

In The High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-24581-2015 (O&M)
Reserved on: 31.1.2019
Date of Decision:- 11.2.2019

Himmat Singh	Versus	 Petitioner
Dalel Singh and others		 Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Himmat Singh, petitioner in person.

None for the respondents.

GURVINDER SINGH GILL, J.

1. By way of filing this petition, the petitioner assails judgment dated 4.6.2015, passed by learned Sessions Judge, Gurgaon, whereby his appeal challenging order dated 23.1.2015, passed by learned Judicial Magistrate 1st Class, Gurgaon, has been dismissed.
2. The petitioner/complainant had filed a private complaint under Sections 211,420,467,468,471,120-B/34 IPC against respondent, but the same was dismissed on grounds of maintainability vide order dated 23.1.2015 (Annexure P-2), passed by learned JMIC, Gurgaon. Aggrieved by said order, the complainant preferred an appeal before the Court of Sessions but

the same was also dismissed vide impugned order dated 4.6.2015 on the ground that the appeal was not maintainable in the Court of Sessions.

3. The facts need not be discussed in detail since it is primarily a legal issue will is involved and also on account of the fact that the complaint (Annexure P-1) is far from being properly worded. In nutshell, the petitioner in his complaint, alleged that his father Ran Singh and his uncle Dalel Singh had jointly purchased land measuring 2 Biswas comprised in Khasra No. 523 situated in the revenue estate of Khandsa, from one Kartar Singh. It is alleged that subsequently Dalel Singh forcibly demolished '*samadhi*' of complainant's grandfather and also blocked a common passage. It is also alleged that said Dalel Singh, on the basis of a forged NOC sold the aforesaid land. It is further alleged that Dalel Singh also filed a false affidavit in the proceedings pending in the Civil Court. Based on the aforesaid allegations, the complaint was filed for offences under section 211,420,467,468,471,120-B/34 IPC.
4. The trial Court, recorded preliminary evidence but did not chose to summon the accused and dismissed the complaint vide order dated 23.1.2015 (Annexure P-2). A perusal of order dated 23.1.2015 shows that the trial court dismissed the complaint primarily on the ground that the Court was not competent to take cognizance. The operative portion of the order dated 23.1.2015 (Annexure P-2) reads as follows:

“.....

34. From bare reading of the aforesaid provisions, it is amply clear that as per Section 195 Cr.P.C., no Court shall take cognizance of any offence punishable under Sections 193

to 196 (both inclusive) 199, 200, 205, 211 (both inclusive) and 228 IPC except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate. Hence, the court cannot take the cognizance of the present complaint under Section 211 of IPC as the present complaint I filed by a Private person and not by any court.

35. In the result, the complaint is hereby dismissed. File, after due compliance, be consigned to the record room.”

5. The complainant, aggrieved by the said order dated 23.1.2015, filed an appeal in the Court of Sessions, but the said appeal was also dismissed on 4.6.2015 on grounds of maintainability. The relevant extract from judgment dated 4.6.2015 (Annexure P-3) reads as follows:

“.....

9. Here, reliance can also be placed upon authority of law in case **Subhash Chand Vs. State (Delhi Administration)**, Criminal Appeal No.50 of 2013 arising out of SLP (Crl.) No.6937 of 2011 decided on complaint case is maintainable only before Hon’ble High Court under Section 378(4) Cr.P.C.

10. In view of law laid down by the Hon’ble Supreme Court of India in **Subhash Chand’s case (Supra)** and Full Bench of our own Hon’ble High Court in **M/s Tata Steel’s case (supra)**, the present appeal is not maintainable before this Court and consequently the same stands dismissed. Trial Court record along with a copy of this judgment be sent back and appeal file be consigned to record room after due compliance.”

6. I have heard the learned counsel for the petitioner. A perusal of order dated 23.1.2015 (Annexure P-2) shows that the trial Court had dismissed the complaint at preliminary stage i.e. even before the accused was summoned. In such circumstances, the order dated 23.1.2015 (Annexure P-2) cannot be termed to be a judgment of acquittal as the accused had never faced trial. In such circumstances the order dated 23.1.2015 (Annexure P-2) passed under provisions of section 203 Cr.P.C. was a revisable order and revision was maintainable before the Court of Sessions. However it appears that the complainant under some mistaken chose to file an appeal.. It will not be out of place to mention that the complainant appears to be prosecuting his complaint/appeal in person and had not engaged the services of any professional lawyer.
7. Further, I find that even the learned Session Court proceeded on the premises that order dated 23.1.2015 (Annexure P-2) was an order of acquittal and on the said premises returned a finding to the effect that appeal was not maintainable before the Court of Sessions, being an appeal against acquittal in a complaint case. However as already stated above the order dated 23.1.2015 (Annexure P-2) cannot be termed as a judgment of acquittal so as to attract provisions of section 378(4) Cr.P.C.
8. Consequently the order dated 4.6.2015 (Annexure P-3), being erroneous cannot sustain and is hereby set aside for the reason that the Court of Sessions has proceeded on wrong premises to the effect that the impugned order was an order of acquittal whereas in fact it was not and was merely an order where the complaint had been dismissed on account of non-maintainability and which was a revisable order. In such circumstances it

was open to the Court of Sessions where the appeal had been filed to treat the appeal as a revision petition. Even if the Session Court had dismissed the appeal by observing that the complainant ought to have filed a revision instead of an appeal, the petitioner who is prosecuting his complaint/appeal in person could have filed the revision immediately upon dismissal of his appeal. As such in view of the peculiar circumstances, more particularly while bearing in mind the fact that the petitioner/complainant has been prosecuting his complaint and appeal in person and was not well advised, the matter is remanded back to the Court of Sessions after setting aside the impugned order dated 4.6.2015 (Annexure P-3), with a direction to the Court of Sessions to treat the appeal as a revision and to dispose of the same expeditiously while duly returning a finding as to whether the offences in question are made out or not and as to whether the court is competent to take cognizance of any of the offences alleged therein or not. The record of the lower Court be sent back. The petitioner is directed to appear before the Court of Sessions, Gurugram on 7th of March 2019, who may either proceed to decide the matter himself or entrust the same to some other officer.

9. The petition stands accepted in above-mentioned terms.

February 11, 2019
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No