

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No. 624 of 2014

Arising out of P. S. Case No. - 1184 Year - 1995 Thana - SIWAN COMPLAINT CASE District - SIWAN

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Raj Kumar Rai, S/o Late Bala Rai, Resident of Village – Sariya, P.S. – Basantpur, Dist. - Siwan

.... Appellant/s

Versus

1. The State of Bihar
2. Vakil Rai, S/o Late Ram Balak Rai
3. Mukhtar Rai, S/o Late Ram Balak Rai
4. Manan Rai, S/o Late Ram Balak Rai

All resident of village – Sariya, P.S. – Basantpur, Dist. - Siwan

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

3 07-01-2015

Heard learned counsel for the appellant, the State and learned counsel for the respondent nos. 2 to 4.

This appeal is directed against the judgment and order dated 12.09.2014 in Cr. Appeal No. 41 of 2003 passed by the learned Additional District and Sessions Judge-III, Siwan whereby and whereunder he has been pleased to set aside the judgment and order dated 19.04.2003 passed by learned Judicial Magistrate, 1st Class, Siwan and acquitted the respondent nos. 2 to 4 in Complaint Case No. 1184/1994 (Tr. No. 152/03).

An objection has been raised by the learned counsel for the State that the appeal is not maintainable in view of the fact that the appellant is a complainant as well as the victim and as per Section 378 (3) & (4) of the Cr.P.C. a complainant in case of appeal against acquittal has to take leave for pursuing the appeal with regard to a non-cognizable and bailable offence.

Learned counsel for the appellant, however, contended that since the appellant is also the victim Section 372 of the Cr.P.C. is applicable,

hence, the appeal is maintainable.

However, having regard to the fact and the submission made since the appellant is a victim as well as the complainant, the provision of Section 378(4) of the Cr.P.C. cannot be ignored and particularly in view of the fact that respondent nos. 2 to 4 have been acquitted and it is not a case in which conviction has been maintained or sentence is to challenge, hence, proper effect is required to be given to Section 378(4) of the Cr.P.C. when the appellant is a complainant and the order impugned is an order of acquittal passed by the trial court in appeal.

Hence, I am of the view that the appellant is required to file special leave to appeal to confirm Section 378(4) of the Cr.P.C. and to maintain the appeal.

Learned counsel for the appellant prays and he may be permitted to convert the criminal appeal into a petition to special leave to appeal under Section 378(4) of the Cr.P.C. in course of the day and the matter be placed before an appropriate Bench.

(Gopal Prasad, J.)

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