

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

CRR No. 4621 of 2015
Date of Decision:22.02.2018

Ashwani Kumar RampalPetitioner

Vs.

Kuldip SinghRespondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Rakesh K.Kaundal, Advocate,
for the petitioner.

Mr.Sunny Deep Juneja, Advocate,
for the respondent.

AMOL RATTAN SINGH, J. (Oral)

The issue in this case is limited to whether, vide the impugned order passed, the learned Additional District Judge, Chandigarh, while allowing the application of the complainant filed before the trial Court (JMIC, Chandigarh), erred in converting the appeal before him into a revision petition, with there being no power available with that Court (as contended by the petitioner), to do so.

Learned counsel for the petitioner has cited a judgment of a co-ordinate Bench of this Court in '**Arjan Dass vs. Market Committee, Hissar**', 1980 PLR 469, wherein it has been held that there was no power with the Sessions Judge to convert an appeal filed before that Court to a revision (even in terms of Section 399 read with Section 401(5) of the Cr.P.C).

It is seen that the learned Additional Sessions Judge, on the other hand has relied upon a subsequent judgment of another co-ordinate Bench of

“4. I have considered the submissions raised by the learned counsel for the parties. First of all, I would like to deal with the second contention of the learned counsel for the petitioners with regard to the competency and the jurisdiction of the learned Additional Sessions Judge to treat the appeal as revision. The impugned order was subject to revision. As per the Code of Criminal Procedure there is concurrent jurisdiction conferred upon the Court of Session and High Court. In this view of the matter, the respondent could file the revision either in the Court of Session or before the High Court. He has labelled his list as an appeal. A reading of Sections 397, 399 and 401 Criminal Procedure Code would show that only the attention of the Court is supposed to be drawn that some illegality or impropriety in the order has been committed by the Court below and these three provisions give ample powers to the competent court of jurisdiction i.e. the revisional courts, to take cognizance into the matter. If the respondent has labelled his list as appeal, it will not make a difference because he has drawn the attention of the Court of Session regarding the illegality committed by the Magistrate. In this view of the matter, I do not concur with the second submission of the learned counsel for the petitioners.

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7. Before I part with this order, I would like to make a passing reference that the complaint is pending against the petitioners since 1988. Does it not amount to an abuse of law on the part of the

complainant who derives pleasure in seeking the prosecution of the petitioners for the last more than 10 years? Does it not confer a right to the petitioners to invoke the powers under Section 482 Criminal Procedure Code for the quashment of the complaint itself on account of long pendency and if the petitioners can satisfy the High Court that this long pendency is on account of the fault of the complainant, then provisions of Section 482 Criminal Procedure Code can be definitely invoked in this case? At the moment this court is only taking cognizance in the criminal revision. It is for the petitioners to adopt the remedy under Section 482 Criminal Procedure Code.”

Though the subsequent judgment does not take into consideration the previous judgment, it obviously not having been brought to notice of the Court that passed the subsequent judgment, and as such the second judgment could be treated to be *per in curiam*, however, delaying the matter further would actually amount to travesty of justice in my opinion, as, if a revision petition had been filed by the respondent before the learned Additional Sessions Judge, it would have very much been filed within limitation and simply because he availed a wrong remedy erroneously, in my opinion the order passed by the learned Additional Sessions Judge, does not require any interference with.

Consequently, this petition is dismissed.

February 22 , 2018

dharamvir

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No