

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

CRM-M-16279-2021
Date of decision: 07.07.2022

Shri Prakash

...Petitioner

Versus

Arun Gupta and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Rakshit Gupta, Advocate, for
Mr. Rakesh Gupta, Advocate, for the petitioner.

Mr. Anuj Garg, Advocate, for respondent No.1.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the order dated 28.01.2021 passed by the learned Additional Sessions Judge, Chandigarh, whereby an application filed by respondent No. 1 to convert the criminal appeal filed by him into a revision petition, was allowed.

Learned counsel for the petitioner would submit that the complaint filed by respondent No.1 was dismissed by the Judicial Magistrate, Ist Class, Chandigarh vide order dated 09.02.2017; that aggrieved against the said order respondent No.1 filed a criminal revision before the Sessions Judge. However, vide order dated 20.04.2018, the said revision petition was dismissed as withdrawn; that subsequently, the respondent No.1 filed a criminal appeal against the order dated 09.02.2017 before the Sessions Court; that, however, during the pendency of the said appeal, respondent No.1 had moved an application for converting the appeal into revision and that the said

application was wrongly allowed by the learned Additional Sessions Judge, vide order dated 28.01.2021.

Emphasizing on the aforesaid factual position, it is argued by the learned counsel for the petitioner that the impugned order amounts to review of the earlier order dated 20.04.2018 passed by the Additional Sessions Judge. It is further argued that there is no power under the Code of Criminal Procedure to review any order passed by the Court and that even otherwise, the second revision petition is not maintainable.

In support of his contentions, learned counsel for the petitioner relies upon the judgments of the Hon'ble Supreme Court in Hari Singh Mann Vs. Harbhajan Singh Bajwa, 2001 AIR (SC) 43; State of Kerala Vs. M.M.Manikantan Nair, 2001(2) RCR (Criminal) 657 and Mohammed Zakir Vs. Shabana and others, 2018(4) RCR (Criminal) 456. Reliance is also placed upon a Coordinate Bench judgment of this Court in Ashok Kumar Vs. Kamal Rani and another, 2014(2) RCR (Civil) 670.

On the other hand, learned counsel appearing for respondent No.1 submits that by treating the appeal into revision, no prejudice has been caused to the petitioner. It is further submitted that the conversion of the appeal into revision is a procedural aspect and the same serves the purpose of administration of justice. Reliance is placed upon a judgment of the Bombay High Court (Panaji Bench) in Aires Rodrigues Vs. State through Public Prosecutor, 2010(12) RCR (Criminal) 737.

A perusal of the order dated 20.04.2018 passed by the Additional Sessions Judge, Chandigarh, would show that

the counsel for respondent No.1 had made a statement that the revision was filed inadvertently and the respondent No.1 wanted to file an appeal and it was under those circumstances, the revision was dismissed as withdrawn. Thus, there was no decision on merits and hence, the argument of the petitioner that the second revision was not maintainable, lacks merit.

As noticed above, vide impugned order, the appeal filed by respondent No.1 was converted into revision. Thus, only the procedural aspect of the matter has been dealt with so as to advance the administration of justice.

It could not be point out as to what prejudice has been caused to the rights of the petitioner. Further, learned counsel for the petitioner could not counter the factum that the earlier order dated 20.04.2018 was not an order on merit.

The judgments relied upon by the counsel for the petitioner are not applicable to the facts of the present case. The said judgments deal with the review/recall of the orders passed by the Court under the Code of Criminal Procedure, which is not an issue in the present case.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

(HARNARESH SINGH GILL)
JUDGE

07.07.2022
ds

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No