

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRR-2607-2013

Date of decision : 11.12.2013

Jyoti Rawal

... Petitioner

Versus

Brij Mohan and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Sanjay Jain, Advocate
for the petitioner.

REKHA MITTAL, J.(ORAL)

Mr.Sandeep Rana, Advocate has put in appearance on behalf of respondents No.1 to 3. Mr.Amandeep Singh, AAG, Haryana has put in appearance on behalf of respondent No.4.

Through the present petition, the petitioner assails the judgment dated 04.05.2013 passed by the Additional Sessions Judge, Ambala, whereby the appeal preferred by the petitioner against acquittal of private respondents No.1 to 3 by the Judicial Magistrate Ist Class, Ambala in a case on the basis of police report, has been dismissed primarily on the ground that the appeal is not maintainable in view of provisions of Section 378 of the Code of Criminal Procedure.

Counsel for the petitioner has submitted that in view of the decision rendered by Full Bench of this Court in *M/s. Tata Steel Ltd. Vs. M/s Atma Tube Products Ltd. and others, 2013(2) R.C.R. (Criminal) 1005*, an appeal preferred by a victim against the order of acquittal passed

by Magistrate in respect of cognizable offence whether bailable or non-bailable shall lie before the Court of Session.

Counsel for the State has not disputed enunciation of law laid down in *M/s. Tata Steel Ltd.'s case (supra)*, wherein the Full Bench has summed up its conclusions in para 139 and answered questions formulated in para 6 of the judgment. However, it is submitted that in the judgment impugned, there is reference to decision of Hon'ble the Supreme Court in *Subhash Chand Vs. State (Delhi Administration), 2013(1) RCR (Criminal) Supreme Court 1013*.

I have heard counsel for the parties and perused the records.

The judgments referred to in para 8 of the decision rendered by the Additional Sessions Judge also find reference in *M/s. Tata Steel Ltd.'s case(supra)*. In *Subhash Chand's case (supra)*, the matter before Hon'ble the Supreme Court was maintainability of appeal before Sessions Court against acquittal of accused by the trial Magistrate in a criminal complaint filed for offence under Sections 16(b)(1A) and 7 of the Prevention of Food Adulteration Act and in those circumstances, Hon'ble the Supreme Court while explaining the scope of Sections 378(1) to (4) held that Sessions Court has no jurisdiction to entertain an appeal. However, in the instant case the acquittal has been recorded by the trial Court in criminal prosecution launched on the basis of police report. The Full Bench of this Court in sub para titled question -(E) in para 139 in *M/s. Tata Steel Ltd.'s case(supra)* has held quoted hereinunder:-

“Question-(E)(vii) In view of proviso to Section 372 an appeal preferred by a 'victim' against the order of acquittal passed by a Magistrate in respect of a

cognizable offence whether bailable or non-bailable shall lie to the Court of Session, the State's appeal under Section 378(1)(a) of the Code against that very order shall also be entertained and / or transferred to the same Sessions Court."

In view of the authoritative pronouncement by Full Bench of this Court, there cannot be any scope to debate that the Court of Sessions has jurisdiction to hear an appeal against order of acquittal passed by the Judicial Magistrate in criminal proceedings arising on the basis of police investigation.

For the foregoing reasons, the impugned judgment is set aside and the matter is remitted to the Court of Additional Sessions Judge, Ambala for decision of the appeal afresh on merits after hearing the parties concerned.

Parties are directed to appear before the Court of Additional Sessions Judge, Ambala on 08.01.2014.

(REKHA MITTAL)
JUDGE

December 11, 2013.

Davinder Kumar