

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

Criminal Revision Nos.47 & 48 of 2015

Narendra Kumawat

Vs.

Ranjeet

O R D E R

Post for 22.07.2016

**(ALOK VERMA)
JUDGE**

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Shri Amit Bhatia, learned counsel for the applicant.

Shri Harshat Warnekar, learned counsel for respondent.

O R D E R

(Passed on this 22nd day of July, 2016)

This common order shall govern disposal of Criminal Revisions No.47 and 48 of 2015.

These two revisions are directed against two separate orders passed by learned Second Additional Sessions Judge, Dhar in criminal revision Nos.160 & 161 of 2014, as facts and issues involved in both the cases are same.

The relevant facts for disposal of these applications are that the applicant-Narendra Kumawat in both the revisions was facing prosecution under Section 138 of Negotiable Instrument Act in criminal case Nos.1751 and 2016 of 2012. Both the criminal cases arose on a complaint filed by the respondent. The cases were fixed for defence evidence on 12.06.2014. On this date,

neither the complainant nor his advocate appeared before the Magistrate, and therefore, after calling the case thrice during course of the day, finally, at 5 PM, the complaint was dismissed.

After this, the complainant filed two separate revisions before the learned Sessions Judge, which were disposed of by the impugned orders. Learned Additional Sessions Judge proceeded to set-aside the order passed by learned Magistrate on the ground that when the case was fixed for defence evidence, it was not necessary for the complainant to remain present before the court. The Magistrate was at liberty to record defence evidence and disposed of the matter on merit. It was also observed by learned Additional Sessions Judge placing reliance on judgment of Hon'ble Apex Court in case of **Mohd. Azeem Vs. A. Venkatesh and another 2002(7) SCC 726** by the question of maintainability of revision against the order as in the opinion of learned Additional Sessions Judge when complaint was dismissed in absence of the complainant it comes within the purview of Section 204 Cr.P.C., and therefore, in accordance with the principles laid down in case of **Mohd. Azeem (supra)**, it was held that the revision is maintainable.

Counsel appearing for the applicant submits that when the complaint case was dismissed in summons cases under Section 256 Cr.P.C., it amounts to acquittal and appeal lies under Section 378(4) Cr.P.C., and when any appeal lies against a particular order, revision is not maintainable.

Counsel appearing for the respondent, however, submits that the orders passed by learned Additional Sessions Judge are proper and do not call for any interference by this court.

I have gone through the judgement passed by Hon'ble Apex Court in case of **Mohd. Azeem (supra)**. It appears that the learned Additional Sessions Judge erred in holding that the dismissal of a complaint in summons case comes within the purview of Section 204 Cr.P.C. In this particular case, an appeal was filed under Section 378(4) Cr.P.C. and the High Court dismissed the appeal against which the matter travelled upto Apex Court. The principle laid down in that case was that when there is a single case of default, such dismissal is not proper. However, fact remains that Section 256 Cr.P.C. itself provides that when a complaint is dismissed in a summons case, it amounts to acquittal, and therefore, appeal lies under Section 378(4) Cr.P.C.

Though, in the present case, on point of maintainability, it appears that this point was not raised properly by the respondent, and therefore, looking to the peculiar circumstances of the case, these revisions are allowed.

The impugned orders passed by learned Additional Sessions Judge are set-aside. The matter is remanded back to the revisional court for reconsideration in the light of principles laid down in case of **Mohd. Azeem (supra)**. The applicant is at liberty to raise question of maintainability in the light of provisions of Section 256 Cr.P.C. and other relevant provisions of law before the revisional court.

Parties to appear before the revisional court on **24.08.2016**.

With observations and directions as aforesaid, these revisions stand disposed of.

(Alok Verma)
Judge

Chitranjan