



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision No. 604 / 2017

1. Sunil Jain S/o Shri Kanti Lal Jain, Aged About 33 Years, By
Caste Jain, R/o 48, Mandiya Road, Pali. Proprietor- Harsh Mobile
Shop Sindhi Colony, Opposite SBBJ ATM, Pali.

2. M/s. Harsh Mobile Shop, Sindhi Colony, Opposite SBBJ ATM, Pali
Through- Its Proprietor Sunil Jain S/o Shri Kanti Lal Jain, Aged
About 33 Years, R/o 48 Mandiya Road, Pali.

-----Petitioners

Versus

1. Praveen Kumar S/o Late Shri Nena Ram, R/o 255, Mahatama
Gandhi Nagar, Ramdeo Road, Pali.

2. State of Rajasthan

-----Respondents

For Petitioner(s) : Mr.Naresh Khatri.

For Respondent(s) : Mr.O.P.Rathi, P.P., Mr.S.D.Purohit.

HON'BLE MR. JUSTICE SANDEEP MEHTA

Judgment / Order

13/07/2017

By way of this revision, the petitioners seek to challenge the judgment dated 25.2.2017 passed by the learned appellate court being the learned Special Judge (SC/ST {PA} Act Cases), Pali in appeal whereby the appellate court accepted the appeal of the respondent complainant preferred under Section 372 Cr.P.C. and set aside the acquittal of the petitioners recorded by the learned trial court being the learned ACJM Pali by judgment dated 21.11.2014 in complaint case No.417/2014 (33/2010) and while convicting the petitioners for the offence under Section 138 of the N.I.Act, sentenced the petitioner No.1 to imprisonment of one year and a fine of Rs.15 lacs in default of payment of fine to



further undergo one month's additional imprisonment.

Learned counsel Shri Khatri urges that the learned Special Judge had no jurisdiction to entertain the appeal preferred by the respondent complainant under Section 372 Cr.P.C. Drawing attention of the Court to the Hon'ble Division Bench Judgment dated 2.12.2014 rendered in the case of **Dhanne Singh Vs. State of Rajasthan & Ors. (D.B.Criminal Revision Petition No.411/2012)**, he urges that the only remedy available to the complainant was to file an application for grant of leave to appeal before this Court under Section 378(iv) Cr.P.C. He thus contends that the impugned judgment is per-se without jurisdiction bad in the eye of law and thus, deserves to be set aside.

Shri S.D.Purohit learned counsel representing the respondent complainant is not in a position to dispute this legal position. However, he submits that as the complainant was not at fault and bonafide preferred the appeal in the Sessions Court which was entertained, he be given liberty to seek exemption from period of limitation in case, he is desirous of filing an application for grant of leave to appeal against the judgment of acquittal before this Court.

To this submission, Shri Khatri urges that the bonafides of the respondent are in grave doubt. Had he acted in a bonafide manner, then he could have requested the learned appellate court during pendency of the appeal to be allowed to withdraw the said appeal and could have preferred an appeal against acquittal before this Court because the Hon'ble Division Bench Judgment in the case of Dhanne Singh (*supra*) was passed way-back on 2.12.2014



i.e. long before disposal of the appeal. He further contends that even during pendency of the instant revision, no such prayer has been made by the respondent complainant.

I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

Suffice is to say that the legal position regarding the jurisdiction to entertain a challenge to an order of acquittal in a complaint case is no longer res-integra in view of the above referred Hon'ble Division Bench Judgment in the case of Dhanne Singh (*supra*) wherein this Court has clearly ruled that the complainant in such a situation can only avail remedy of filing application for grant of leave to appeal against the judgment of acquittal in the High Court under Section 378(iv) Cr.P.C. The learned Sessions Court does not have any jurisdiction to entertain an appeal under Section 372 Cr.P.C. when the acquittal is recorded in a complaint case.

In this background, I am duly satisfied with the arguments advanced by Shri Khatri that the impugned order passed by the appellate court is patently bad in the eye of law because the same was passed without jurisdiction.

Consequently, the impugned judgment dated 25.2.2017 passed by the learned Special Judge (SC/ST Act Cases), Pali in appeal is set aside and the acquittal of the petitioners recorded by the trial court vide judgment dated 21.11.2014 is restored. The respondent complainant if so advised may file an application for grant of leave to appeal against acquittal of the petitioners in this



Court alongwith an application for condonation of delay which upon being filed would be considered as per law.

The revision is allowed in the above terms.

(SANDEEP MEHTA)J.

/tarun goyal/



RAJASTHAN HIGH COURT



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