

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 592 of 2019

- Mamta Shah, Aged About 42 Years, W/o Mr. Mr. Goutam Shah, Prop. M/s Shah And Company, RTC Building, GE Road Raipur, Police Station Golbazar, District Raipur Chhattisgarh Through The Attorney Holder Mr. Goutam Shah, S/o Late Radhe Shyam Shah, R/o Byron Bazar Raipur, Chhattisgarh (Complainant).

---- Petitioner

Versus

- Gurdeep Singh, Aged About 53 Years, R/o Plot No. 104, Rohini Vila, Near Jagannath Mandir, Sector- 2, Priyadarshani Nagar, District Raipur, Chhattisgarh (Accused).

---- Respondent

For Appellant : Shri B.P. Sharma and Ms. Shivali Dubey,
Advocates.

For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

11.03.2019

1. Default overruled.
2. This petition is preferred against the judgment dated 28.07.2018 passed by Judicial Magistrate First Class, Raipur, (C.G.) in Criminal Complaint Case No. 130 of 2011 wherein the said Court acquitted the respondent for charge under Section 138 of the Negotiable Instruments Act, 1881 (for short the Act, 1881). It appears that earlier this appeal was preferred against the said order before the Court of 6th Additional Sessions Judge, Raipur and said Court vide order dated 27.12.2018 opined that complainant in complaint case filed under Section 138 of the N.I. Act, 1881 is not victim as per law lay down in the matter of Dharam Singh Tomar Versus Ram Raj Singh Tomar reported in 2011 (II) MPLJ (Madhya Pradesh Law Journal).

3. The only issue for consideration of this court is whether the complainant is victim as mentioned under Section 372 proviso of the Code of Criminal Procedure, 1973.
4. In the matter of “**Mallikarjun Kodagali (Dead) through LRs. Versus State of Karnataka and Others**” reported in AIR 2018 SC 5206, it is held by the Hon'ble Apex Court as under.

78. As far as the question of the grant of special leave is concerned, once again, we need not be overwhelmed by submissions made at the Bar. The language of the proviso to [Section 372](#) of the Cr.P.C. is quite clear, particularly when it is contrasted with the language of [Section 378\(4\)](#) of the Cr.P.C. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word 'complaint' has been defined in [Section 2\(d\)](#) of the Cr.P.C. and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR, and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to [Section 372](#) of the Cr.P.C. is concerned.

5. As per law lay down the Hon'ble Apex Court in the matter of (Mallikarjun Kodgali (supra), the complainant of complaint case is also victim and, therefore, it is not at all necessary to consider the effect of a victim being the complainant.

6. In view of the aforesaid law laid down by Hon'ble Apex Court the complainant is victim and appeal filed by the victim to the Court of Session to which appeal ordinarily lies against the order of conviction passed by the Judicial Magistrate First Class is competent to hear the appeal as per Section 372 proviso of the Cr.P.C.
7. In view of the above order passed by the Court of 6th Additional Sessions Judge, Raipur, C.G. in Criminal Appeal No. 266 of 2018 dated 27.12.2018 is set aside. That said Court is directed to hear the appeal on merit and decide the same, according to law.
8. The appellant to appear before the Court of 6th Additional Sessions Judge, Raipur for further proceedings on 30.04.2019.
9. In view of the above, in the instant petition stands disposed of.

Sd/-

(Ram Prasanna Sharma)
Judge

Vasant.