interim maintenance, although no such provision existed in Section 125 of the Code of Criminal Procedure, 1973.

I find no weight in the submission of learned counsel for the petitioner that order of learned Sessions Judge has caused prejudice to the petitioner. If his submission is accepted, learned Sessions Judge could allow respondent No.2 to withdraw the appeal or dismissed the same being not maintainable with liberty to respondent No.2 to file fresh revision petition.

Learned Sessions Judge while allowing the application of respondent No.2 to treat the appeal as revision has observed that allowing the appeal to be converted into revision will not cause any serious prejudice to the petitioner on merits. All the grounds available to him against the plea raised by respondent No.2 could be heard and considered at the time of final disposal of the revision.

As a sequel of my above discussion, I find no merits in this petition. The same is dismissed.

August 16, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***