

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 221 of 2015

1. Vijay Kumar Agrawal S/o Late Shanker Lal Agrawal, aged about 60 years, R/o Sheetal Sari Show Room, in front of Jutemill Dharamshalla, New Road, Raigarh, P.S., Tah. and District Raigarh C.G.

---- Applicant/Petitioner

Versus

1. Parmanand Mishra S/o Raghunandan Mishra, R/o Through House of Lochan Prasad Mishra, Chote Atarmuda, P.S. - Chakradharnagar, Raigarh, Tahsil and District Raigarh C.G.
2. State of Chhattisgarh Through - District Magistrate, Raigarh, District Raigarh Chhattisgarh.

---- Non-applicants/Respondents

For Applicant – Shri V.K.Pandey, Advocate.

For Non-applicant No.1 – None.

For Non-applicant No.2 – Shri Avinash K.Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

21/04/2015

1. Heard on maintainability of this criminal revision.
2. As per unreported Criminal Misc. Petition No.617 of 2012 and Criminal Revision No.285 of 2014, Division Bench of this High Court held and answered to the stated questions as follows:-

1. Complainant is not entitled to prefer an appeal under proviso to Section 372 of the Code before the Court of Sessions against the judgment of acquittal passed by subordinate criminal court arising out of criminal complaint filed by the complainant;
2. Complainant is required to prefer an appeal under Section 378(4) of the Code before the High Court after obtaining special leave; and
3. Decision of the learned Single Judge (Hon'ble Mr. Justice G.

Minhajuddin) in **Sunder Das Rohra** (supra) cannot be said to be based on correct law interpretation and application of law. **Sunder Das Rohra** (supra), along with all other rulings whose ratio run contrary to the legal opinion expressed by us above, to that extent stands overruled.

3. As the applicant/complainant filed a complaint case against accused Parmanand Mishra, by the judgment dated 24-01-2014 in Case No.61/2012 the learned Judicial Magistrate First Class, Raigarh, dismissed the complaint and acquitted the accused, against which the applicant/complainant preferred the criminal appeal before the Second Additional Sessions Judge, Raigarh. By the judgment dated 02-01-2015 in Criminal Appeal No.H 28/2014, the learned appellate Court dismissed the appeal filed by the applicant/complainant holding the same as not maintainable and held that the applicant/complainant has to file an appeal along with leave to appeal under the provisions of Section 378(4) of the Code of Criminal Procedure, 1973 (in short 'the Code'). Hence, the applicant/complainant against the said judgment of the appellate Court preferred this criminal revision along with a prayer that the judgment passed in the criminal appeal dated 02-01-2015 be set aside and the case be remanded back to the Sessions Court of Raigarh to hear the case on merits.
4. As per answer passed in the reference above mentioned, the complainant's appeal under proviso to Section 372 of the Code is not maintainable. The complainant has to prefer an appeal under Section 378(4) of the Code before the High Court after obtaining special leave. Therefore, the criminal revision filed on behalf of the applicant is not maintainable, as per law.
5. During submission of argument, the learned counsel for the applicant submits that he be given an opportunity to file a duly constituted appeal under the provision of Section 378(4) of the Code before this Court.
6. As prayed, the criminal revision filed by the applicant is hereby

dismissed as not maintainable reserving the aforesaid liberty to file a duly constituted appeal as above mentioned.

7. Registry is directed to return the certified copy filed by the applicant after retaining photocopy of the same in the record.

Sd/-

(C.B.Bajpai)
JUDGE

