

(2023) 06 SHI CK 0040

High Court Of Himachal Pradesh

Case No: CR.MMO No. 596 of 2022

Dinesh Chander
Sharma

APPELLANT

Vs

Karanjit Singh & Anr

RESPONDENT

Date of Decision: June 19, 2023

Acts Referred:

Constitution Of India, 1950 " Article 227#Code Of Criminal Procedure, 1973 " Section 200, 378, 378(4), 397#Indian Penal Code, 1860 " Section 34, 323, 352

Citation: (2023) 06 SHI CK 0040

Hon'ble Judges: Satyen Vaidya, J

Bench: Single Bench

Advocate: Lakshay Parihar

Final Decision: Disposed Of

Judgement

Satyen Vaidya, J

1. Petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India and has made a prayer in following terms:-

“It is, therefore, humbly prayed that this petition may kindly be allowed with exemplary costs by setting aside the aforementioned order dated

21.05.2022 passed by the learned Additional Sessions Judge (1), Una, in the above mentioned Revision No. 33/2021 thereby setting aside the judgment

and order dated 1.10.2021 passed by the Court of CJM, Una in the said complaint No. RBT 1-I-13/05 for the ends of justice. It is further prayed that

the unfounded disparaging remarks passed against the petitioner by the Ld. CJM in the order dated 13.09.2021 and judgment dated 1.10.2021

delivered in the aforesaid complaint case be ordered to be expunged in the interest of justice. It is also prayed that the concerned records of both the

lower Court be called for the proper adjudication of this petition for the ends of justice.

2. Petitioner filed a complaint under Section 200 of the Code of Criminal Procedure (for short "the Code") against the respondents alleging

commission of offences under Sections 352 and 323 read with Section 34 of the IPC against them. Learned Chief Judicial Magistrate, Una, tried the

complaint as complaint case RBT No. 65-II-16/05 and vide judgment dated 01.10.2021 acquitted both the respondents of all the charges.

3. Petitioner assailed the judgment of acquittal passed by the learned Chief Judicial Magistrate, Una, by filing revision petition under Section 397 of the

Code. Learned Additional Sessions Judge (1), Una, vide impugned judgment dated 21.05.2022 has dismissed the revision petition so filed by the

petitioner as Criminal Revision No. 33 of 2021. The ground for rejection of revision petition is its non maintainability. It has been held that the judgment

passed by learned Chief Judicial Magistrate in complaint No. RBT 65-II-16/05 on 1.10.2021 was a judgment of acquittal and could be assailed by filing

an appeal before this Court under Section 378 (4) of the Code.

4. I have heard the petitioner as also the learned counsel for the respondents and have also gone through the record carefully.

5. Petitioner while appearing in person before this court strenuously contended that the impugned judgment dated 21.05.2022 passed by the learned

Additional Sessions Judge (1), Una, in Criminal Revision No. 33 of 2021 was not sustainable on the grounds, firstly, that there were cross cases

between the parties and decision in complaint No. RBT 65-II-16/05 without deciding the cross case, not only violated the mandate of law but also has

caused serious prejudice to the valuable rights of the petitioner. According to the petitioner, his defence in the cross case, where he is accused, is

likely to suffer adversely in all probabilities. Secondly, the petitioner had not been afforded sufficient opportunity by learned CJM, Una, for presenting

his case.

6. Petitioner has placed on record order dated 13.09.2021 passed by the learned Chief Judicial Magistrate, Una, in complaint RBT No. 65-II- 16/05.

Its operative portion reads as under:-

“10. So in view of these facts and circumstances of the case, the prayer of the complainant is rejected. In view of the peculiar circumstances of

the case and conduct of the complainant especially, I find it appropriate to direct the parties to file written arguments in the present case. It is also

directed that in case of failure of filing written arguments, the arguments shall be deemed to be heard on behalf of defaulting party. Written arguments

must be filed on or before 27.09.2021. Further it may be mentioned that aforementioned State case has been fixed for final arguments for 1.10.2021

vide order of even date. When arguments of the case will be heard. The record of this case will be available in the court. Defence, if finds convenient

may also file written arguments in that case as well, so that both cases may be decided on the same day. Application stands disposed of. Be tagged

with case file.

7. It appears that complaint RBT No. 65-II-16/05 came to be decided by the learned Chief Judicial Magistrate, Una, on 01.10.2021, whereas the case

No. RBT 32-II-16/2006, titled State versus Dinesh Chander Sharma remained pending.

8. The petitioner has also placed on record order dated 1.10.2021 passed by learned Additional Sessions Judge (1), Una, in Criminal Revision No.30 of

2021. It is further revealed that Criminal Revision No. 30 of 2021 was preferred by the petitioner against above noted order dated 13.09.2021 passed

by learned Chief Judicial Magistrate, Una.

9. The fate of Criminal Revision No. 30 of 2021 is not known. In such view of the matter, the prayer made in the instant petition in respect of order

dated 13.09.2021 passed by learned Chief Judicial Magistrate, Una, in complaint RBT No. 65-II-16/05 cannot be considered. As regards, the prayer to

set aside the impugned order dated 21.05.2022 passed by the learned Additional Sessions Judge (1), Una, in Criminal Revision No. 33 of 2021 is

concerned, it deserves rejection as the revisional court has committed no illegality in passing the said order. The impugned order dated 21.5.2022 also

cannot be said to have been passed without jurisdiction. Learned Chief Judicial Magistrate, Una, vide judgment dated 01.10.2021 passed in Complaint

RBT No. 65-II-16/05 has acquitted the respondents of the charges by discussing the merits of the case. Section 378 of the Code provides for appeal

in case of acquittal. Sub-section (4) of Section 378 of the Code reads as under:-

“378. Appeal in case of acquittal.

(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.”

10. In the case in hand, the criminal prosecution was launched upon a complainant and, therefore, the petitioner being the complainant had specific

remedy under sub-section (4) of Section 378 of the Code noted above. Had the petitioner availed the remedy under sub-section (4) of Section 378 of

the Code, he could have raised all the grounds against the judgment of acquittal passed by the learned Chief Judicial Magistrate, Una, on 01.10.2021 in

Complaint RBT No. 65-II-16/05, as had been raised by him by way of revision.

11. In the light of above discussion, there is no merit in the petition and the same is dismissed. Needless to say that in case the petitioner still avails the

appropriate remedy under law to assail the judgment dated 01.10.2021 passed by the learned Chief Judicial Magistrate, Una, in Complaint RBT No.

65-II-16/05, he shall be at liberty to raise all available grounds in accordance with law. The petition stands disposed of, so also, the pending

applications, if any.