HIGH COURT OF JAMMU & KASHMIR AND LADAKH
ATJAMMU

SLA No.136/2016

Reserved on: 29.09.2026
Pronounced on: 06.11.2026
Uploaded on: 06.11.2026

Dalbeer Singh S/O Late Sarwan Singh aged 41 years R/O Paloura, Tehsil & District Jammu …Petitioner(s)

Through: Mr. A. K. Shan, Advocate

v/s

1. Raghubir Singh
2. Hans Raj Singh, both sons of Gandharb Singh.
3. Rajinder Singh,
4. Rajvir Singh, both sons of Raghubir Singh.
5. Surinder Singh alias Romesh Singh S/O Hans Raj Singh, all residents of Patta Bohri, Jammu.
6. Pardeep Sharma alias Sanjeev Sharma S/O Ram Lal Sharma R/O Subash Nagar, Jammu.
7. Mohinder Pal Singh alias Sonu alias Raj Kumar S/O Naresh Singh R/O 518, Rehari Colony, Jammu.
8. State through P/S Janipur.

.....Respondent(s)

Through: Mr. J. P. Gandhi, Advocate with
Mr. Ashok Singh, Advocate
Mr. Nipun Gandhi, Advocate &
Mr. Sonam Sharma, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE YASH PAUL BOURNEY, JUDGE

JUDGMENT

Per: Y. P. Bourney-J

01. Petitioner, who happens to be one of the injured/victims of alleged murderous assault, has filed this petition under section 417(2) of the Code of Criminal Procedure for seeking special leave to file an appeal against

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the order of acquittal dated 26.07.2016 drawn by learned 1st Additional Sessions Judge, Jammu.

02. The occurrence is alleged to have happened on 17.09.2005 and a report came to be lodged by one Swarn Singhwith Police Station Janipur alleging therein that his son Sohan Singh @ Sonu had purchased a piece of land at Chohana, Ploura and was going to look after the same when he came to be attacked by accused/respondents with sharp edged weapons and sticks who were having common criminal intention to murder but was saved by the timely intervention of the some passers by and was brought and undergoing treatment at GMC Hospital, Jammu. It led to the registration of FIR No.94/2005 for the offences punishable under Sections 307/326/147/148/149/34 Ranbir Penal Code and 4/25Indian Arms Act and consequent setting into motion of investigation culminating into filing of the charge-sheet in due course on 06.08.2007, which upon committal eventually came to be assigned to the learned 1st Additional Sessions Judge, Jammu. The learned trial Court after hearing both sides and going through the charge-sheet and material documents produced in support thereof, held the charges against respondents to be *prima facie* made out for the offences punishable under Sections 307/326/147/148/149/34 Ranbir Penal Code and 4/25 Indian Arms Act. They were handed down the charges accordingly, however, accused pleaded not guilty. So, prosecution was called upon to produce and examine its witnesses for proving the charges. Prosecution, during 7 ½ years of time and availing of numerous opportunities to produce the witnesses could examine only three witnesses namely PW-2 Sohan Singh, who was examined in-part and PW-7, Ranjeet Singh and PW-15 Dr. Sanjay Bhaton 18.05.2016.

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03. It is pertinent to mention that on the day when PW-2 Sohan Singh,who happened to be one of the victims, was examined in-chief, an application filed by the defense for deferring the cross-examination of the said witness till the examination of his brother-Dalbeer Singh**,** the other victim was brought to the notice of court and the cross-examination was deferred. It, however, remained incomplete since the other injured was never produced and examined.

04. It is indeed disturbing in the given scenario, the way trial has proceeded and ended. Section 417 of the Code of Criminal Procedure Svt. 1989, which is *pari-materia* to Section 378 of the Central Code, reads as:

> "**417.Appeal in case of acquittal** (1)Subject to the provisions of sub-section (4), the Government may, in any case, direct the Public Prosecutor to present an appeal to:
>
> (a) the Court of Sessions from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
>
> (b) the High Court from an original or appellate order of an acquittal passed by any Court, not being an order under clause (a) or an order of acquittal passed by Court of Sessions in revision:
>
> Provided that no appeal to the High Court under sub-section (1) shall be entertained except with the leave of High Court.
>
> (2)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, grant special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.
>
> (3)No application under sub-section (2) 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.
>
> (4)If, in any case, the application under sub-section (2) 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 section (1).

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> Explanation-For the purposes of this section the expression "Public Prosecutor" shall include and shall be deemed always to have included the Advocate General, Senior Additional Advocate General, Additional Advocate General, Government Advocate and Deputy Advocate General."

05. The question whether the victim has a right and could file an appeal against the order of acquittalis no more *res integra* having been set at rest by the Hon'ble Apex Court in '**Mahabir & Others Vs. The State of Haryana**' [Criminal Appeal Nos; 5560-5561 of 2024 D.O.D. 29.01.2025] reported as **2025 INSC 120** and as such, must not detain us anymore. In the said case**,** Hon'ble Apex Court examined at great length the provisions of the Code of Criminal Procedure dealing with the appeal, the judicial precedents and also referred to the reports of the Law Commission on the subject as well as the amendments in law made from time to time.There has been a paradigm shift in the administration of criminal justice system from penology to victimology focusing equally on the victims, who actually suffer the injury/wrong, [Refer 154th Report of the Law Commission of India]. Position of law has been summed up thus:

> (a) The appeal being a statutory remedy is available to the person/entity to whom the Statute grants the right and no one else. Since Section 404 of the local Code, which corresponds to Section 372 of the Central Code, specifically provided that no appeal shall lie from any judgment or order of a criminal court, except as provided by this Code or by any other law for the time being in force. Pertinently, a proviso came to be added to Section 372 of the Central Code by Amending Act 05 of 2009 thereby making provision that victim shall have a right to prefer an appeal against any order passed by the Court acquitting accused or convicting for a lesser offence or imposing inadequate compensation. However, no such amendment was affected in the local Code even thereafter. Therefore, the right to appeal being a substantive right was held to be not available to the victim(s) in the local Code as well as in the Central Code before the amendment made in 2009.

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(b) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(c) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(d) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(e) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(f) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospectiveinoperation, unless otherwise provided, either expressly or by necessary implication." (Emphasis supplied)

06. In light of the afore-stated clear position of law, petitioner has no right to maintain the appeal under Section 417(2) of Code of Criminal Procedure, since it was not a case registered on a private complaint but on the charge-sheet filed by the police even though he happened to be one of the victims. Therefore, his plea for leave to file the appeal against the acquittal is not legally tenable and hence cannot be accepted. So, his petition for leave to file appeal merits rejection, but at the same time, after having examined the record of the trial Court, it is a fit case to exercise the inherent jurisdiction vested in this Court under Section 561-A CrPC so as to redress the complete failure of process of law occasioned by the inaction of the trial Court in securing the presence of at least the injured, material witnesses thereby negating the very purpose of trial. It is indeed a matter of grave concern that not even the victims have been examined during the period of 7 ½ years for which the prosecution and investigating

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agency has squarely to be blamed. Learned APP has been seeking opportunities leisurely and the investigating agency also abdicated its responsibility once the charge sheet was filed and the trial Court has remained a mute spectator all along. So, each one has contributed in one way to the failure of process of law. Therefore, it is the fittest case to exercise the inherent jurisdiction vested in this court under section 561-A of the erstwhile state which was in vogue at the relevant time and to re-open and remand back the case for conducting the trial in accordance with law expeditiously since the operation of law should not and cannot be allowed to subverted by anyone. The trial court shall make every endeavor to conclude the trial at the earliest, preferably within six months from the receipt of the copy of the order.

07. Disposed off accordingly.

(Yash Paul Bourney)
Judge

(Sanjeev Kumar)
Judge

JAMMU
06.11.2026
Narinder

Whether order is speaking? Yes/No
Whether order is reportable? Yes/No

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