

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

+CrI. L.P. NO. 61/2004 & CrI.M.A.No. 5016/2004

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13.09.2010

GYAN CHANDRA GUPTA

... Petitioner

Through: Mr Sanjiv Kr. Advocate.

Versus

STATE & ORS.

... Respondents

Through: Mr. S.M. Rama Chandra, Advocate for
R-2 & R-3

Date of Reserve: 13th July, 2010
Date of Order: September 13, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

This leave to appeal has been preferred by the complainant in FIR No. 138/92 PS Sadar Bazar as the accused persons were acquitted by the Appellate Court vide order dated 27th January, 2004. Under Section 378 Sub Section 2 Cr.P.C., an appeal against acquittal by the Court of Sessions whether as Trial Court or as Appellate Court can be preferred by the State Government after obtaining a leave to appeal. No right has been vested by the Legislature in complainant to prefer an appeal against the acquittal passed by the Court of Sessions to the High Court. A complainant however, has a right to file a revision. In the present case, the complainant has not preferred revision but has preferred an appeal with this application for leave to appeal. In view of judgment of Supreme Court in Jagbir & Anr. v. State of Punjab AIR 1998 (SC) 3130 and provisions of CrI. L.P. No. 61/2004

Cr.P.C., an appeal filed by complainant is not maintainable. There is no request from the appellant for conversion of this appeal into a revision. However, even the jurisdiction of revision can be exercised by the High Court only in the exceptional circumstances when there is a glaring defect in the procedure or there is manifest error on a point of law resulting into flagrant miscarriage of justice. I, therefore, consider that the present appeal filed by the complainant is not maintainable and the application for leave to appeal is liable to be dismissed, the same is hereby dismissed.

SHIV NARAYAN DHINGRA, J.

September 13, 2010
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