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(2013) 07 P&H CK 0648

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M 28332 of 2012

Piara Singh APPELLANT

Vs

Daljit Singh RESPONDENT

Date of Decision: July 31, 2013

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 372, 378(4), 397, 401#Negotiable Instruments Act, 1881 (NI) â€" Section 138

Citation: (2013) 07 P&H CK 0648

Hon'ble Judges: Rekha Mittal, J

Bench: Single Bench

Advocate: Amandeep Soni, for the Appellant;

Final Decision: Partly Allowed

Judgement

Rekha Mittal, J.
The petitioner prays for quashing of complaint No. 196 dated 28.07.2007 "Daljit Singh v. Piara Singh" (Annexure P1),

filed before the Judicial Magistrate Ist Class, Phagwara, District Kapurthala and order dated 07.08.2012 (Annexure P4), passed by the Additional

Sessions Judge, Kapurthala, whereby the complaint filed by the respondent, is ordered to be restored. Counsel for the petitioner submits that the

respondent filed a complaint u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as "the 1881 Act"), on the premise that

the petitioner had issued a cheque of Rs. 2,50,000/- dated 19.05.2007 in favour of the respondent to discharge his liability and the said cheque

was dishonoured with remarks "funds insufficient" on its presentation to the Bank and the petitioner failed to make payment of the cheque amount

within the stipulated period, after receipt of notice, issued by the complainant. The complaint of the respondent was dismissed by the Court of

Judicial Magistrate Ist Class, Phagwara, vide order dated 16.03.2011 (Annexure P2). The respondent filed revision petition before the Court of

Additional Sessions Judge, Kapurthala and the revisional Court exceeded jurisdiction, accepted the revision petition, set aside order of acquittal

and restored the complaint case, which is now pending before the trial Magistrate. It is argued with vehemence that the order passed by the

Additional Sessions Judge, Kapurthala, is illegal, therefore, cannot be sustained as only an appeal is maintainable before this Court u/s 378(4)

Cr.P.C. against acquittal in a complaint case. In support of her contentions, she has placed reliance upon "R.P.G. Transmission Limited v. Sakura

Seimitsu (I) Limited and others", 2005 (4) R.C.R. (Cri) 440 (Delhi High Court) and " Om Gayatri and Co. and Others Vs. State of Maharashtra

and Another,

2. Daljit Singh, Respondent failed to appear, despite service, therefore, there is no counter to the submissions made by counsel for the petitioner.

3. I have heard counsel for the petitioner and gone through the case file.

4. A perusal of the records reveal that the criminal complaint filed by the respondent u/s 138 of the 1881 Act was dismissed by the trial Court in

the absence of the complainant, on 16.03.2011. A relevant extract from order dated 16.03.2011, passed by the Judicial Magistrate Ist Class,

Phagwara, is quoted thus:-

The complaint called several times during the day. It is 12:00 pm, but none has come present on behalf of complainant. The same be called after

lunch.

Complaint has been called after lunch, but none has appeared on behalf of complainant. Now, it is 3:55 pm. As such, the instant complaint is

hereby dismissed in default. Accused stands acquitted. His bail bonds and surety bonds stands discharged. File be consigned to the record room

Phagwara.

5. A perusal of the order leaves no manner of doubt that the complaint was ordered to be dismissed for want of prosecution and the accused was

ordered to be acquitted and his bail bonds and surety bonds were ordered to be discharged.

6. The only question for consideration before this Court is "whether the respondent could maintain a revision before the Court of Sessions or this

Court in exercise of jurisdiction u/s 397 /401 Cr.P.C."

7. The question is no longer res integra as it already stands decided in the aforesaid two judgments relied upon by counsel for the petitioner. It is

appropriate to mention that a Division Bench of this Court in M/s. Tata Steel Ltd. Vs. M/s. Atma Tube Products Ltd. and Others, in para 6 of the

judgment formulated one of the questions to the following effect:-

(B) Whether "complainant" in a private complaint-case, who is also the "victim" and the "victim" other than the "complainant" in such cases are

entitled to present appeal against the order of acquittal under proviso to Section 372 or have to seek "special leave" to appeal from the High Court

u/s 378(4) CrPC?

8. The aforestated question along with other questions, formulated in para 6, were answered in para 139 of the judgment. However, answer to

question (B) reads as follows:

(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 u/s 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.

9. In view of the authoritative enunciation of law laid down by this Court, the complainant in a complaint case shall have the remedy of appeal only

against acquittal, u/s 378(4) of the Code. As revision petition before the Court of Sessions is not maintainable against order of dismissal of a

private complaint and acquittal of the accused, the order impugned, passed by the learned Additional Sessions Judge, is clearly beyond jurisdiction

and nullity. In view of the above, the petition is partly allowed and order dated 07.08.2012, passed by the Additional Sessions Judge, Kapurthala,

allowing the revision petition of the respondent, ordering restoration of the complaint, dismissed in default, is set aside.