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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2746-2016 (O&M)

Date of Decision : May 08, 2019

Arun Gupta

.... Petitioner

Versus

Dhani Ram

... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present : Mr. Surinder Gandhi, Advocate
for the petitioner.

Mr. Sandeep Kumar Sharma, Advocate,
for the respondent.

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SHEKHER DHAWAN, J.

Present revision petition is directed against the order dated 14.07.2016 passed by learned Additional Sessions Judge, Rohtak whereby application filed the accused-respondent against judgment dated 14.02.2013 passed by learned Judicial Magistrate 1st Class, Rohtak was dismissed.

2. Facts relevant for the purpose of decision of the present revision petition; that complainant – Dhani Ram had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, “**the Act**”) before learned Magistrate at Rohtak and after trial, learned trial Judge acquitted accused – Arun Gupta. As per Section 378(4) Cr.P.C., appeal against acquittal in criminal cases was to be filed before this Court and the complainant filed an application, bearing CRM-A-270-MA-2013

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seeking leave to appeal under Section 378(4) before this Court and the same was disposed of vide order dated 31.07.2013 with liberty to applicant – Dhani Ram to approach the Court of Sessions by way of filing appeal.

The order dated 31.07.2013 passed by this Court is extracted below:-

“ The present application has been filed under Section 378 (4) of Code of Criminal Procedure for granting Special Leave to Appeal against the judgment of acquittal dated 14.2.2013 passed by learned Judicial Magistrate Ist Class, Rohtak in complaint under Section 138 of the Negotiable Instruments Act and Section 420 IPC. A perusal of Section 372 of Code of Criminal Procedure amended recently shows that the applicant is having right to appeal before court of sessions against judgment of acquittal passed by a Magistrate. Hence, in this view of the matter, the present application is disposed of with liberty to applicant to approach court of Sessions by way of filing appeal.

However, in case an application for condonation of delay is filed, the period spent by applicant in pursuing this application before this Court be taken into consideration.”

3. In compliance of that order, complainant -Dhani Ram preferred appeal before the Court of Sessions and at that time, accused – Arun Gupta moved an application for dismissal of the appeal and the said application was dismissed by learned Additional Sessions Judge on 14.07.2016 as per following order :-

“8. In this case, there is no dispute regarding the proposition of law as held in case titled **Subhash Chander Vs. State's case (supra)**, but in this case, this point has already been raised before the Hon`ble Punjab and Haryana High Court and a decision has already been pronounced in

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this regard. So, this Court cannot over-ride the judgment passed by the Hon`ble Punjab and Haryana High Court. In these circumstances, the application stands dismissed.”

4. Learned counsel for the petitioner, who has filed the present revision petition against the said order dated 14.07.2016, contended that as per Full Bench judgment of this Court dated 18.03.2013 in case **M/s Tata Steel Ltd. Vs. M/s Atma Tube Products Ltd. & Ors., 2013 (2) R.C.R. (Criminal) 1005**, appeal against acquittal could be filed only before this Court and not before the Court of Sessions and the learned Additional Sessions Judge has completely ignored this fact while passing the impugned order dated 14.07.2016.

5. While arguing on this point, learned counsel for the respondent-complainant contended that specific order was passed by this Court on 31.07.2013 and learned Additional Sessions Judge was bound to comply with the said order and there is no illegality in the impugned order. So, the present revision petition deserves to be dismissed.

6. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that there is no dispute on main facts of this case that complaint under Section 138 of the Act was filed by the complainant before learned Magistrate and the same was dismissed and accused was acquitted. Thereafter appellant-complainant approached this Court by filing an application seeking leave to appeal and vide orders dated 31.07.2013, this Court had disposed of the said application with liberty to the applicant-complainant to approach the Court of Sessions by way of filing appeal. At that stage, there was no remedy with the complainant except to approach

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the Court of Sessions and pursue his matter. The order passed by this Court on 31.07.2013 was having binding effect upon the complainant as well as learned Additional Sessions Judge, Rohtak. It is also not disputed that the order passed by this Court is dated 31.07.2013 was not challenged by accused by availing appropriate remedy and that order has already attained finality.

7. In view of the above facts, the present revision petition is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 08, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes