

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 915 of 2019

Susanta Pal @ Naiti

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Soumya Basu Roy Chowdhury.

For the State : Ms. Puspita Saha.

For the Opposite Party : None.
No. 2

Heard on : 26.07.2023

Judgment on : 18.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against a judgment dated 20th of February, 2019 passed by the Learned Additional Sessions Judge, First Court, Hooghly Sadar at Chinsurah in Criminal Appeal No. 46 of 2011, convicting the present petitioner for commission of offence punishable under Section 138 of the Negotiable Instrument Act and sentencing him to suffer simple imprisonment for six months and also to pay a fine of

Rs.1,22,775/- (no sentence in default of fine has been passed) thereby setting aside an order of acquittal dated 26th of September, 2011, passed by the learned Judicial Magistrate, 3rd Court, Hooghly Sadar, Chinsurah, in C.R. Case No. 579 of 2009.

2. The petitioner's case is that in the year 2009, the present opposite party No. 2 filed one petition of complaint before the Learned Chief Judicial Magistrate, Hooghly Sadar, Chinsurah alleging thereby commission of offence punishable under Section 138 of the Negotiable Instrument Act, against the present petitioner and the same was registered as C.R. Case No. 579 of 2009. The Learned Chief Judicial Magistrate, Hooghly Sadar, Chinsurah, after perusing the petition of complaint has been pleased to take cognizance and transferred the case to the file of the Learned Judicial Magistrate, 3rd Court, Hooghly Sadar, Chinsurah, for disposal.
3. The Learned Judicial Magistrate, 3rd Court, Hooghly Sadar, Chinsurah, after conclusion of trial, by an order dated 26th of September, 2011, has been pleased to pass an order of acquittal thereby holding the petitioner herein not guilty.
4. Challenging the legality of the order dated 26th of September, 2011, passed by the Learned Judicial Magistrate, 3rd Court, Hooghly Sadar, Chinsurah, passed in connection with C.R. Case No. 579 of 2009, the opposite party No. 2 herein on 12th of December, 2001, filed one appeal before the Learned District and Sessions Judge, Hooghly at Chinsurah under Section 372 of the Code of Criminal Procedure, 1973 and the same was registered as Criminal Appeal No. 46 of 2011.

5. That at the time of hearing of the criminal appeal, neither the respondent no. 2 herein (Being the appellant before the Sessions Court) nor his advocate appeared before the Learned Additional Sessions Judge, First Court, Hooghly Sadar at Chinsurah, but the Learned Judge opined that the criminal appeal requires to be disposed of on merit even in absence of the appellant and only on hearing the argument advanced on behalf of the Public Prosecutor and the present petitioner/accused and after perusing the relevant records available before him, the Learned Judge has been pleased to set aside the order dated 26th of September, 2011, passed by the Learned Judicial Magistrate, 3rd Court, Hooghly Sadar, Chinsurah, in connection with C.R. Case No. 579 of 2009 and has been pleased to convict the present petitioner for commission of offence punishable under Section 138 of the Negotiable Instrument Act and sentenced him to suffer simple imprisonment for six months and also to pay a fine of Rs.1,22,775 (no sentence in default of fine has been passed).
6. The petitioner submits that the legal procedure adapted by the present opposite party No. 2 by filing an appeal under Section 372 of the Code of Criminal Procedure, 1973 before the Learned District & Sessions Judge, Hooghly, against the order of acquittal passed by the Learned Judicial Magistrate, 3rd Court, Hooghly Sadar, Chinsurah, in connection with C.R. Case No. 579 of 2009, is absolutely illegal. It is well settled proposition of law that in case of appeal against acquittal, the aggrieved appellant has to file for special leave before this Hon'ble High Court, to file an appeal against the order of acquittal under Section 378 of the Code of Criminal Procedure, 1973. But in the instant case, the opposite party no. 2 filed an

appeal under Section 372 of the Code of Criminal Procedure 1973, before the Learned Sessions Judge. The Learned Judge, overlooked the settled legal proposition of law and has been pleased to entertain the appeal filed by the respondent No. 2, before the wrong forum.

7. **Mr. Soumya Basu Roy Chowdhury, learned counsel for the petitioner** has submitted that the complainant in a case under Section 138 of the Negotiable Instrument Act cannot challenge the order of acquittal before the Learned Sessions Court under the proviso of Section 372 of the Code of Criminal Procedure and his remedy is only to file an appeal to the High Court with special leave under Section 378(4) of the Code of Criminal Procedure.
8. It is further submitted, that the proviso to Section 372 of the Code of Criminal Procedure creates a right as well as a forum for appeal only for the victim (other than a complainant in a complaint case) against orders of acquittal in a police case. But in case of a prosecution initiated on a complaint, the complainant cannot take the recourse of Section 372 of the Code of Criminal Procedure.
9. It is thus submitted that an order for setting aside the order of conviction and sentence is warranted under the circumstances in order to uphold the ends of justice.
10. **Ms. Puspita Saha, learned counsel for the State** is present. As the opposite party no. 2 could not be served by the petitioner, the State, as directed has filed a report stating that the opposite party no.2/complainant has expired on 30.05.2021. But in spite of the said

intimation there is no representation on behalf of the opposite party no. 2 by his legal heirs.

11. **In the present case** the Learned Judicial Magistrate, 3rd Court, Hooghly Sadar, in C.R. Case No. 579 of 2009 was pleased to acquit the petitioner in a proceedings under Section 138 of the N.I. Act vide judgment dated 26.09.2011.
12. On an appeal under Section 372 Cr.P.C., the Learned Sessions Judge, 1st Court, Hooghly Sadar at Chinsurah vide the judgment and order under revision dated 20.02.2019, set aside the order of the Learned Magistrate and convicted the petitioner/accused under Section 138 N.I. Act. Hence, the revision.
13. Copies of the order sheets in C.R. No. 579 of 2009 are as follows:-
 - i) **Order dated 11.07.2019 the learned Magistrate has taken on record the present revision and the stay granted in this case.**
 - ii) Order dated 24.07.2019 the petitioner deposited cash of Rs.61,377.50 on 23.07.2019, with the judicial cashier of the trial Court **as directed by the High Court** in this revision vide order dated 20.06.2019.
 - iii) **Finally on 17.05.2022, the Learned Magistrate has been pleased to dismiss C.R. 576 of 2009 for non-prosecution as the complainant failed to appear before the Court.**
 - iv) It appears that the said order is erroneous as a judgment of conviction was already on record and the said judgment of conviction is also under challenge in this revision, where a stay

had been granted and was on record in the Learned Magistrate Court.

- 14.** The learned counsel for the petitioner has challenged the maintainability of the appeal preferred by the complainant under Section 372 Cr.P.C. before the Court of Sessions.

- 15.** *The Code of Criminal Procedure (Amendment) Act 2005, introduced various changes in the legislation. However, despite the Supreme Court's recognition of victim's rights as well as the evolution of international jurisprudence regarding the rights of the victims of crimes, the legislature failed to introduce provisions permitting the victim to appeal against the acquittal of an accused. The Amendment allowed appeals against acquittals in the Court of Session without any leave to appeal. Section 377 of the CrPC was also amended to allow an appeal on the ground of inadequacy of sentence. All these amendments were intended to check the abuse of power and restrain frivolous acquittals.*

The insertion of Section 378(3) restricted the right to appeal against an acquittal order without the permission of the High Court. Section 378(4) allowed the State Government to file an appeal with the consent of the complainant only if the special leave to appeal was granted by the High Court. Section 372 of the Code of Criminal Procedure mandated that no appeals against the decision of a Criminal Court could be maintained without the consent of the High Court. Therefore, the Indian legislature failed to acknowledge the diminished rights and options available to a victim after a criminal proceeding.

- 16.** The Code of Criminal Amendment Act, 2008 highlights the rights of a victim.

Section 2(wa) lays down:-

“Section 2(wa): Definition of victim

“victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.”

Section 372 of Cr.P.C. lays down:-

“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.]”

17. The Supreme Court in **Subhash Chand vs. State (Delhi Administration)** in **Criminal Appeal No. 50 of 2013** delivered on 08.01.2013 long after the amendment bringing in the definition of ‘Victim’ under Section 2(wa) of the Cr.P.C. held as follows : para 7 and 21:

“7. The short point which arises for consideration in this appeal is whether in a complaint case, an appeal from an order of acquittal of the Magistrate would lie to the Sessions Court under Section 378(1)(a) of the Code or to the High Court under Section 378(4) of the Code.”

21. In view of the above, we conclude that a complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court. He cannot file such appeal in the Sessions Court. In the instant case the complaint alleging offences punishable under Section 16(1)(1A) read with Section 7 of the PFA Act and the Rules is filed by complainant Shri Jaiswal, Local Health Authority through Delhi Administration. The appellant was acquitted by the Metropolitan Magistrate, Patiala House Courts, New Delhi. **The complainant can challenge the order of acquittal by filing an application for special leave to appeal in the Delhi High Court and not in the Sessions Court.** Therefore, the impugned order holding that this case is not governed by Section 378(4) of the Code is quashed and set aside. In the circumstances, the appeal is allowed.”

18. Thus, the complainant’s right to appeal against acquittal lies under Section 378(4) Cr.P.C. only before the High Court with special leave.

- 19.** The Sessions Court thus has no jurisdiction to entertain an appeal in a complaint case ***(Subhash Chand vs. State (Delhi Administration) (Supra))***.
- 20.** Thus, the learned Sessions Court did not have the jurisdiction to entertain the appeal preferred under Section 372 of Cr.P.C.
- 21.** The complainant's/opposite party's relief lies before the High Court under Section 378(4) Cr.P.C. The complainant is at liberty to avail of the said provision of law.
- 22.** As the complainant has pursued his relief before the wrong forum, the question of limitation shall be decided accordingly.
- 23. The revisional application being CRR 915 of 2019 is accordingly allowed.**
- 24.** The judgment dated 20th of February, 2019 passed by the Learned Additional Sessions Judge, First Court, Hooghly Sadar at Chinsurah in Criminal Appeal No. 46 of 2011, convicting the present petitioner for commission of offence punishable under Section 138 of the Negotiable Instrument Act and sentenced him to suffer simple imprisonment for six months and also to pay a fine of Rs.1,22,775/-, thereby setting aside an order of acquittal dated 26th of September, 2011, passed by the learned Judicial Magistrate, 3rd Court, Hooghly Sadar at Chinsurah, in connection with C.R. Case No. 579 of 2009, **is set aside/quashed** being not in accordance with law.
- 25. The Trial Court** shall pass necessary orders recording the proper status of the case as on date and **permit the petitioner to withdraw the amount deposited on 23.07.2019 with the judicial cashier, as directed**

by the High Court in this revision on vide order dated 20.06.2019, as noted in the trial court's order dated 24.07.2019 within 15 days from the date of this order.

- 26.** All connected applications, if any, stands disposed of.
- 27.** Interim order, if any, stands vacated.
- 28.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 29.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)