

(2019) 04 SHI CK 0048
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 435 Of 2018

Tejinder Singh

APPELLANT

Vs

Govinder Singh & Others

RESPONDENT

Date of Decision : 30-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 201, 201, 420, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 2(d), 2(wa), 173, 372, 378(4)

Citation : (2019) 04 SHI CK 0048

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : R.L. Sood, Arjun Lall, Vivek Sharma, Rajiv Sirkeck, Hemant Vaid,
Desh Raj Thakur, Yudhveer Singh Thakur, Vikrant Chandel

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. The learned Judicial Magistrate, 1st Class, Court No. (6), Shimla, upon, his assuming a valid cognizance upon FIR No. 199 of 2009, thereafter proceeded to charge accused Govinder Singh, for his allegedly committing offences constituted under Sections 420, 467, 468, 471 and 120-B of IPC, and, accused Kahan Chand, for, his allegedly committing offences constituted under Sections 468, 201 and 120-B of IPC. On an appreciation of evidence, adduced by the prosecution, for, hence, sustaining the charge, the learned trial Magistrate proceeded to record an order of acquittal upon the accused.

2. The aggrieved therefrom i.e. State of Himachal Pradesh, preferred an appeal thereagainst, before the learned Sessions Judge (F), Shimla. The appeal preferred before the learned appellate Court is yet pending adjudication.

3. One Tejinder Singh, a person, purportedly aggrieved by, the, afore verdict, of, acquittal made upon the afore accused, vis-a-vis, offences constituted in the afore FIR also hence proceeded, to, make an appeal thereagainst, before the

learned appellate Court. However, the afore appeal, was also, strived, to be acquiring an aura of validity, given, his being a victim, within, the ambit of, the, provisions, borne in Section 2 (wa), of, the Code of Criminal Procedure (for short "Cr.P.C"), provisions whereof stand extracted hereinafter. However the appeal preferred by the afore Tejinder Singh, against, the verdict of acquittal, pronounced by the learned trial Magistrate, hence stood dismissed, (i) nonetheless, in the impugned order recorded upon Cr. Appeal RBT No. 42-S/10 of 2018/2015, by the learned first appellate Court, a right was reserved, upon, the afore Tejinder Singh, to, make a representation in the connected appeal, preferred by the State of Himachal Pradesh, as stands reared by the latter, against, the verdict of acquittal pronounced, upon, the afore accused, by the learned trial Magistrate.

" Section 2 (wa) of Cr.P.C: 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;]"

4. For determining the validity, of, the pronouncement recorded by the learned first Appellate Court, whereupon, it dismissed, the, afore appeal preferred therebefore, by the afore Tejinder Singh, it is deemed, imperative to allude to the mandate, borne in Section 372 of Cr.P.C, provisions whereof are extracted hereinafter, and, significantly, the proviso borne therein, is also, enjoined to be meted an adjudication.

"Section 372 of Cr.P.C:- 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.]"

5. The proviso opens with the coinage "provided that the victim", however, before proceeding to make an interpretation, upon, the afore coinage, occurring in the opening, of, the proviso to Section 372 of Cr.P.C, (a) the initial legal milestone which is required to be jumped, is, comprised in the necessity of a leave, to appeal being strived, for, and granted, upon, (b) the trial Magistrate assuming jurisdiction or his concomitant thereto taking cognizance, upon, a complaint constituted under the apposite provisions, of, Cr.P.C, (c) and, vis-a-vis the afore dire legal necessity also arising, upon, the learned trial Magistrate assuming jurisdiction, and, also as a corollary thereto, taking cognizance upon a report filed therebefore, under, Section 173 Cr.P.C, by the Investigating Officer concerned, upon, the latter completing investigations, upon, an FIR, being lodged before the Police Station concerned. The answer to the afore conundrum, is, purveyed by a verdict, of, the Hon'ble Apex Court rendered in case title as

Mallikarjun Kodagali v. State of Karnataka, reported in 2018 SCC OnLine SC 1941, the relevant paragraph 79 whereof, are extracted hereinafter:-

79. As far as the question of the grant of special leave is concerned, once again, we need not be overwhelmed by submissions made at the Bar. The language of the proviso to Section 372 of the Cr.P.C is quite clear, particularly when it is contrasted with the language of Section 378(4) of the Cr.P.C. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word 'complaint' has been defined in Section 2 (d) of the Cr.P.C and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to section 372 of the Cr.P.C is concerned."

6. A reading, with, the deepest incision of the mandate, borne in the afore extracted paragraph, occurring, in the judgment supra, rendered by the Hon'ble Apex Court, enhances a formidable inference, qua, (a) the mandate borne in paragraph 79 thereof, vis-a-vis, upon, the victim and the complainant, being the same person, thereupon, (b) upon the afore being aggrieved from an order of acquittal pronounced upon the accused, rather being statutorily enjoined to strive for, and, to obtain the requisite leave to appeal, for hence making, before the learned first appellate Court concerned, a valid challenge, vis-a-vis, the verdict of acquittal pronounced upon the accused. However, a further deepest reading of paragraph 79 of the judgment supra, rendered by the Hon'ble Apex Court, does also unveil, qua it also drawing a distinction qua assumption of jurisdiction, and, taking of cognizance, by the learned Magistrate, upon, a private complaint, and, upon a report filed therebefore, under, Section 173 of Cr.P.C, by the Investigating Officer concerned, upon, the latter concluding or completing investigations, vis-a-vis, the offences constituted in the apposite FIR, as, stands lodged before the Police Station concerned.

7. The afore embodied distinction, vis-a-vis, the afore factum, as encapsulated in paragraph 79, of the verdict supra, rendered by the Hon'ble Apex Court, makes a concomitant upsurging, qua, the mandate borne in the proviso, to, Section 372 of Cr.P.C, being restricted, and, also stricto sensu being also trammelled, within, the statutory domain of Section 378(4) of Cr.P.C, (i) in as much as, vis-a-vis, assumption of jurisdiction or taking of cognizance by the learned Magistrate concerned, upon, a private complaint, preferred therebefore under the apposite provisions of Cr.P.C, against, the verdict of acquittal, made upon the accused, by the learned trial Magistrate, (ii) reiteratedly hence, the aggrieved therefrom, victim/complainant being statutorily empowered, to make, a successful onslaught thereon, only upon his prior thereto hence obtaining the requisite leave, from, the learned appellate Court, (iii) however, an enunciation borne in paragraph 79 of the verdict supra, makes clear echoings, qua its clout and mandate neither extending nor encompassing, vis-a-vis, any assumption of jurisdiction or any taking of cognizance, by the trial Magistrate concerned, upon,

a report filed therebefore, under Section 173 Cr.P.C by the Investigating Officer concerned, on the latter completing or concluding the investigations, into, the apposite FIR, as, stands lodged before the police Station concerned. The consequent effect thereof, being qua even if the extant FIR, is not lodged, at the instance of the victim, yet upon the latter falling within the ambit, of, the proviso to Section 372 of Cr.P.C, and, upon, his also falling with the ambit of "victim" as embodied in Section 2 (wa) of the Cr.P.C, (a) thereupon, de hors his being not the informant, his rather holding an absolute statutory right, without any necessity, of, striving to espouse, for, an apt leave to hence prefer, an appeal against an order of acquittal rendered by the learned trial Magistrate, and also, his rather holding an indefeasible right to make an appeal, vis-a-vis, imposition of inadequate compensation or imposition of an inadequate sentence.

8. Reiteratedly, a reading of paragraph 78 of the judgment supra, paragraph whereof, is, extracted hereinafter, makes clear upsurging, that, upon an aggrieved, hence, within the ambit of Section 2 (wa), of the Cr.P.C, being a, victim, of an offence, thereupon, hence his holding an indefeasible statutory right to make a valid challenge, against, an order of acquittal, before the appellate Court concerned, and, also the afore statutory right, to, make an appeal, against the imposition of lesser sentence, upon, the accused, and also the afore right, not being trammelled by the statutory fetter, embodied in Section 378(4) of Cr.P.C, provisions whereof stand, extracted hereinafter, (a) rather the latter provisions only appertaining to assumption, of jurisdiction upon a private complaint, by the learned Magistrate concerned, nor, hence it making it incumbent upon him/petitioner herein, to prior thereto, seek any leave to make an appeal, from, the appellate Court concerned.

" 78. Under the circumstances, on the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, it is quite clear to us that a victim as defined in Section 2 (wa) of the Cr.P.C would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction. It must follow from this that the appeal filed by Kodagali before the High Court was maintainable and ought to have been considered on its own merits."

"Section 378 (4) of Cr.P.C:- 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."

9. Be that as it may, even when this Court has put, to rest, the afore controversy, nonetheless, it is also deemed imperative, to allude vis-a-vis the submission made before this Court, by the learned counsel, for the aggrieved petitioner, that, he is a victim, and that, since the trial Magistrate has assumed cognizance, upon, an FIR, (a) thereupon even if the victim/petitioner, is not the informant, or, is an informant, and, also is a purported victim of the offence, borne in the apposite FIR, (b) thereupon he purportedly holds an indefeasible

statutory right, to, make a valid challenge to the order of acquittal, pronounced upon the accused, by the learned trial Magistrate, de hors any leave being strived to be asked or obtained by him, for the requisite purpose, from the appellate Court concerned. In aftermath, he obviously submits that since the petitioner herein though was not required to be obtaining the requisite leave from the learned Appellate Court, yet with his espousing for the requisite leave, the afore espoused leave, was, meteable to him, and, refusal/declining thereof, vis-a-vis, the petitioner herein, is grossly illegal.

10. However, the afore espousal made before this Court, by the learned counsel for the petitioner, would, beget success, only upon the aggrieved petitioner being encompassed, within, the definition, of, "victim" encapsulated in Section 2 (wa), of the Cr.P.C, mandate whereof is extracted hereinabove, or rather upon mandate thereof begetting satiation, from, the records germane thereto, and, the material existing hereat, (i) especially from the contents of the FIR,(ii) and from the charge framed against the accused.

11. A reading of the definition of "victim" borne in Section 2(wa) of Cr.P.C, does, beget an inference, qua, a person being construable to be victim, upon, (a) his evidently suffering any loss or injury caused by the reason of any act or omission and (b) the afore entailments of loss or injury, upon, the victim, being embodied in the charge framed, against, the accused concerned. The making of the afore connotation to the statutory definition, of "victim", as, embodied in Section 2 (wa) of the Cr.P.C, does also make it incumbent upon this Court, to, make a requisite allusion to (a) the FIR concerned, whereupon, the learned trial Magistrate (b) proceeded, to, frame the apposite charges against the accused concerned. However, a reading of the afore material, as, existing on records, fails to make any upsurging, qua, both making any echoing qua any legal injury befalling upon or standing entailed upon the petitioner herein. Precisely, from the afore requisite material, for hence the petitioner herein, being construable to be "victim" rather, satiation, vis-a-vis the afore ingredients, is grossly amiss, whereupon, alone, the statute permits him to be construable to be a "victim". In aftermath, the petitioner, is, not construable to be a "victim".

12. Be that as it may, the learned counsel appearing for the petitioner, has contended with much vigor that the petitioner rather donning the mantle of a "victim", as, encapsulated in Section 2 (wa) of the Cr.P.C, (i) given respondent No.1 in the petition through his counsel meting suggestion, to the petitioner, during the latters' cross-examination, with, echoing therein qua the petitioner herein allegedly fabricating, and, forging an agriculture certificate, and, thereafter meted vis-a-vis the petitioner rather suggestions, also holding echoings qua his subsequently placing it before the Registrar concerned, for, hence falsely implicating respondent No.1. However, the meteing of the afore suggestions, to the petitioner by the respondent/accused, through his defence counsel, may give, leverage to the petitioner herein, to avail all remedies embodied in the apposite penal provisions, yet, the afore meteing of suggestions,

by the counsel of the respondent to the petitioner, during, the latter's cross-examination, obviously do not, satiate the requisite statutory ingredients, borne in Section 2 (wa) of the Cr.P.C, and, thereupon the espousal made before this Court, that, he is yet a victim, cannot be countenanced.

In view of the above, there is no merit in the petition, and the, same is accordingly dismissed alongwith all pending applications.