



CRM-M-28928-2017

-1-

(270)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28928-2017

Date of Decision: 23.07.2024

PREM KUMAR

... Petitioner

Versus

STATE OF HARYANA & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Deepak Girotra, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the impugned judgment dated 19.05.2017 (Annexure P-3) passed by the Addl. Sessions Judge, Rohtak whereby the appeal preferred by the petitioner against the order of acquittal dated 16.11.2015 (Annexure P-1) passed by the Court of SDJM, Meham has been dismissed on the ground of maintainability.

2. The brief facts of the case are that an FIR No.03 dated 12.01.2011 under Sections 420/467/468/471/120B IPC Police Station Lakhan Majra came to be registered against respondent Nos.2 to 6. The Court of SDJM, Meham acquitted the private respondents vide judgment dated 16.11.2015. The copy of the said judgment dated 16.11.2015 is attached as Annexure P-1 to the petition.



CRM-M-28928-2017

-2-

3. An appeal was preferred against the said judgment of acquittal and the same came to be dismissed on the grounds of maintainability vide judgment dated 19.05.2015. The copy of the judgment dated 19.05.2015 is attached as Annexure P-3 to the petition.

4. The aforementioned judgment dated 19.05.2015 (Annexure P-3) is under challenge in the present petition.

5. The learned counsel for the petitioner contends that in view of the judgment in **M/s Tata Steel Limited Versus M/s Atma Tube Products Limited & others, 2013(2) RCR (Criminal) 1005**, the only remedy available to the petitioner was to file an appeal against the judgment of acquittal passed by the Court of SDJM, Meham. Therefore, the judgment dated 19.05.2017 (Annexure P-3) was liable to be set aside and the case be remanded back to the said Court for an adjudication on merits.

6. On the other hand, the learned State counsel and the counsel for the private respondents have fairly conceded the legal position as enumerated by the counsel for the petitioner.

7. I have heard the learned counsel for the parties.

8. In **M/s Tata Steel Ltd.** (supra) this Court held as under:-

“106. The only effective modicum to meet with the situation as we perceive can be to interpret and construe Section 378(1)(a) in such a manner that the State's appeal(s) in respect of all the cognizable offences (whether bailable or non-bailable) are presented to the Court of Session, for such a recourse is the least harmful, non-prejudicial and substantively conforms to the legislative vision underlying the amendments carried out in the Code in the years 2005 and 2009. This can be feasible if the word "and" contained in



CRM-M-28928-2017

-3-

Clause (a) of Section 378(1) of the Code is read as "or" so that the appeal preferred by the State against an order of acquittal passed by the Magistrate in respect of every cognizable offence, whether bailable or not, lies to the Court of Session only. We hasten to add that the action in respect of a non-cognizable offence can be initiated only by filing a private complaint before the Magistrate and against acquittal in such a case the appellate recourse lies under Section 378(4) of the Code.

*** *** ***

120. In the light of the above discussion, we hold that while in view of proviso to Section 372 an appeal preferred by a 'victim' against the order of acquittal passed by a Magistrate in respect of a cognizable offence whether bailable or non-bailable shall lie to the Court of Session, the State's appeal under Section 378(1)(a) of the Code against that order shall also be entertained and/or transferred to the same Sessions Court.

(F) Whether proviso to Section 372 Criminal Procedure Code inserted w.e.f. December 31, 2009 is prospective or retrospective in nature and whether a revision petition pending against an order of acquittal before the insertion of the said proviso, can be converted into an appeal and transferred to the Court of competent jurisdiction?

*** *** ***

139. For the reasons assigned above, we sum up our conclusions and answer the questions as formulated in para 6 of this order, in the following terms:-

Question- (A) (i) The expression "victim" as defined in Section 2(wa) includes all categories of his/her legal heirs for the purpose of engaging an advocate under Section 24(8) or to prefer an appeal under proviso to Section 372 of the Code.

(ii) However, legal heirs comprising only the wife, husband, parent and child of a deceased victim are entitled to payment of compensation under Section 357(1)(c) of the Code. Similarly, only those dependents of a deceased victim who have suffered loss or



CRM-M-28928-2017

-4-

injury as a result of the crime and require rehabilitation, are eligible to seek compensation as per the Scheme formulated under Section 357A of the Code.

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.

(iv) The 'victim', who is not the complainant in a private complaint-case, is not entitled to prefer appeal against acquittal under proviso to Section 372 and his/her right to appeal, if any, continues to be governed by the unamended provisions read with Section 378 (4) of the Code.

(v) those 'victims' of complaint-cases whose right to appeal have been recognised under proviso to Section 372, are not required to seek 'leave' or 'special leave' to appeal from the High Court in the manner contemplated under Section 378(3) & (4) of the Code.

Questions - (C) & (D) (vi) The right conferred on a 'victim' to present appeal under proviso to Section 372 is a substantive and independent right which is neither inferior to nor contingent upon the filing of appeal by the State in that case. Resultantly, the condition of seeking 'leave to appeal' or 'special leave to appeal' as contained in Section 378(3) & (4) cannot be imposed for the maintainability of appeal by a 'victim' under proviso to Section 372 of the Code.

Question - (E) (vii) In view of proviso to Section 372 an appeal preferred by a 'victim' against the order of acquittal passed by a Magistrate in respect of a cognizable offence whether bailable or non-bailable shall lie to the Court of Session, the State's appeal under Section 378(1)(a) of the Code against that very order shall also be entertained and/or transferred to the same Sessions Court.



Question - (F) (viii) The proviso to Section 372 inserted w.e.f. December 31, 2009 is prospective in application and only those orders which have been passed on or after December 31, 2009, irrespective of the date of occurrence or registration of FIR or filing of complaint, shall be appealable at the instance of a 'victim' under the afore-stated proviso. Consequently, a revision petition preferred against an order of acquittal passed prior to December 31, 2009 cannot be converted into an appeal and shall be decided accordingly.

Question - (G) (ix) Subject to the exception carved out in para-138 of this order, the period of limitation for an appeal by a 'victim' under proviso to Section 372 of the Code shall be as under :-

(a) In case of acquittal -

(i)	Where appeal lies to the High Court	90 days	Date of order appealed against
(ii)	Where appeal lies to any other Court	60 days	Date of order appealed against

(b) Any other sentence or order -

(i)	to the High Court	60 days	The date of sentence or order
(ii)	to any other court	30 days	The date of sentence or order

(emphasis supplied)

9. A bare reading of the aforementioned judgment would show that an appeal preferred by a victim against the order of acquittal passed by the Magistrate in respect of a cognizable offence would lie to the Court of Sessions. In the instant case, the FIR had been registered under Sections

**CRM-M-28928-2017****-6-**

420/467/468/471/120B IPC and only Section 467 IPC was non-cognizable. Therefore, the case would be deemed to be a cognizable case in view of Section 155(4) Cr.P.C. Quite apparently, the remedy available with the petitioner being a victim was to file an appeal against the judgment of acquittal.

10. In view of the above, the present petition is allowed. The judgment dated 19.05.2017 (Annexure P-3) passed by the Addl. Sessions Judge, Rohtak is hereby quashed. The case is remanded back to the Court of Addl. Sessions Judge, Rohtak who shall hear and decide the case on merits.

(JASJIT SINGH BEDI)
JUDGE

23.07.2024

JITESH

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