

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

CRM-M-38527-2017 (O&M)

Reserved on : 17.04.2023

Pronounced on: 28.04.2023

Sita Ram

..... Petitioner

Versus

Kamal Furniture House

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Satyaveer Singh, Advocate, for the petitioner.

Mr. Amit Bansal, Advocate, for the respondent.

Rajesh Bhardwaj, J.

Prayer in the present petition is for setting aside the judgment dated 02.06.2017 passed by the learned Additional Sessions Judge, Chandigarh, whereby, the order dated 27.05.2016 passed by the learned JMIC, Chandigarh dismissing the complaint No.3997/2014 under Section 138 of Negotiable Instruments Act, 1881, was set aside and the petitioner herein was convicted.

Succinctly, facts of the case are that the petitioner was prosecuted by the respondent-complainant in a complaint filed under Section 138 of the Negotiable Instruments Act. On the conclusion of the trial, the petitioner was acquitted by the learned trial Court vide order dated 27.05.2016. Aggrieved by the same, the respondent-complainant filed an appeal before the Court of learned Additional Sessions Judge, Chandigarh. Learned Appellate Court after hearing both the sides, found the acquittal of the petitioner not sustainable in the eyes of law and thus, set aside the order dated 27.05.2016 and convicted the petitioner vide impugned order dated 02.06.2017. Aggrieved by the same, the petitioner has approached this

Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that the impugned order passed by the learned Appellate Court is non est in the eyes of law as the appeal filed by the respondent-complainant before it was not maintainable in view of the statutory provisions of Section 378(4) Cr.P.C. He argued that as per the provisions of Section 378(4) Cr.P.C., the appeal against acquittal is maintainable before the High Court and not before the learned Additional Sessions Judge, as had been filed in the present case. He has relied upon the judgment of Full Bench of this Court rendered in M/s Tata Steel Ltd. vs. M/s Atma Tube Products Ltd. and others, 2013(2) RCR (Criminal) 1005, wherein it has been specifically held that appeal against acquittal in a complaint case would be maintainable before the High Court. He submits that admittedly the petitioner was prosecuted in a complaint under Section 138 of the Negotiable Instruments Act and thus, the order of acquittal passed by the trial Court was assailable before the High Court and not by way of appeal before the Sessions Court. He submits that as the appeal filed by the respondent-complainant was not even maintainable, the impugned order dated 02.06.2017 deserves to be set aside.

Learned counsel for the respondent-complainant has admitted that legal proposition of law that the appeal filed by him before the learned Additional Sessions Judge, was not maintainable and as per the statutory provisions and the law settled, the same is maintainable before the High Court. However, he submits that in case of acceptance of this petition, he be granted liberty to assail the order passed by the learned trial Court acquitting the accused before this Court.

Heard.

The grievance raised by learned counsel for the petitioner regarding maintainability of the appeal is not under dispute and the same has been fairly conceded by counsel for the respondent as well.

As the appeal filed by the respondent-complainant was not maintainable against the order of acquittal before the learned Additional Sessions Judge, the impugned order dated 02.06.2017 is set aside. However, the respondent-complainant is at liberty to avail his remedy for assailing the order of acquittal before the competent Court of jurisdiction in accordance with law.

The petition stands allowed in above-said terms.

28.04.2023
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No

(RAJESH BHARDWAJ)
JUDGE