

**CRR-108-2013****251 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRR-108-2013 (O&M)****Date of decision: 7th August, 2024**

Harvinder Singh

...Petitioner(s)

Versus

Rajinder Singh

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

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

Mr. N.S. Goraya, Advocate for the respondent.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed by the petitioner against the judgment of conviction and order of quantum of sentence both dated 09.01.2013 passed by learned Additional Sessions Judge (FTC), Patiala in criminal appeal No. 94 of 2011 titled as 'Rajinder Singh Vs. Harvinder Singh' thereby allowing the appeal as filed by the present respondent against the judgment of trial Magistrate dated 23.07.2011 passed in complaint No. 290 of 2010 titled as 'Rajinder Singh Vs. Harvinder Singh'.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the respondent Rajender Singh had filed the aforementioned criminal complaint under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act') on the allegations that the present petitioner had issued a cheque bearing No. 106298 dated 03.08.2010 for a

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sum of Rs. 60,000/- in his favour to discharge his legal liability. The said cheque had been presented for encashment before the banker of the respondent but was returned as dishonored with the remarks 'account closed'. The petitioner failed to pay the aforementioned amount despite receipt of statutory notice. The aforementioned complaint was dismissed by the learned Magistrate and the present petitioner was acquitted of the allegations as levelled against him by observing that the respondent-complainant had failed to prove that the cheque in question was issued in discharge of his existing legal liability.

3. It has been revealed from the record that feeling dissatisfied, the respondent preferred the aforementioned criminal appeal No. 94 of 2011 against the order dated 23.07.2011 as passed by the learned Magistrate and vide judgment dated 09.01.2013, the appeal was allowed, the findings of the learned Magistrate were reversed, the petitioner was held guilty and convicted for commission of offence punishable under Section 138 of NI Act and was sentenced to undergo rigorous imprisonment for a period of one year and to pay an amount of Rs. 60,000/- as compensation. The period of detention already undergone by the petitioner was ordered to be set off against the substantive sentence.

4. Assailing the order passed by learned Appellate Court, it is argued by learned counsel for the revisionist-petitioner/accused that since he being accused in the complaint in question was acquitted vide judgment dated 23.07.2011, hence, the appeal against the same was to be filed directly before this Court as no appeal before the Sessions Court was maintainable

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but the same had not only been entertained but had also been allowed by it. The sole argument raised by him is that the impugned judgment passed by learned Additional Sessions Judge (FTC), Patiala is not sustainable as the same was not vested with any jurisdiction in law to entertain the said appeal in view of the provisions of Section 378(4) of Cr.P.C.

5. Learned counsel for the respondent on the other hand, submitted that since no objection as to maintainability of jurisdiction of the learned Additional Sessions Judge (FTC), Patiala had been taken by the petitioner at the relevant point of time, therefore, he was not competent to take the same at this stage. It is further argued that the findings given by the learned Additional Sessions Judge (FTC), Patiala are otherwise correct, suffering from no manifest injustice or illegality and therefore, deserve to be affirmed.

6. I have heard learned counsel for both the parties at considerable length and have gone through the record carefully.

7. On giving thoughtful consideration to the contentions raised by the parties, in my considered opinion, the only question that required consideration before this Court is that whether appeal against the judgment of acquittal passed by the Magistrate in a complaint case was maintainable before the Court of Sessions Judge or not. This issue revolves around the relevant provisions of code of criminal procedure providing remedy of appeal against the acquittal. Unquestionably, the remedy of appeal being a statutory remedy has to be availed by any person in accordance with statutory provisions. A reference to Section 378 of the Code is relevant for this purpose. Under sub-Section 4 of this Section, if an order of acquittal is

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passed in any case instituted upon complaint and the High Court, on an application moved to it by the complainant in this regard, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to High Court. The Hon'ble Supreme Court had expatiated upon this issue in case cited as '*Subhash Chand Vs. State (Delhi Administration) (2013) 2 SCC 17*', by observing that an appeal by complainant against an order of acquittal is a category by itself under Section 378(4) of the Code that specifically makes provision of order of acquittal passed upon complaint and held that in such case, if the complainant makes an application to the High Court and the High Court grants special leave to appeal, the complainant may present such appeal to the High Court. It was further observed that if special leave is not granted to the complainant to appeal against an order of acquittal, the matter must end there. While further observing that once it is the case instituted on a complaint and an order is passed whether the offence is punishable or not punishable, cognizable or non-cognizable, the complainant can file an application under Section 378(4), for special leave to appeal against it in the High Court but he cannot file such appeal in the Sessions Court.

8. In view of the observations as made in the above cited case with regard to the applicability of Section 378(4) of Cr.P.C., it is crystal clear that an appeal against the judgment of acquittal passed by the trial Court arising out of a complaint case is not maintainable before the Sessions Court and the right to file such an appeal falls only under the provisions of Section 378(4) of the Code of Criminal Procedure. It may be mentioned here that under

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Section 372 of the code, the victim has right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser/minor offence or imposing inadequate compensation and such appeal lies to the Court to which an appeal ordially lies against the order of conviction of such Court but the said proviso which was inserted in the Code by way of an amendment by Act 5 of 2009 can not be interpreted so as to disturb or surpass and then to mutilate the already existing statutory arrangement provided by Section 378 of Cr.P.C. which deals with independent category of complaint cases. This amendment has simply introduced a new class of persons, the victim of offence who have been empowered and have been conferred with the right to file appeal against the undesirable acquittals, keeping in view the fact that the matters where State was prosecuting agency, it was only the said agencies which had the right to file appeal against the acquittals but the actual victim himself had no say in the matters. In ***'Smt. P. Vijaya Laxmi Vs. Smt. S.P. Sravana and another, 2018 CriLJ 1338'***, it was observed by High Court of Andhra Pradesh that a complainant in a case under Section 138 of NI Act can not be categorized as 'victim' in terms of definition under Section 2(wa) of the Code of Criminal Procedure and stands excluded therefrom, by virtue of the fact that the accused in such case is subject to a charge and thus he is not entitled to prefer an appeal under the provisions of Section 372 of the Code. His only remedy is to prefer an appeal under Section 378(4) of the Code, with special leave against the order of acquittal.

9. In view of the above, it can be reasonably considered that

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Section 372 of the Code provides to a victim, the right to prefer an appeal only in cases arising out of police report. The limited remedy available to such a victim when the trial Court acquitted the accused, was to prefer a revision under Section 372 of the Code which at best would only result in setting aside of the acquittal and a consequential remand but not a conviction whereas, in a case of acquittal in private complaint, the remedy is to file an appeal to the High Court with special leave under Section 378(4) of the Code.

10. As such, it emerges that a complainant in a case arising out of private complaint, who is already provided the right of appeal under Section 378(4) of the Code, cannot be permitted to take recourse to Section 372 of the Code. Therefore, the appeal as filed by the respondent against acquittal of the petitioner before the Court of Sessions was certainly not maintainable. In view of this position of law, this Court has no hesitation to hold that the impugned judgment as passed by learned Additional Sessions Judge (FTC), Patiala is liable to be set aside on this very ground. Accordingly, the same is hereby set aside.

11. However, it is simultaneously made clear that since this Court has not touched upon the merits of the allegations made in the complaint against the revisionist-petitioner by purposely avoiding the same for the reason that the same might cause any prejudice to either of the parties while keeping in view the fact that this revision petition had been filed way back in the year 2013 and a period of more than eleven and half years has been passed from the date of filing this petition till date, therefore, in order to

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protect the interest of the respondent as well, it is ordered that the respondent-complainant shall be at liberty to file an appeal against the judgment of the learned trial Court before this Court by invoking the provisions of Section 378(4) of Cr.P.C. within a period of two months from the date of receipt of certified copy of this order and the period during which this petition has remained pending shall be excluded for the purpose of counting the limitation period.

12. A copy of this order be sent to the trial Court forthwith for intimation.

[MANISHA BATRA]
JUDGE

7th August, 2024

Parveen Sharma

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No