

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

CRM-M-47717-2019

Reserved on: 26.05.2023

Pronounced on : 09.06.2023

Jai Narain

..... Petitioner

Versus

Amarjit

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Gaurav Mohunta, Advocate, for the petitioner.

Mr. Ashit Malik, Advocate, for the respondent.

Mr. Karunesh Kaushal, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J.

The present petition has been filed under Section 407(1)(c)(ii) read with 482 Cr.P.C. praying for clubbing **CRM-A-1007-MA-2018** arising out of judgment and order dated 05.12.2017 passed by learned ACJM, Gurugram in criminal complaint No.36 of 2008 dated 30.10.2008, under Sections 420, 467, 468, 471 and 506 IPC, wherein, the respondent has been acquitted which is pending before this Court and **Criminal Appeal No.52 of 2018** dated 07.09.2018 arising out of judgment dated 05.12.2017 passed by the learned ACJM, Gurugram in FIR No.127, dated 01.03.2011, registered under Sections 420, 467, 468, 471 IPC titled as State vs. Jai Narain, wherein the petitioner has been acquitted, which is pending before the learned Additional Sessions Judge, Gurugram.

Adumbrated facts of the case are that the petitioner was prosecuted by the respondent in above-said FIR No.127 on account of preparing two fabricated receipts dated 01.08.2007 and 25.02.2008 to the tune of Rs.50 lacs each and on the other hand, the petitioner had filed above-said criminal complaint No.36 against the respondent before the

Court of competent jurisdiction. The incident was reported to the police by both the parties and the police officials registered FIR against the petitioner, however, did not register cross case against the respondent and hence, feeling aggrieved, the petitioner filed a complaint under Section 156(3) Cr.P.C. before the trial Court on 31.10.2008. Both the cases arisen out of the same incident between the same parties, were tried and decided together by the same Court i.e. learned ACJM, Gurugram vide separate orders dated 05.12.2017 in both the cases. Learned trial Court acquitted the accused in both the cases i.e. the petitioner, who was accused in FIR case and the respondent, who was accused in complaint case. Aggrieved by both these judgments of acquittal, both the petitioner and the respondent assailed the respective judgments of acquittal before the learned Appellate Court. As per the appellate jurisdiction, the petitioner filed the leave to appeal under Section 378(4) Cr.P.C. before this Court by way of CRM-A-1007-MA-2018, which is pending adjudication before this Court. However, respondent at whose behest the petitioner was prosecuted in FIR case, had assailed the order of acquittal against the petitioner by way of filing Appeal No.52 of 2018 as enumerated under Section 374 Cr.P.C., before the Court of competent jurisdiction i.e. Additional Sessions Judge, Gurugram and the same is pending adjudication before it. As the dispute between the petitioner and the respondent is of version and cross-version regarding which one case is pending before this Court and another one before Additional Sessions Judge, Gurugram, hence, the petitioner has approached this Court by of filing the present petition under Section 407(1)(c)(ii) read with 482 Cr.P.C. praying for clubbing **CRM-A-1007-MA-2018** and **Criminal Appeal No.52 of 2018** and deciding them together.

Learned counsel for the petitioner has vehemently contended that the inter-se dispute between the petitioner and the respondent is regarding an agreement to sell between both of them as there arose a dispute regarding execution of sale deed. He submits that both the parties had their version regarding the dispute and hence, both of them approached the police for the redressal of their grievances by praying for registration of FIR against each other. He submits that on the basis of the version of the petitioner, no FIR was registered against the respondent, whereas, at the behest of the respondent FIR No.127 was registered against the petitioner. He further submits that the petitioner feeling aggrieved by inaction of the police had no other option than to file a complaint under Section 156(3) Cr.P.C. against the respondent for his prosecution. He submits that both the cases i.e. FIR case and the complaint case, were tried by the same trial Court i.e. ACJM, Gurugram and in both the cases accused i.e. the petitioner and the respondent were acquitted by it by way of passing separate judgments dated 05.12.2017 in both cases. He submits that said judgments were challenged by both the petitioner and the respondent and the leave to appeal as well as appeal are pending adjudication before two different forums and hence, there is every chance that if both are allowed to be adjudicated by these two different forums, the view taken by both the Courts can be self contradictory and would be prejudicial to both the sides. He submits that as per the provisions of Section 407(1)(c)(ii) Cr.P.C., this Court facing the situation such like in hand, has the jurisdiction for directing Appeal No.52 of 2018 pending before the learned Additional Sessions Judge to be transferred to this Court and tried by this Court alongwith CRM-A-1007-MA-2018 pending before this Court. He submits that it

would be in the interest of justice to try both these appeals together by this Court so as to avoid any miscarriage of justice with either of the parties. He further submits that as the legislature has not provided any specific remedy in meeting this type of situation and to meet the ends of justice, this Court should exercise its inherent jurisdiction under Section 482 Cr.P.C. read with Section 407 Cr.P.C. to meet the ends of justice. He relies upon the judgment of Hon'ble Supreme Court in Sri Indra Das vs. State of Assam, 2011(2) RCR (Criminal) 64 and Satbir Singh vs. State of Haryana and others, 2012(2) RCR (Criminal) 978 and prays for allowing the present petition by directing the Sessions Court to remit the record of the appeal pending before it to this Court so as both the cases be heard together.

Learned counsel for the respondent has submitted that there is no dispute regarding the statutory provisions and the law settled by Hon'ble Full Bench of this Court in M/s Tata Steel Ltd. Vs. M/s Atma Tube Products Ltd. and others, 2013(2) RCR (Criminal) 1005.

Learned State counsel has also not disputed the statutory provisions and the law settled in M/s Tata Steel Ltd.'s case (supra).

After hearing learned counsel for the parties and perusing the record, it is apparent that the dispute is between the same parties i.e. the petitioner and the respondent and for the redressal of their grievances both have approached the competent authorities, however, at the behest of the petitioner FIR was not lodged by the police, hence, he filed a complaint against the respondent, whereas, at the behest of the respondent, the FIR was lodged against the petitioner. Both the cases were tried by the same Court by way of separate trial. After hearing both the sides, the learned trial Court acquitted the accused in both the FIR case and the complaint case by way of passing separate order of acquittal dated 05.12.2017. Both the sides

i.e. the petitioner and the respondent were aggrieved by the order of acquittal and hence, filed leave to appeal against the acquittal by assailing the order of the trial Court. However, in view of the statutory provisions both cases went before different forums i.e. the appeal against acquittal in FIR case has been filed before the learned Additional Session Judge, Gurugram and leave to appeal against acquittal in complaint case has been filed before this Court and both the cases are pending adjudication.

For resolving the dispute in hand, appraisal of following statutory provisions is relevant:-

“Section 372 Cr.P.C.- 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 by 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.]

Section 374 Cr.P.C.-Appeals from convictions.

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial], may appeal to the High Court.

(3) Save as otherwise provided in sub- section (2), any person,-
(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced under section 325, or
(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session.

[(4) When an appeal has been filed against a sentence passed under Section 376, Section 376A, Section 376AB, Section 376-B, Section 376C, Section 376D, Section 376D, Section 376DA, Section 376 DB or Section 376E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.]

From perusal of the above mentioned statutory provisions, it is apparent that the appeal would lie against any judgment only as in accordance with the provisions as provided by the Criminal Procedure of Code. By way of amendment in Section 372 Cr.P.C., the right of appeal has been provided even to a victim. For the appeals from the order of conviction relevant Section as mentioned above is Section 374 Cr.P.C.

Hon'ble Full Bench of this Court in M/s Tata Steel Ltd.'s case (supra) has dealt with this issue in detail and thus, it has been held that the appeal against acquittal filed by the victim would lie before the Court before which an appeal ordinarily lies against the order of conviction. Hence, as the petitioner was prosecuted in FIR case lodged by the respondent and thus, appeal against conviction was maintainable before the learned Additional Sessions Judge, which was the Court of competent jurisdiction as the appeal ordinarily, lies before that Court against the order of conviction.

However, the Court of competent jurisdiction before which the appeal would after acquittal lie in case the prosecution of the accused has been initiated by way of filing of a complaint, would be a different Court as per the statutory provisions of Section 378 Cr.P.C. Section 378 Cr.P.C. is

relevant for understanding of the same, which reads as follows:-

378.- Appeal in case of acquittal.

[(1) Save as otherwise provided in sub- section (2), and subject to the provisions of sub- sections (3) and (5),-

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government, may in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, [the Central Government may, subject to the provisions of sub- section (3), also direct the Public Prosecutor to present an appeal-

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]

(3) [No appeal to the High Court] under sub- section (1) or sub- section (2) shall be entertained except with the leave of the High Court.

(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.

(5) No application under sub- section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the application under sub- section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub- section (1) or under sub-section (2).

The statutory provisions are clear enough that in a case order of acquittal is passed in a complaint case then the leave to appeal would lie before the High Court as filed in this case. Hon'ble Full Bench of this Court in M/s Tata Steel Ltd.'s case (supra) has also approved the same. Thus, filing of two different appeal against the orders of acquittal before two different forums were in accordance with the statutory provisions of Criminal Procedure of Code. It is apparent that if there is any anomaly in filing the appeals before two different forums i.e. because of legislative provisions as exists in Criminal Procedure of Code.

However, to meet the controversy faced in such situation, relevant provisions are as follows:-

“407. Power of High Court to transfer cases and appeals:-

(1) Whenever it is made to appear to the High Court:--

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any

provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order --

(i) that any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Session Judge and rejected by him.

(3) Every application for an order under sub section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made, and no

order shall be made on the merits of the applications unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any Subordinate Court, the High Court may if it is satisfied that it is necessary so to do in the interest of Justice, order that, pending the disposal of the application the proceedings in the Subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the Subordinate Court's power of remand under Section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under Section 197.”

There is no gainsaying that two different cases i.e. one leave to appeal and another appeal, between the same parties are pending adjudication before two different forums. Thus, there is every chance of conflicting opinions if the same are allowed to be adjudicated by these two forums and hence, to meet such an exigency, it is a fit case for invoking its power by this Court under Section 407 Cr.P.C. read with Section 482 Cr.P.C. to meet the ends of justice. This Court has earlier also dealt with a similar situation in case of **Mohd. Alyas Abdali vs. State of Punjab and another**, passed in CRM-M-9545-2015 decided on 27.03.2017. Thus, the

appeal pending before the Additional Sessions Judge, Gurugram is directed to be transferred to this Court to be heard on 17.08.2023 alongwith CRM-A-1007-MA-2018 pending here. The Additional Sessions Judge, Gurugram is directed to send the complete record of Criminal Appeal No.52 of 2018 pending before it to this Court.

The petition is allowed in above-mentioned terms.

09.06.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No