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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-38054-2019
IN/AND CRM-A-464-MA-2013
DECIDED ON: 01.05.2025

KULTAR SINGH

.....APPELLANT

VERSUS

RAHUL GUPTA AND ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. S.S. Ranghi, Advocate,
for the applicant/appellant.

SANJAY VASHISTH, J (ORAL)

1. For bouncing of a cheque No.736142 dated 07.08.2007, amounting to Rs.16 lacs, drawn on State Bank of India, Branch at Shahabad (M), District Kurukshetra, applicant/complainant filed a complaint under Section 138 of the NI Act, 1881, against respondent No.1 – Rahul Gupta, s/o Bhushan Lal Gupta Murli Wale, r/o Colony Panj Kothian, G.T. Road, Near Taj Palace Shahabad (M), District Kurukshetra, now resident of C/o Sh. K.K. Gupta, H. No.1374, Sector 17, Behind Market, Near Andhra Bank, Faridabad, Haryana.

Trial Court i.e. Sub Judicial Magistrate Kurukshetra, vide its judgment dated 14.03.2012, recorded its finding of acquittal against respondent No.1, by observing as under:-

“Thus, I fully agree with the arguments and citations advanced by the counsel for the accused and I dismissed the present complaint. The accused is acquitted. He is set at liberty. His bail/surety bonds stand discharged. File be consigned to the record room after due compliance.”



2. Applicant/complainant assailed the aforesaid order of judgment of acquittal before the Appellate Court and thereupon, in criminal appeal No.121 dated 28.03.2012, Court of learned Additional Sessions Judge, Kurukshetra, dismissed the appeal, as the same being not maintainable, vide its judgment dated 03.05.2013.

3. Subsequently, the applicant/complainant filed the present application, seeking special leave to appeal along with the application for condonation of delay of 492 days, and the same was condoned by this Court, vide order dated 17.05.2023. However, till date, application for grant of special leave to appeal is pending for consideration before this Court, without any decision.

4. It is noticed that till date, respondent No.1 – Rahul Gupta, could not be served, and therefore, no one has ever appeared on his behalf.

5. On 23.02.2023, following order was passed by the coordinate Bench of this Court:-

“On 14.01.2020, the following order was passed:-

“CRM Nos.13916 & 37229 of 2015

In view of order dated 23.05.2019, these applications are termed as disposed of.

CRM-38054 of 2019

Through this application under Section 482 Cr.P.C. prayer has been made by the applicant for direction to the State to verify the death of respondent No.1-Rahul Gupta.

Notice.

On the asking of the Court, Mr. Surinder Paul, DAG, Haryana, who is present in Court, accepts notice on behalf of respondent No.2-State. Copy of the application has been supplied to him in Court today.

Learned State counsel is directed to verify as to whether respondent No.1-Rahul Gupta is alive or died. In case, he has expired, his death certificate be



obtained from the concerned Registrar, Birth and Death or from his wife Seema Gupta.

Adjourned to 7.5.2020 for consideration.”

Pursuance to the aforementioned order, the State has filed a reply dated 01.02.2023. A perusal of reply would show that there is no clarity regarding the death of respondent No.1 – Rahul Gupta.

State is directed to file a better response, clearly disclosing as to whether respondent No.1 – Rahul Gupta has in fact died or not.

Adjourned to 31.03.2023.”

6. It is thereafter, an affidavit was filed by Mr. Surinder Singh Bhoria, IPS, Superintendent of Police, Kurukshetra, on behalf of the State, stating therein as under:-

viii. That on 13.05.2023, statements of Kultar Singh (Petitioner), Bhupinder Singh, father-in-law of his child (Samdhi) and Jaspreet, grandson of brother of petitioner, who had furnished their affidavits in CRM No. 34755 of 2017, were recorded. The petitioner in his statement has stated that Rahul Gupta was lastly seen by him on 30.09.2017 at Dasher Ground Shahabad and after 30.09.2017, he has never seen Rahul Gupta. Bhupinder Singh in his statement has stated that Rahul Gupta was lastly seen by him on 30.09.2017 at main bazaar Shahabad whereas, Jaspreet in his statement has stated that Rahul Gupta was lastly seen by him on 19.10.2017 at Bus Stand Shahabad. The statements of Kultar Singh, Bhupinder Singh and Jaspreet Singh are annexed as Annexure-11 to Annexure-13 and true English translation thereof is Annexure-11/T to Annexure-13/T.

3. That from the perusal of facts detailed above, this Hon'ble Court may kindly appreciate that despite best efforts made by Police, and no evidence has



come on record to conclude that Rahul Gupta is dead.”

7. Counsel for the applicant/appellant points out that subsequently, the State of Uttarakhand was also impleaded as respondent No.3, vide order dated 18.01.2024, but still, presence of respondent No.1 – Rahul Gupta, could not be secured before this Court, till date.

8. It is noticed that the actual dispute is in regard to a cheque dated 07.08.2007, and the finding of acquittal had already been recorded by the trial Court on 14.03.2012, and present application for grant for special leave to appeal, is also pending before this Court since the year 2013.

It is admitted position on record that till date, applicant/complainant has neither succeeded in securing the presence of the accused, nor he even apprised this Court about the life status of the acquitted accused/respondent No.1.

9. In the present case, the matter at hand is of a non-cognizable nature. After the Court has recorded a clear finding of acquittal, any effort to seek the presence of the acquitted person must be initiated in a lawful and proper manner. The responsibility for ensuring effective service of notice upon the concerned party lies entirely with the complainant. Furthermore, it is noteworthy that even the applicant is not aware of the current life status of respondent No. 1, thereby raising further doubts regarding the feasibility and validity of proceeding against the said respondent.

10. At this stage, learned counsel for the applicant has requested that the matter be kept pending for consideration until effective service is



effected upon respondent No. 2. However, considering the overall circumstances of the case, this Court finds no substantial reason to keep the petition pending indefinitely, especially when the delay is the solely to await the service report of an unserved respondent in a non-cognizable offence.

11. Therefore, this Court is left with no other option, except to dismiss the present application for leave to appeal for want of prosecution.

However, liberty is granted to the applicant/appellant to move an application for revival of the present application for special leave to appeal, within a period of one year, if the applicant herein, succeeds in getting the complete particulars of acquitted respondent No.1, along with his life status.

(SANJAY VASHISTH)
JUDGE

01.05.2025

Lavisha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>