

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

202

CRR No. 2893 of 2014

Date of decision: 18.01.2019

Amrit Pal Singh

...Petitioner

Vs.

Gurbani Malik & Another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner.

RAMENDRA JAIN, J.(ORAL)

As per office report respondent could not be served as they are presently residing abroad.

Learned counsel for the petitioner submits that as per report of process server, on the notice issued to the respondents for their appearance for today, both the respondents are residing in America, since last 6-7 years. However, as per another report of process server dated 22.11.2018, attorney of the respondents, namely Kanwaljit Singh Malik, who had preferred appeal before the First Appellate Court on behalf of the respondents against order dated 29.01.2011 of the trial Court has expired.

From the perusal of above reports, it is evident that both the respondents cannot be served in person or through their attorney in the absence of availability of their current address.

Learned counsel for the petitioner contends that a complaint under Sections 423, 467, 471 read with 120-B, IPC was filed against the petitioner by father of the respondents before the Court of Judicial Magistrate, Ist Class, Chandigarh which after holding trial was dismissed. Thereafter, father of the respondents expired. Consequently, general attorney namely Kanwaljit of the respondents now deceased, filed an appeal against the said order of dismissal of the complaint, which was accepted vide judgment dated 13.08.2014, impugned herein, thereby directed the trial Court to proceed with the trial. The appellate Court was not empowered to entertain appeal of the respondents in person or through their alleged attorney, in view of the provisions of Section 378(4) Cr.P.C. Therefore, the impugned order is liable to be set aside.

Undisputedly, the respondents were legally required to approach this Court under Section 378 (4) Cr.P.C. against the order of dismissal of their complaint. Since wrong forum was chosen by the respondents of filing their appeal before the Sessions Court, therefore, any order passed by it has no legal sanctity.

Consequently, impugned order dated 13.08.2014 is accordingly set aside.

January 18, 2019
Poonam Sharma

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No