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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

- (1)

CRM-M-23136-2022  
Date of decision:30.05.2022
- M/s Arora Traders and another

...Petitioners
- Versus
- M/s M.D. Traders

...Respondent
- (2)

CRM-M-24138-2022
- M/s Arora Traders and another

...Petitioners
- Versus
- M/s M.D. Traders

...Respondent
- (3)

CRM-M-24148-2022
- M/s Arora Traders and another

...Petitioners
- Versus
- M/s M.D. Traders

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR**

Present: Mr. Parvez Chugh, Advocate  
for the petitioners (in all cases).

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**SURESHWAR THAKUR, J. (ORAL)**

1. Since all the three petitions cast under Section 482 of Cr.P.C. read with Section 397 of Cr.P.C., arise from a common verdict made by the learned Additional Sessions Judge, Ferozepur, respectively upon Criminal Appeal No.15, 20, and, 14 of 2018, and, wherethroughs after making an interference with the verdict of acquittal, as became pronounced, upon the petitioners, by the learned trial Magistrate concerned, he proceeded to make a remand of the

petition complaint(s) to the learned trial Magistrate concerned, for its/theirs being tried afresh or a *de-novo* trial being entered thereintos.

2. The facts relevant for a decision being made with respect to the validity of the above order carried in Annexure P-1 (in all the petitions), are that the petitioners in the connected petitions, were arrayed, as, accused respectively in Criminal Complaints No. 385, 17, and, 389. The learned Judicial Magistrate Ist Class, Ferozepur through a verdict made respectively thereons, on 29.05.2018, and, on 31.07.2018, proceeded to draw a verdict of acquittal in their favour.

3. The above made verdict of acquittal by the learned trial Magistrate, upon the petition complaints, resulted in the aggrieved-complainant respectively instituting Criminal Appeal Nos. 15, 20, and, 14 of 2018, before the learned Additional Sessions Judge, Ferozepur. The above criminal appeal(s) became allowed. The petition complaint(s) became remanded to the learned trial Magistrate concerned, for his deciding it/them afresh, but after the contesting litigants adducing their respective evidence, in respect of the notice of accusation, and/or, in other words, the order made in Annexure P-2, carried a mandate, upon, the learned trial Magistrate concerned, to make a *de-novo* trial of the petition complaint(s).

4. The petitioners in all the petitions become aggrieved from the above order(s). The gravamen of their grievance becomes rested, upon the factum, that the criminal appeal(s) respectively bearing Nos. 15, 20, and, 14 of 2018, were completely mis-constituted, and, the above endeavour on the part of the aggrieved-complainant, rather was a completely statutorily forbidden recouring by the aggrieved-complainant, given the challenged verdict of acquittal(s), becoming passed in a trial made, upon, a complaint case. He submits, that the

remedy, if any, as was available to the aggrieved-complainant, was the one, as is embodied in sub-Section 4 of Section 378 of the Cr.P.C., than the above mis-recoursed remedy.

5. The proviso of Section 372 to the Cr.P.C., provisions whereof along with the substantive provisions thereof, become extracted hereafter, bestow a right in the aggrieved-victim, rather from a verdict of acquittal pronounced by the Court concerned, upon a lis tried either as a private complaint, or as a police case, to even against a verdict of conviction made thereons, by the Convicting Court, upon the accused, and, if it causes pain to him, upon, the compensation awarded qua him, being inadequate or, upon, the conviction, as made upon the accused by the Convicting Court, being for a lesser offence, and, also upon, his may be pained, even with respect to the inadequacy of the sentence, as passed by the Convicting Court, upon, the accused, rather to prefer an appeal thereagainst, before the Appellate Court concerned. Reiteratedly the above empowerment to the victim, is irrespective of the factum, that the assumption of cognizance, by the learned trial Judge, is, made in a complaint case or, upon, a police report.

*“372. No appeal to lie, unless otherwise provided. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or any other law for the time being in force.*

*Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”*

6. Moreover, through the mandate constituted in sub-Section 1 of Section 378 of the Cr.P.C., the District Magistrate, becomes empowered to direct the public prosecutor concerned, to present an appeal to the Court of Session,

from an order of acquittal, as, made with respect to cognizable, and, non-bailable offences. Furthermore, the provisions of clause (b) of sub-Section 1 of Section 378 of the Cr.P.C., also empower the State Government to direct the public prosecutor concerned, to present an appeal to the High Court, from an original or appellate order of acquittal, passed by any Court, other than the High Court, or against an order of acquittal, passed in revision, by the Court of Session. The mandate carried in 1(a) of Section 378 Cr.P.C., though does empower, the District Magistrate to present an appeal to the Court of Session, but the above power is in respect of a verdict of acquittal being made by the learned trial Court, be it by the Magisterial Court or by the Sessions Court, but rather only with respect to cognizable, and, non-bailable offence(s).

7. The touchstone for determining the validity of the above argument, is the meaning or the connotation to be assigned to sub-Section 4 of Section 378, of the Cr.P.C., provisions whereof become extracted hereinafter. The provisions (supra), empower the aggrieved-complainant, to institute an appeal before this Court, against a verdict of acquittal, made upon a case tried as, a complaint case, but subject to an application for leave to appeal being appended, with the apposite criminal appeal, and, the asked for leave becoming granted by the High Court.

“**378(4)** If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.”

8. The conundrum which besets this Court, and, requires becoming rested, is whether when within, the realm of the *proviso* to Section 372 of the Cr.P.C., which becomes extracted hereinafter, rather a complete statutory

leverage becomes bestowed to the victim, to the extents, as discussed above, but yet whether the statutory latitude bestowed, upon, the aggrieved-complainant, under sub-Section 4 of Section 378 of the Cr.P.C., also takes it within its ambit, all the statutory rights bestowed, upon, a victim of the offence, and/or, whether the complainant in a complaint case, can be assigned synonymity with the phrase “victim” existing in the proviso to Section 372 of the Cr.P.C. In other words whether the phrase 'victim' occurring in the proviso to Section 372 Cr.P.C., can also be construed to be an aggrieved-complainant, from an order of acquittal, as, made by the learned trial Magistrate concerned, upon the complaint concerned, especially when the learned Magistrate concerned, assumes jurisdiction or cognizance, upon, a complaint case.

*“372. No appeal to lie, unless otherwise provided. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or any other law for the time being in force.*

*Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”*

9. The answer to the above legal conundrum is readily available, from a verdict of the Full Bench of this Court, as made on 18.03.2013, in case CRM-790-MA-2010, in case titled as '**M/s Tata Steel Ltd. V. M/s. Atma Tube Products Ltd. & Ors.**', wherein, in respect of relevant question No.(B) (ii) occurring at page No.82 of the verdict (supra), and, which became extracted hereinafter, this Court has made it abundantly clear, that the victim's of complaint cases, shall have a remedy under Section 378(4) to make an appeal against a verdict of acquittal, before the High Court, except when he/she

succeeds in establishing the guilt of the accused, but is aggrieved at the convict's conviction, for a lesser offence or from imposition of an inadequate compensation, for which he/she shall be entitled to avail the remedy of appeal under the proviso to Section 372 Cr.P.C.

**“Question-(B) (iii)** The 'complainant' in a complaint-case who is also a 'victim' and the 'victim' other than a 'complainant' in such case, shall have remedy of appeal against acquittal under Section 378(4) only, except where he/she succeeds in establishing the guilt of an accused but is aggrieved at the conviction for a lesser offence or imposition of an inadequate compensation, for which he/she shall be entitled to avail the remedy of appeal under *proviso* to Section 372 of the Code.”

10. Moreover, it is also underscored therein, that those victims of complaint cases, whose right to appeal has been recognized under the proviso, to Section 372 of Cr.P.C., are not required, to seek 'leave' or 'special leave' to appeal from the High Court in the manner, as contemplated under Section 378 (3) & (4) of the Cr.P.C. The above underlinings therein, completely underscore that the phrase “victim”, as, borne in the proviso to Section 372 Cr.P.C., becomes synonymous to the aggrieved-complainant, from a verdict of acquittal made, upon, a complaint case, by the learned trial Magistrate concerned. Moreover, only in the event of a verdict of acquittal being made, upon, the apposite complaint, thereupon the aggrieved therefrom complainant, becomes a 'victim', especially for instituting an appeal thereagainst, before the High Court, but in a situation covered, by the *proviso* to Section 372 of Cr.P.C, the aggrieved-victim concerned, rather from the verdict of conviction, can avail all the statutory latitudes assigned thereunders to him, even when such verdict of

conviction is in respect of a private complaint concerned, and/or, upon a trial, being entered into, upon, a police complaint/report.

11. Therefore, the instant petitions are allowed. The impugned orders , Annexure P-2, as made by the learned Additional Sessions Judge, Ferozepur, are quashed, and, set aside.

12. However, leaving liberty to the aggrieved-complaint to move this Court, through an appeal constituted within the ambit of Section 378(4), of the Cr.P.C.

13. A photocopy of this order be placed on the file(s) of other connected case(s).

**(SURESHWAR THAKUR)**  
**JUDGE**

**30.05.2022**

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| Whether speaking/reasoned:- | Yes/No |
| Whether reportable:         | Yes/No |