

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal No.192/2001**

Reserved on : 10.11.2008
Date of Decision : 17.11.2008

VIJAY PAL SINGH

..... Appellant
Through Mr.S.C.Buttan and Mr.Purvesh
Buttan, Advocates

Versus

YASH PAL & ANR.

..... Respondents
Through Mr. Kirti Uppal, Advocate for the
respondent No.1.
Ms. Richa Kapoor, APP for the
State/Respondent no.2.

CORAM :

HON'BLE MR. JUSTICE ANIL KUMAR, J

HON'BLE MR. JUSTICE V.K.SHALI, J

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| 1. Whether reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

J U D G M E N T

V.K. SHALI, J:

1. This is an appeal filed by the appellant, a private party under Section 378 (4) of Code of Criminal Procedure against the order dated 6th December, 2000 passed by Shri Narender Kumar, learned Metropolitan Magistrate, Delhi. By virtue of the impugned order, the learned Magistrate has acquitted the respondent No.1 for an offence under sections 147, 223, 427 read with sections 149 and 336 IPC.

2. The appeal raises important question as to whether an appeal u/s 378 (4) Cr.P.C. (it ought to have been 378(1) and (3) Cr.P.C. could be entertained at the instance of a private party or complainant in respect of a case filed on the basis of police report). Before dealing with the said question, it would be pertinent here to mention the brief facts of the case which are reproduced from the impugned judgment as under:-

“a) Yashpal Singh, respondent No.2 was put to trial on the basis of police case registered at the instance of the appellant on 15th December 1990 under sections 147, 323, 427 read with section 149 and 336 of the IPC. The allegations made in the FIR were that on 15th December, 1990 at about 7.40 A.M. near Johar of village Ibrahimpur in the area of Samaipur Badli, the respondent along with 4/5 other persons formed an unlawful assembly with the common object to cause hurt to the complainant and his wife Smt. Sulakshna. It is also alleged that the respondent No.1 was armed with a revolver and the remaining 4/5 persons had Iron rods i.e. deadly weapons, and caused hurt on the person of the appellant and his wife. It has been stated that at the relevant time, the appellant was driving his Maruti Car No. DDV-9690 along with his wife and two sons: Sonu- aged 12 years and

Hardyal – aged 14 years, as he was going to leave both the children at their school in the area of Radio Colony. So far as the allegation of mischief is concerned it was alleged that damage was caused to the glass panes of the car and the respondent No.1 also fired in air from his revolver so as to endanger human life and personal safety of others.

(b) After investigation, ASI Raghbir Singh filed a charge sheet, recorded the statement, seized the vehicle No. DDV 9690 and some broken pieces of glass panes apart from one white colour button which was alleged to have been recovered from the wearing apparel of respondent No.1. Statement of Raj Kumar, alleged eye witness of the crime was recorded, spot was photographed. Respondent No.1 was arrested on 16th January, 1991 and his car was also seized whereupon after completion of the investigation challan was filed for the aforesaid crime for which charges were framed and they were put to trial.

(c) Respondent No.2, the prosecuting agency in support of its case examined PW-1, Devender Kumar, record Clerk of Hindu Ram Hospital, who proved MLC Ex.PW1/A to Ex.PW-1/D of the appellant and his wife,

PW-2 Vijay Pal Singh, PW-3 Smt. Sulakhna, PW-4 Raj

Kumar, the alleged eye witness, PW-5 Jai Prakash who proved photographs and negatives of the appellant, PW-6 Constable Jeevan Singh who accompanied the investigating officer, PW-7 SI Raghbir Singh IO of the case, PW-8 and Dr. C.P. Sharma to prove report on examination of X-Ray plates, PW-9, Head Constable Suresh Chander who took rukka from the IO and got the case registered and PW-10 Inspector Hans Ram who investigated the case partly after ASI Raghbir Singh was transferred.

(d) The incriminating evidence was put to respondent No.1 but in his statement under Section 313 Cr.P.C. he stated that he was the only accused person who was arrested and put to trial. Respondent No.1 took the plea that he has been falsely implicated in the instant case by the appellant on account of the fact that the respondent No.1 demanded the money back from the appellant which was lent to him. It is because of this reason that he has been falsely implicated. He has also taken the plea of alibi and stated that on the date of incident he was with the Vice Chancellor of Meerut University, Dr.P.C. Gupta at his camp office in Khurja. Dr. P.C. Gupta, Ex-Vice Chancellor of Meerut University

was examined as DW-1 by respondent No.1 in support of his defence who supported the case of respondent No.1 about his presence at Khurja at the relevant date and time when the incident is purported to have taken place. DW-2 Sh. Y.V. Krishna, Secretary to the Vice Chancellor has also supported the case of the defence.”

3. The learned Magistrate after hearing the arguments and analysing the evidence, arrived at a finding that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt, on the contrary, he observed that the story which has been put up by the appellant is full of inconsistencies and improbabilities and therefore, acquitted the respondent No.1 of all the charges framed against him.

4. Feeling aggrieved by the aforesaid acquittal order, the appellant wanted the State to file an appeal however, the State respondent No.2 after examining the judgment found that it was not a fit case for filing an appeal and accordingly replied the appellant that so far as the State is concerned, it has not found the case fit for filing an appeal, however, the Director of Prosecution will have no objection in case the appellant wants to file an appeal at his own end. This communication was sent to the appellant on 2nd February, 2001. Accordingly, the appellant chose to file the present appeal in the month of April, 2001 along with an application seeking condonation of delay as well as leave to appeal under Section 378 (4) of the Code of Criminal Procedure.

5. On 10th April, 2001, a notice to show cause was issued to the State as to why the delay in filing the leave to appeal may not be condoned and the leave to appeal may not be granted, returnable on 27th July, 2001. However, perusal of the orders passed thereafter show that at no point of time either the delay has been condoned or the leave to file the appeal has been granted to the appellant under Section 378 of the Code of Criminal Procedure. On the contrary, vide order dated 11th March, 2003, it was observed by the Division Bench of this Court that as the parties are closely related to each other and are involved in the litigation apart from the present case, the parties had arrived at a compromise by way of a Memorandum of Understanding and the appeal was accordingly disposed of in terms of the Memorandum of Understanding arrived at between the parties vide order dated 22nd April, 2003. Thereafter, it seems that respondent No.1 did not allegedly perform his part of the compromise, leading to filing of a Special Leave Petition before the Hon'ble Supreme Court in Crl.A.Nos.451-453/2008 by the appellant on the basis of which not only the order dated 18th November, 2006 and 8th May, 2007 were set aside but the statement dated 22nd April, 2003 was also set aside directing the restoration of Crl.A.No.192/01 to its original file and number. This is how the matter got revived and the arguments have now been heard so far as the present appeal is concerned. At the outset, it is observed by us that so far as the question of delay is concerned, neither the learned counsel for the respondent No.1 nor the learned APP for the

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State have raised any objection regarding the condonation of delay by the appellant in filing the present appeal seeking leave to appeal under section 378 (4) of the Code of Criminal Procedure. However, on the question of maintainability of the appeal, the respondent No.1 has vehemently contested the locus of the appellant to file the present leave to appeal against the order of acquittal or the leave application of Section 378 (4) of the Code of Criminal Procedure. Accordingly, we have heard the learned counsel for the appellant as well as respondents on the question of maintainability of the appeal by a private party/complainant in respect of the State case.

6. It has been contended by the learned counsel for the appellant that present appeal is maintainable under Section 378(4) of the Code of Criminal Procedure inasmuch as the appellant being a complainant and informant as well as aggrieved party has a right to file the present appeal against the wrongful acquittal of the respondent No.1 by the learned Magistrate by the impugned order dated 6th December, 2000. Attentively, it was contended by the learned counsel for the appellant that even if the present application to leave to appeal mentions wrong provision of Section 378(4), it may be read as an leave to appeal under Section 378(1) Cr.P.C. because according to the learned counsel that provision also does not prohibit a private complainant from filing an appeal in a police case in case of acquittal. It was urged by the learned counsel that Section 378(1) does not start with a non obstante clause and therefore, it cannot be assumed that it was the intention of the

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legislature that a private party should not be given the right to challenge the order of acquittal even in a police case. The learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in **M/s J.K. International vs. State, Govt. of NCT of Delhi and others** **AIR 2001, Supreme Court 1142** and **Suga Ram @ Chhuga Ram vs. State of Rajasthan and others** **AIR 2006 SC 3258** apart from Single Judge's judgment of Karnataka High Court in **Smt. Champabai vs. M. Girijapathy and others** **1999 Cri.L.J.3101**. The Supreme Court in **J.K. International's** case had observed that the High Court has grossly erred in rejecting the application of the complainant for intervention and from being heard in a petition filed under Section 482 Cr.P.C. by a party/petitioner seeking quashing of all the charges against him under Section 120B, 406, 420 IPC. The Supreme Court in the said judgment after referring to earlier judgment of the Supreme Court in **Bhagwant Singh vs. Commissioner of Police** **AIR 1985 SC 1285** and distinguishing the case of **Thakur Ram vs. State of Bihar** AIR 1966 SC 911 had observed that the High Court had grossly erred by closing the door of the appellant in the said case by refusing to hear him in respect of quashing of an FIR where he was informant/complainant. In the instant case also learned counsel has contended that Directorate of Prosecution by its letter dated 2nd February, 2001 has communicated to the appellant that it has found the decision of acquittal not fit for appeal yet it would have no objection, in case the appellant chooses to file an appeal against the impugned

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judgment. It was in this background that the learned counsel submitted that he was well within his right to file and maintain the present appeal under Section 378 (4) of the Code of Criminal Procedure inasmuch as shutting down the appellant from hearing of the present appeal would only result in miscarriage of justice but would also foreclose the right of the appellant to get the justice from the Court.

7. This plea of the learned counsel for the appellant has been vehemently contested by the learned counsel for the respondent No. 1 on the ground that Section 378(4) specifically uses the word:

“if an order of acquittal is passed in any case instituted upon a complaint then the High Court may on an appeal on Special Leave to appeal from the order of acquittal being filed by the complainant may grant such an appeal to the complainant”.

It was contended that the present appeal is arising out of a police case in which cognizance had been taken under Section 190(b) of the Code of Criminal Procedure and it is not a case where the cognizance has been taken on the basis of a complaint filed by the complainant and therefore Section 378 (4) of the Code of Criminal Procedure is not applicable. It is pleaded that on the contrary, what is applicable is Section 378 (1)(3) of the Code of Criminal Procedure under which only the State has a right to file an appeal.

8. We have thoughtfully considered the submissions of the respective sides. Before deciding the question as to whether the present appellant has the locus to file the present appeal against the judgment

dated 6th December, 2000 is concerned, it would be pertinent here to reproduce the relevant provisions of law of Code of Criminal Procedure, 1973. Sections 372 & 378 reads as under :-

372. 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.

378. Appeal in case of acquittal – [(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and 5-

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) The State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]

(2) -----

(3) [No appeal to the High Court] under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) 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.

(5)-----

(6)-----

9. A perusal of the aforesaid Section 372 Cr.P.C. reveals that an appeal is a creature of a statute and there is no inherent right to appeal as is sought to be canvassed before us. Reliance in this regard is placed on **Akalu Ahir and Ors. Vs. Ramdeo Ram AIR 1973 SC 2145.** Further, Section 378 Cr.P.C. would clearly show that a distinction has been made by the framers of the legislation in filing an appeal against the acquittal in case based on police report on what is called a state case and in respect of a complaint case. If an acquittal is arising from a complaint case filed by the complainant obviously the complainant has a right to prefer an appeal subject to Special leave (emphasis added) granted by the High Court. But the position is totally different in a case where the appeal is sought to be filed against the judgment of acquittal where the cognizance has been taken on the basis of a police report filed u/s 173 of the Code of Criminal Procedure what is called as a challan. In such a case, it is only the State through the District Magistrate or the Director of Prosecution as the case may be who have to obtain the leave to appeal and not the complainant. We have been informed that in Government of National Capital Territory of Delhi, the entire prosecution including the filing of leave to appeal or appeal against acquittal in police case is done by the Director of Prosecution under the supervision of Secretary Law, Department of Law, Government of Delhi.

10. A perusal and comparison of these two sub-Sections (1) and (3) on the one hand and sub-Section (4) on the other hand clearly show that in State cases, private party has no locus to file an appeal against acquittal. Further, while under sub-Section (4), the private party has to obtain a **Special** leave (emphasis added), the State only has to obtain a **leave** in contradistinction to **special** leave. Meaning thereby that the private party has to show something **special** or **extraordinary** to get the **leave** for hearing of an appeal against acquittal.

11. In the instant case also, the judgment of acquittal has arisen on the basis of a police challan filed against the appellant for an offence u/s 147, 149, 323, 336, 427 IPC. No doubt, in the instant case, the prosecution, Director of Prosecution, namely respondent No.2 vide its letter dated 2nd February, 2001 has written to the appellant that although the impugned judgment dated 6th December, 2000 is not found by the Director fit for appeal but it has no objection in case the appellant chooses to file an appeal against the impugned judgment, but it does not give a right to the appellant to maintain the appeal, as the under (Section 378 (1)) the appeal is not maintainable. In our view it was not proper for the prosecution or Director of Prosecution after having examined the judgment and forming an opinion that no appeal ought to be preferred from the same, yet permit a private party namely the appellant to file a leave to appeal and observing that it has no objection to filing of appeal by the present appellant. This is not

warranted by law as envisaged under Section 378(1) and (3) Cr.P.C. It will also add to the unnecessary burden of the Courts as it will impels the private party to file a leave to appeal in respect of every police cases resulting in acquittal.

12. The argument which is advanced by the learned counsel for the appellant is to the effect that his leave to appeal is maintainable on account of the fact that Supreme Court in **M/s J.K. International vs. State, Govt. of NCT of Delhi and others** **AIR 2001, Supreme Court 1142.** We find ourselves unable to persuade that the ratio of said judgment is applicable to the facts of the present case. The facts of **J.K. International's case**, are distinguishable from the facts of the present case. In the said case, a police case under Section 120B, 406,420 IPC was registered at the instance of M/s J.K. International against the accused. The respondent/accused had filed a case in the High Court for the purpose of quashing of the FIR and the consequent charge sheet filed by the police for the aforesaid offences. It was at that stage that M/s J.K. International filed an application for being heard on the question of quashing. The said application was dismissed on the ground that as the cognizance has been taken on the basis of a police report and it is a police case, the private party/complainant had no locus standi to be heard on the question of quashing. Accordingly, the application of M/s J.K. International was rejected by the High Court by placing reliance on the judgment of **Thakur Ram's** case (supra) which

was a judgment of the three judges of the Supreme Court. On a special leave being filed by M/s J.K. International, the Supreme Court set aside the judgment of the High Court on the ground that the facts of the Thakur Ram's case were totally different than the facts of the M/s J.K. International and the ratio laid down by the Supreme Court in **Bhagwant Singh vs. Commissioner of Police** were more appropriate to govern the facts of M/s J.K. International's case. Supreme Court observed that no doubt a police case is registered on the basis of a private complaint but after having done so, the complainant does not go into oblivion and is not altogether wiped out from the scene of the Trial Court. It was also observed that even though the cognizance of the offence is taken on the basis of police report but that does not debar him from reaching the Court for ventilating his grievance. For this purpose, the Court referred to the provisions of Section 301(2) by virtue of which a private party/person can instruct a pleader to prosecute a criminal case who will assist the prosecutor or the Assistant Prosecutor who is in charge of the prosecution. This has to be done with the permission of the Court as observed by the Court. The Supreme Court felt if the private party could be heard even at the stage of revision than keeping an aggrieved person outside the corridors of Court and not attending to his grievance would not be appropriate. Accordingly, the Supreme Court set aside the judgment of the High Court and directed the High Court to give reasonable opportunity to the appellant namely

M/s J.K. International before deciding the quashing petition of the respondent.

13. The facts of the present case are totally different. In the facts of the present case, no doubt the cognizance is taken on the basis of a police report which was initiated on the basis of a complaint lodged by the appellant, but once the FIR is registered, the State takes on to itself to espouse the cause of the complaint. It is the State which is incharge of the case and the role of the complainant is only ancillary or subsidiary to support the State case. In the present case, on the complaint of the appellant an FIR was registered for various offences. The matter was investigated and charge sheet was filed way back in 1990. Thereafter, the appellant had appeared as a witness in support of the prosecution case namely offences under sections 147, 149, 323, 336, 427. As many as 10 witnesses were examined by the prosecution and two witnesses by the respondent in defence. After detailed examination of the entire evidence, learned Trial Magistrate did not accept the prosecution case as proved beyond reasonable doubt on account of inherent contradictions on major aspects and because of the highly improbable story set up. The learned Magistrate on the contrary accepted the plea of alibi of the respondent and acquitted the respondent of the charge under section 147, 149, 323, 336, 427 IPC.

14. The prosecution has examined the matter threadbare and came to a conclusion that it is not a fit case for filing an appeal. Under these

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circumstances, once there is an acquittal on merit and the prosecution came to the conclusion that there is no merit in the appeal, it is not open to the private party to file an appeal by invoking Section 378 of the Cr.P.C. because the appeal can be filed only by the State/Prosecution. 378(4) Cr.P.C. which has been invoked by the appellant in the instant case is not applicable to the facts of the case because 378 (4) is applicable only in cases where the acquittal takes place in case which is instituted on the basis of a private complaint whereas the present case is a police case. This view also gets a support from the judgment of **Parvati Devi's case.** In **Parvati Devi Vs. State & Ors. 2004 (115) DLT 578**, a private complaint was filed before a learned Magistrate in respect of a Sessions trial offence. The learned Magistrate after completing preliminaries committed the matter to the Sessions for trial. Once the matter was sent to the Sessions Court, the State through its prosecutor was incharge of the case by virtue of Section 225 Cr. P.C. The case resulted in acquittal and it was against this acquittal that the complainant filed a leave to appeal under Section 378 (4). The opposite side took the plea that since the case was a Sessions trial and the prosecutor was incharge, therefore it would not be treated as a case instituted on private complaint and consequently Section 378 (4) had no application. This argument was negated by the Division Bench of this Court and rightly so because the cognizance was taken by the learned magistrate on the basis of a private complaint.

15. Therefore for seeing whether a private party can file an appeal or not what is to be seen is on what basis the cognizance has been taken under Section 190 Cr.P.C. Whether it has been taken on the basis of a private complaint under Section 190 (a) Cr.P.C. or on the basis of a police report under Section 190 (b) Cr.P.C. Since in the present case, the cognizance was taken on the basis of a police report, therefore, the private party has no right to file an appeal against acquittal under Section 378 (1) (3) and seek leave. Even if we assume for the sake of argument that this was an application for leave to appeal under section 378(1) read with sub-section (3) even then it would not be maintainable. If such appeals is permitted then it will not only result in witch hunting and will obliterate the distinction between a case initiated on private complaint and a state case initiated on the basis of a police report and the taking of a cognizance thereof. In case, **Jagbir and Anr. vs. State of Punjab, AIR 1998 SC 3130** the Hon'ble Supreme Court has held that under Section 378(1) Cr.P.C. State alone can file an appeal in the High Court against the order of acquittal after obtaining leave under sub-section (3) thereof and the complainant in such a case only can file an application under Section 401 Cr.P.C. for revision of that order.

16. On the basis of the aforesaid judgment we are of the considered opinion that the present appeal by the appellant is not maintainable as he does not have locus to maintain the present leave to appeal and the

judgment in **J.K. International's** case which is sought to be relied, is distinguishable from the facts of the present case.

17. Having said so, we are cognizant of the fact that the Supreme Court in **Ramakant Rai vs. Madan Rai** 2004 AIR (SC) 77 has entertained an appeal against the acquittal passed by the High Court by **observing that the order of the High Court has led to a serious miscarriage** of justice and in such a case Supreme Court cannot refrain from doing its duty and abstain from interfering on the ground that a private party and not the State has invoked the Court's jurisdiction. It may be pertinent here to mention that the judgment in **Suga Ram's** case (supra) cited by the learned counsel for the appellant instead of supporting the submission made by the appellant supports the view of **Ramakant Rai's** case (supra). Further, in the light of these two judgments, the judgment of the Karnataka High Court in **Champabhai's case** (supra) pales into insignificance. The power exercised by the Supreme Court under Section 136 or 142 of the Constitution of India cannot be exercised by the High Court. The High Court does not have and cannot exercise any such power. It has to go strictly accordingly to the letter and spirit under Section 378(1) and (3) of the Cr.P.C. read with Section 372 of Cr.P.C. Needless to say that in a given case, where a serious miscarriage of justice is shown by a private party on account of acquittal order passed by the courts below in respect of a police case and the State does not prefer any appeal

under Section 378 (1) read with sub-Section (3) on account of malafide reasons or ulterior consideration, it may perhaps be open for the aggrieved parties to seek an appropriate writ of mandamus against the State or the Officer under Section 226 of the Constitution of India. But certainly a leave to appeal by a private party in respect of an acquittal in a police case would not be maintainable under Section 378 (1) Cr.P.C.

18. The learned counsel has also relied upon **Ramji Missir & Anr. Vs. The State of Bihar AIR 1963 SC 1088** and **Shri.A.C.Aggarwal, Sub-divisional Magistrate, Delhi and Anr. Vs. Mst. Ram Kali, etc. AIR 1968 SC 1**. We have gone through both the judgments. The ratio of these cases not applicable to the facts of the case as no question of interpretation of Section 378 (1) or (3) had arisen in them. There is absolutely no ambiguity in the language of the Section 378 Cr.P.C. and the first principle of interpretation is the literal interpretation which is being followed in the instant case. Accordingly, the present leave to appeal is dismissed.

19. Having said so that the appellant does not have locus standi to maintain the present appeal against the acquittal order passed by learned Magistrate. In addition to this, a perusal of Section 378 (1)(a) would show that an appeal against an order of acquittal would lie only to the Court of Sessions and not to the High Court. This get further fortified from reading of Section 378(1) (b) Cr.P.C.

20. Since we are of the view that the appellant does not have the locus standi to maintain the present leave to appeal yet in order to satisfy ourselves regarding the correctness, legality and propriety of the finding handed down by the learned Magistrate, this Court **can** exercise the power of revision suo moto. Reliance in this regard is placed on **Hydru vs. State of Kerala 2004 (13) SCC 374.** The record of the case is available with this court. We have gone through the impugned judgment of the learned Magistrate. The learned Magistrate has critically analysed the entire evidence adduced by the respective sides and came to the finding that the story which has been put up by the appellant regarding the incident purported to have taken place is not only highly improbable but in the light of the fact that there was evidence adduced by the defence that he was not present at Delhi itself on the date of incident, the learned Magistrate has disbelieved the appellant's case. The learned Magistrate has also taken note of the fact of the serious inconsistencies in the case of the complainant including the non-production of his two sons who would have been very vital witnesses and held that the appellant has not been able to prove the case beyond reasonable doubt and accordingly acquitted him.

21. Be that as it may, it is really unfortunate that such a small matter has continued to be prolonged by the appellant, firstly, before the Trial Court from 1990 to 2001 when it resulted acquittal and again from 2001 to 2008, since then the present leave to appeal is pending. It

is travesty of justice that in a small matter like this, where the parties are relations, personal scores are being settled through Court of law by keeping the other side hanging in Court for almost decades together. Such a practice is not only deprecated but must be discouraged strongly.

22. In the light of the aforesaid facts and circumstances, we hold that the present leave to appeal is not maintainable by the private party against the order of acquittal in a State case either under Section 378 (4) or 378 (1)(a)(3) of the Cr.P.C. Further on examination suo moto in exercise of its power of revision, this Court does not find any illegality, impropriety in the correctness of the impugned judgment passed by the learned Magistrate. Accordingly, the present leave to appeal is dismissed with costs which is quantified at Rs.20,000/-. The said cost shall be paid within four weeks from today failing which the respondent shall be well within its right recover the same from the appellant.

(V.K.SHALI)
JUDGE

(ANIL KUMAR)
JUDGE

November 17, 2008
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