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**(2011) 01 MP CK 0058**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Criminal Revision No. 944 of 2010

Dharmveer Singh Tomar

APPELLANT

Vs

Shri Ramraj Singh Tomar

RESPONDENT

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**Date of Decision:** Jan. 17, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 372, 374(3), 378(4), 397, 401
- Negotiable Instruments Act, 1881 (NI) - Section 138

**Citation:** AIR 2011 MP 314 : (2011) 1 Crimes 647 : (2011) ILR (MP) 1085 : (2011) 1 MPHT 491 : (2011) 1 MPJR 276 : (2011) 2 MPLJ 643 : (2011) 3 RCR(Criminal) 607 : (2011) 3 RCR(Criminal) 607

**Hon'ble Judges:** Indrani Datta, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

Indrani Datta, J.

This revision has been preferred by applicant/complainant against order dated 31.8.2010 passed by Fourth Additional Judge to First Additional Sessions Judge, Gwalior, in Criminal Appeal No. 266/2010, whereby appeal preferred against judgment dated 28.1.2010 passed in Criminal Case No. 2302/2008 acquitting Respondent from the charge u/s 138 of the Negotiable Instruments Act, (for brevity the Act) is dismissed.

Facts stated in brief are that applicant/complainant filed a complaint u/s 138 of the Act before JMFC, Gwalior, which was registered as Criminal Case No. 2302/2008. In that case, Respondent/accused was acquitted by judgment dated 28.1.2010 from the charge u/s 138 of the Act. Against that judgment of acquittal, applicant/complainant preferred Criminal Appeal No. 266/2010 which was dismissed

by learned Appellate Court vide order dated 31.8.2010 on two grounds; firstly that appeal is time barred and secondly appeal is not maintainable. Against this order of Appellate Court dismissing the appeal, applicant/complainant has preferred this revision.

It is contended by learned Counsel on behalf of the applicant that order of learned Appellate Court is illegal, arbitrary and contrary to law and deserves to be set aside. It is further contended that as per the provisions of Section 372 of Cr.P.C., victim can prefer an appeal against any judgment or order passed by the criminal Court acquitting the accused before Session Court. Hence, applicant has rightly preferred appeal in Sessions Court and learned Court below has erred in holding that appeal is not maintainable u/s 372 of Code of Criminal Procedure. It is further submitted that Section 378(4) of Code of Criminal Procedure prescribes that complainant can only prefer an application for leave to appeal and if such leave is granted, then such appeal lies before High Court. Under the provisions of Section 378(4) of Code of Criminal Procedure right to file appeal depends upon the discretion of the Court, while Section 372 of Code of Criminal Procedure gives an absolute right to the victim to prefer an appeal against the judgment of acquittal in Session Court.

It is further submitted by learned Counsel that judgment was passed on 28.1.2010 and applicant could not receive information about the judgment as he went to Shivpuri. When he came back from Shivpuri and was intimated on 10.5.2010 about the result of the case, he applied for getting certified copy of the judgment and got it on 29.5.2010. Thereafter, he preferred appeal on 2.6.2010. In such circumstances, there are sufficient reasons for condoning the delay, and hence, learned Trial Court has erred in holding that applicant failed to show sufficient cause for condoning the delay. It is further submitted that order of learned court below is not sustainable and is to be set aside and matter be remanded back to learned Trial Court for deciding afresh on its merit.

Heard learned Counsel for the applicant and perused the record of learned Trial Court.

In the present case, the points that arise for consideration are that (i) Whether in case of acquittal by Judicial Magistrate First Class, complainant can prefer appeal to Sessions Court u/s 372 of Code of Criminal Procedure ? and (ii) Whether in case of acquittal by Judicial Magistrate First Class complainant can only prefer appeal before High Court u/s 378(4) of Code of Criminal Procedure and cannot prefer appeal u/s 372 of Code of Criminal Procedure ?

In order to examine the scope of Sections 372 and 378(4) of Code of Criminal Procedure and to specify the meaning of word "victim", which is explained in Section 2(wa), these Sections need to be quoted, which reads as under:

372. No appeal to lie unless otherwise provided.-No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any

other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

"2. Definitions.-In this Code, unless the context otherwise requires.-

(a) to (w) .....

(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir."

(x) to (y) ....."

"378. Appeal in case of acquittal.-(1) to (3)....

(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.

(5) to (6) ...."

On a bare reading of Section 372 of Cr.P.C., it is crystal clear that this Section nowhere specifies that victim also includes complainant of complaint case. In Section 372 of Code of Criminal Procedure the word used is victim and in Section 378(4) of Code of Criminal Procedure the word used is complainant and this Section applies to complaint case.

In the case of [Damodar S. Prabhu Vs. Sayed Babalal H.](#), Hon"ble Apex Court has held in para 14 as under:

It may be noted here that Section 143 of the Act makes an offence u/s 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 Session u/s 374(3)(a) of the Cr.P.C.; thereafter a Revision to the High Court u/s 397/401 of the Code of Criminal Procedure 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 u/s 378(4) of the Cr.P.C., 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.

Considering this legal aspect and in the light of amended provision and decision of Hon"ble Apex Court, in my considered opinion, the only remedy available to the applicant/complainant of complaint case is to prefer appeal against the judgment of acquittal before High Court u/s 378(4) of Code of Criminal Procedure

In view of the above observation, there is no necessity to discuss anything on the point of limitation, as the appeal has rightly been rejected by learned Appellate Court on the ground of non-maintainability.

This revision sans merit and is dismissed accordingly.