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(2023-1)209 PLR 371

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anoop Chitkara

O.K. FINANCE COMPANY and another – Petitioners,

Versus

SURJIT KUMAR – Respondent.

CRR No.1912 of 2012 (O&M)

Negotiable Instruments Act, 1881 (26 of 1881) [Section 138](#) – When a complaint under section 138 of the Negotiable Instruments Act, 1881, is allowed by the trial Court, then the remedy for filing an appeal under Section 374(3) of the Code of Criminal Procedure, 1973, would lie before the Court of Session; however, in case the complaint is dismissed, then the complainant may apply for leave to appeal under Section 378(4) CrPC, and such appeal would be heard only when the High Court grants leave – When Section 378(4) CrPC explicitly provides for leave to appeal against the dismissal of a complaint, then the legal remedy is to take resort to file an application for leave to appeal before the High Court and not to bypass the same by taking resort to Section 372 CrPC, which is introduced for an entirely different purpose.

Mr. Yagsmant Attri, for Mr. Rajinder Goyal, for the petitioner (s).

Mr. Varun Mittal, for the respondent.

Anoop Chitkara, J. - (29th July, 2022) – Challenging dismissal of a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the Act”) and the order passed in an appeal filed under Section 372 CrPC, the complainant has come up before this Court under Section 401 CrPC.

2. On dishonor of cheque given by the respondent-accused, the petitioner- complainant had launched prosecution against him under Section 138 of the Act. The complainant alleged that to settle the outstanding loan amount of Rs.87,350/-, the accused had handed over a cheque of Rs.80,000/- in favour of the complainant and had also promised to pay the balance amount of Rs.7,350/- within five days after realization of the cheque. However, on the presentation of the cheque with the bank, it was dishonored with the comments “insufficient funds.” The demand notice issued to the accused to make the payment was

also non-responsive. Consequently, the holder of the cheque filed a complaint under Section 138 of the Act, but the same was dismissed vide order dated 20.11.2010 passed by Sub Divisional Judicial Magistrate, Samana. Feeling aggrieved by the dismissal of the complaint under Section 138 of the Act, the complainant filed an appeal under Section 372 CrPC before learned Additional Sessions Judge (Fast Track Court), Patiala. The head note of the appeal reads as under: –

“Appeal under section 372 CrPC against the Judgment dated 20.11.2010 passed by the Court of Sh. Kuldip Singh, PCS, Sub- Divisional Judicial Magistrate, Samana, in Criminal Complainant no.10 of 1.2.2010 under section 138 of the Negotiable Instruments Act whereby, the complaint has been dismissed and the accused has been acquitted from the charges against him under section 138 of the Negotiable Instruments Act.”

3. Learned Additional Sessions Judge (Fast Track Court), Patiala vide judgment dated 11.5.2012, dismissed the said appeal on merits, holding that the complainant failed to make out a case that the cheque was issued to discharge the existing legal liability.

4. Challenging the aforesaid judgment, the complainant had filed the instant criminal revision petition under Section 401 CrPC on 2.7.2012.

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

6. When a complaint under section 138 of the Negotiable Instruments Act, 1881, is allowed by the trial Court, then the remedy for filing an appeal under Section 374(3) of the Code of Criminal Procedure, 1973 (CrPC), would lie before the Court of Session; however, in case the complaint is dismissed, then the complainant may apply for leave to appeal under Section 378(4) CrPC, and such appeal would be heard only when the High Court grants leave.

7. In the present case, since the complaint filed by the complainant was dismissed, resulting in the acquittal of the accused, the legal remedy for the complainant was to file an application for leave to appeal under Section 378(4) CrPC; however, the complainant instead of resorting to the remedy of seeking leave to appeal under Section 378(4) CrPC, filed an appeal under Section 372 CrPC before the Court of Session.

8. Section 372 CrPC provides that no appeal shall lie unless otherwise provided by this CrPC or any other law in force. It is, thus, clear that in case of dismissal of a complaint, an appeal against acquittal would lie under Section 378(4) CrPC by seeking leave to appeal. There is a proviso to Section 372 CrPC, which provides that the victim has a right to 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.

9. It implies that when an appeal is not otherwise provided under CrPC., Section 372 CrPC creates an express bar to resort to the proviso to appeal, otherwise provided in CrPC. However, in case no such appeal is provided under CrPC, then the victim can file an appeal against acquittal or conviction for a lesser offence or inadequacy of compensation under

the provision of Section 372 CrPC.

10. Section 2(wa) CrPC defines the “victim” as 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 their guardian or legal heir. Thus, the primary intention of the Legislature to introduce the provision to Section 372 CrPC, as well as the definition of “victim,” is to provide relief to those persons who were not the complainants, and thus, it was the State which had launched prosecution.

11. Thus, when Section 378(4) CrPC explicitly provides for leave to appeal against the dismissal of a complaint, then the legal remedy is to take resort to file an application for leave to appeal before the High Court and not to bypass the same by taking resort to Section 372 CrPC, which is introduced for an entirely different purpose.

12. Given the above, the appeal filed by the complainant before the Sessions Court was not maintainable. However, strangely, the learned Additional Sessions Judge did not notice this anomaly and proceeded to decide the appeal on merits. Furthermore, the petitioner also, instead of seeking a remedy of filing an application for grant of leave to appeal under Section 378(4) CrPC, challenged the dismissal of the complaint by filing an appeal before the Sessions Court and further, by preferring the present revision petition. Be that as it may, more than 12 years have elapsed since the dismissal of the complaint, simply because of the first legal remedy chosen by the petitioner and also non-application of mind by the lower Appellate Court.

13. Given the above analysis, the concerned Sessions Judge had no jurisdiction to decide an appeal against acquittal under Section 372 CrPC on merits, and as such, the order passed by Additional Sessions Judge (Fast Track Court), Patiala, is set aside being void of jurisdiction and the revision petition is dismissed as not maintainable.

14. However, liberty is given to the complainant to file an application for grant of leave to appeal under Section 378(4) CrPC before this Court. Since the petitioner is not at fault, as such, this Court makes an advance request to the bench hearing leave to appeal, if filed, to be lenient while considering the delay in the filing by condoning the time spent on choosing the wrong remedy, i.e., firstly filing an appeal before the Sessions Court and, after that, filing a revision petition before this Court, sympathetically.

Petition dismissed in aforesaid terms. All pending applications, if any, are closed.

*R.M.S.
dismissed.*

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Petition