Ankur Goyal
2019.03.28 17:34
I attest to the accuracy and
authenticity of this document

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.237

CRR No.1512 of 2015 (O&M)
DECIDED ON: *March 25, 2019*

M/S MAHAVIR PHOTOSTAT

..PETITIONER

VERSUS

VINAYAK AHUJA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vishal Goel, Advocate, for the petitioner.

Mr. Anish Setia, Advocate, for the respondent.

*****

SUDHIR MITTAL, J. (ORAL)

A complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') was filed by the petitioner namely Vinayak Ahuja. Vide judgment dated 29.05.2013 passed by the learned Judicial Magistrate 1st Class, Abohar, the said complaint was dismissed. The complainant chellenged the judgment dated 29.05.2013, vide an appeal under Section 382 read with Sections 377 & 372 of the Code of Criminal Procedure (for short 'the Code'). During the pendency of the said appeal, the petitioner-accused moved an application for dismissal of the appeal on the ground of maintainability. Vide judgment dated 09.12.2014, the said application was rejected and the appeal was held to be maintainable. Aggrieved by the said judgment passed by the learned Additional Sessions Judge, Fazilka, the present revision petition has been preferred.

Ankur Goyal
2019.03.28 17:34
I attest to the accuracy and
authenticity of this document

Learned counsel for the petitoner places reliance upon a Full Bench judgment of this Court in ***M/s Tata Steel Ltd. vs. M/s Atma Tube Products Ltd. & ors., 2013 (2) R.C.R. (Criminal) 1005*** to contend that so far as the status of a complainant in a complaint case is concerned, the Amending Act No.5 of 2009 has not made any change. Even if the complainant 'is also the victim' only an appeal by special leave under Section 378 (4) of the Code is maintainable.

Learned counsel for the respondent-complainant also places reliance upon aforementioned judgment but argues that after the introduction of Amending Act No.5 of 2009 in the Code of Criminal Procedure, a complainant 'who is also the victim' as in a complaint under Section 138 of the Act, is entitled to file an appeal under Section 372 of the Code before the Court of Sessions and that impugned order is just & legal and does not require any interference.

Thus, the only point to be decided in this case is regarding the remedy available to the complainant in a complaint case who is also the 'victim'. For a decision of this question, the Court is only required to go through the Full Bench judgment in ***M/s Tata Steel Ltd. (supra)*** and nothing further. This exercise has been done by me with the able assistance of learned counsel for the parties. The judgment in ***M/s Tata Steel Ltd. (supra)*** states in no uncertain terms that after the introduction of Amending Act No.5 of 2009, a 'victim' as defined by the definition introduced vide the same amending act can also prefer an appeal against the judgment of a trial Court convicting an accused if the said victim is aggrieved by the sentence or compensation awarded. However, in a complaint case, whether

Ankur Goyal
2019.03.28 17:34
I attest to the accuracy and
authenticity of this document

the victim is the 'complainant' himself or somebody else, the only remedy available is to seek special leave to appeal under Section 378(4) of the Code. Under the circumstances, the judgment impugned in the revision petition cannot be sustained and is liable to be set aside.

The revision petition is accordingly allowed and judgment dated 09.12.2014 passed by the learned Additional Sessions Judge, Fazilka, is set aside.

March 25, 2019 **(SUDHIR MITTAL)**
Ankur **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No