

CRR-1-2013(O&M)

238 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1-2013(O&M)
Date of decision: 20.02.2024

Baldev Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Baltej Singh Sidhu, Senior Advocate with
 Mr. Divij Datt, Advocate with
 Mr. Chandan Singh, Advocate for petitioner no. 2

Mr. Sandeep Kumar, DAG Punjab

HARPREET SINGH BRAR, J. (ORAL)**CRR-1-2013**

1. The present revision petition is preferred against judgment dated 10.12.2012 passed by learned Additional Sessions Judge (FTC), Rupnagar whereby appeal against judgment of acquittal dated 20.12.2011 passed by learned Judicial Magistrate 1st Class, Ropar in Complaint no. RT 15 dated 28.01.2008/19.01.2011, under Section 138 of the Negotiable Instruments Act (hereinafter 'NI Act', for brevity), was allowed.

2. Briefly, the facts are that the petitioners/accused ran a business i.e., M/s Saini Commission Agency and apparently were on friendly terms with respondent no. 2/complainant, as a result of which, the latter extended a loan of Rs. 2,50,000/- to the former, in order to ensure that the business of the petitioners continues to thrive. The petitioners assured to repay the loan amount within 2 months. Upon expiry of the said period and in order to discharge their liability, the petitioners issued a cheque, bearing no. 456999 dated 10.09.2007 amounting to Rs. 2,50,000/- of State Bank of Patiala, Branch Thali, in favour of respondent no.

2. On 28.11.2007, respondent No. 2 deposited the above said cheque with his bank State Bank of Patiala, Branch Thali, for encashment of the same. Vide memo dated 28.11.2007, the above said cheque was returned unpaid with the remark, "Account Closed". Subsequently, this fact was brought to the notice of the petitioners vide legal notice dated 08.12.2007 but the petitioners failed to pay the cheque amount. Hence, the complaint before the Magistrate.

3. After assessing all material on record, the learned trial Court acquitted the petitioners vide judgment dated 20.12.2011. Aggrieved by the same, respondent no. 2 preferred an appeal before the learned Lower Appellate Court. The Lower Appellate Court vide judgement dated 10.10.2012 allowed the appeal on merits and passed a judgement of conviction and order of sentence, sentencing the petitioners to undergo rigorous imprisonment for one year.

4. Learned Senior counsel for the petitioners argues that the learned lower Appellate Court had no jurisdiction to entertain the appeal as from the judgement of acquittal, appeal would lie only before the High Court as per Section 378(4) of the Cr.P.C. Learned counsel further cited the case of ***Damodar S. Prabhu v. Syed Baba Lal 2010(2)R.C.R.851*** and averred that the principles laid down in the said judgement have not been complied with, and as such, it amounts to judicial impropriety.

5. Learned Senior counsel further submits that Section 378 (4) of Cr.P.C. states in no uncertain terms that no appeal would lie from a judgement of acquittal passed by the learned trial Court in a complaint case before the Court of Sessions. Additionally, no appeal can be filed by the complainant by taking the benefit from the amended provisions of Section 372 Cr.P.C. as it would lead to a conflict between the two sections. In order to buttress this argument, reliance was placed on ***M/s. Tata Steel Ltd. v. M/s. Atma Tube Products Ltd. 2013(2) R.C.R.***

(Cri.) 1005.

6. Having heard the learned Senior counsel for the petitioners and after perusing the record of the case with his able assistance, at the very outset, it must be stated that the learned lower Appellate Court committed an oversight by entertaining the appeal of the respondent no. 2 against the judgement of acquittal passed by the learned trial Court. It is well settled that an appeal flows from a statute. In the present case the provision of appeal is governed by the language of Section 378 (4) Cr.P.C., which expounds that if a judgement of acquittal is passed in a case which has been instituted upon a complaint, then the complainant has to file an application before the High Court, seeking special leave to appeal for the said judgement. Only after the leave to has been granted by the High Court can the complainant file an appeal. Section 378 (4) Cr.P.C. reads as under:—

“(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.”

7. The facts of the present case are squarely covered by the ratio of law laid down in ***Damodar S. Prabhu v. Syed Baba Lal 2010(2)R.C.R.851*** by the Hon’ble Supreme Court. Para 14 of the said judgement is relevant for our consideration, which states as follows: -

“14. It may be noted here that Section 143 of the Act makes an offence under Section 138 triable by a Judicial Magistrate First Class (JMFC). After trial, the progression of further legal proceedings would depend on whether there has been a conviction or an acquittal.

In the case of conviction, an appeal would lie to the Court of Sessions under Section 374(3)(a) of the Criminal Procedure Code; thereafter a Revision to the High Court under Section 397/401 of the Criminal Procedure

Code and finally a petition before the Supreme Court, seeking special leave to appeal under 136 of the Constitution of India. Thus, in case of conviction there will be four levels of litigation.

In the case of acquittal by the JMFC, the complainant could appeal to the High Court under Section 378(4) of the Criminal Procedure Code, and thereafter for special leave to appeal to the Supreme Court under Article 136. In such an instance, therefore, there will be three levels of proceedings.”

8. For sagacity, it is imperative to assert that the proviso to Section 372 of the Cr.P.C would not be attracted in the present case. The proviso to Section 372 Cr. P.C. confers upon the victim, as defined in Section 2(wa) of Cr.P.C., who is the complainant in the instant case, the right to prefer an appeal against an order of the criminal Court in the following three cases i.e.,

1. Acquittal of the accused person;
2. Conviction of the accused person for a lesser offence; and
3. Imposition of inadequate compensation.

9. In the present case, since the respondent no. 2 is the victim-cum-complainant, there may naturally arise a doubt as to which one of the two sections would be applicable in such a situation. However, this inconsistency has been resolved by a Full Bench of this Court in the case titled, ***M/s. Tata Steel Ltd. v. M/s. Atma Tube Products Ltd. : 2013(2) R.C.R.(Criminal) 1005*** wherein a 3 Judge bench, speaking through Surya kant, J. observed as follows:

“79. Section 378(4) of the Code enables a complainant to prefer appeal against acquittal of the accused provided that the High Court grants 'special leave' to such appeal. The Legislature has imposed stringent condition on the maintainability of appeal against an order of acquittal in a complaint-case, for the acquittal by the trial court reinforces the presumption of

innocence in favour of the accused who has earned acquittal in a case where the complainant himself/herself was the prosecutor unlike the 'victim' in a police-case who does not have any say in the trial. Such being the legislative intentment, there cannot be any scope to doubt that the 'complainant' of Section 378(4) who has failed to establish the complicity can assail such acquittal only with the 'special leave' of the High Court under Section 378(4) only. The fact that the Legislature has brought no changes in this sub-Section fortifies its policy to retain the same legal position as it existed before the Amendment Act, 2008.

80. However, if such a 'victim-cum-complainant' succeeds in bringing the guilt home against the accused and establishes his/her 'victimisation' but is aggrieved at the conviction for a lesser offence or imposition of inadequate compensation, he/she shall be entitled to invoke the proviso to Section 372 of the Code. We say so for the reason that in such a case the accused no longer enjoys the protection of presumed innocence. The proven 'victim' also has no other remedy to assail the conviction for a lesser offence or imposition of inadequate compensation except the proviso to Section 372. Any different construction would discriminately leave his/her wrong without a remedy. The victims at post- conviction stage constitute one homogenous class and deserve to be treated alike. In such like cases decided by a Magistrate, even the accused has remedy to file appeal to the Sessions court under Section 374(3) of the Code.”

10.

In view of the observations made above and the judgements cited, the impugned judgment dated 10.12.2012 passed by learned Additional Sessions Judge (FTC), Rupnagar is set aside on account of being non maintainable.
11.

Accordingly, the present petition is allowed.

20.02.2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No