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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 501 of 2013**

Vimal Kedia, aged about 41 years, S/o Vishwanath Kedia, R/o HIG 47, Maharana Pratap Nagar, Sub Police Station Rampur, Tahsil and Civil and Revenue District Korba, Chhattisgarh.

---- Petitioner**Versus**

1. Gopal Rai S/o Late Raghunath Rai Soni, Age 48 years, R/o Laluram Colony, Transport Nagar, Korba.
2. Abhishek Rai Soni, aged 24 years, S/o Gopal Rai Soni, R/o Laluram Colony, Transport Nagar, Korba, and 5-6 other persons.

---- Respondents

For Petitioner : Shri Parag Kotecha, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****06/10/2015**

1. The petitioner filed a complaint case before the Chief Judicial Magistrate against the respondents under sections 392, 395, 424, 427, 440, 447, 448, 450, 451, 452, 461, 34 IPC on 22.5. 2012 alleging that the Respondent had increased the rent for the shop arbitrarily and refused to accept rent. The rent was therefore deposited in Court. The Respondents had illegally thrown his belongings on the road and locked the premises. Before inquiry or cognizance could be taken, he filed an application on 23.5.2012 under Section 156 (3) of the Code of Criminal Procedure for a direction to the police to register a first information report and investigate. The police after investigation submitted final report that the dispute between the parties was civil in nature arising out of a landlord and tenant dispute. The Petitioner had also filed a civil suit before the Civil Judge Class II, Korba, for declaration of title and possession with regard to the Suit properties. The Magistrate after perusing the police report and hearing the parties

accepted the closure report and discharged the Respondents on 30.4.2013. The Petitioner assails the order under Section 378 (4) of the Code of Criminal Procedure.

2. Learned Counsel for the Petitioner submits that the Magistrate could not have dismissed the Complaint without recording the statement of the Complainant and inquiry. The acquittal of the Respondents is illegal and contrary to law.

3. We have considered the submissions. The F.I.R was registered under Section 156(3) Code of Criminal Procedure before the Magistrate commenced inquiry on the complaint by recording the statement on oath of the Petitioner or taking of cognizance. The police submitted final report under Section 173 of the Code of Criminal Procedure that no offence was made out. The Magistrate at this stage could not have gone back to the stage of inquiry into the Complaint. No protest petition was filed by the Petitioner against the closure report. The Magistrate heard the parties on the final report and by a reasoned order discharged the Respondents under Section 227 of the Code of Criminal Procedure.

4. We are not satisfied that the present application is maintainable under Section 378 (4) Code of Criminal Procedure Code which reads as follows :-

“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. An order of acquittal is fundamentally distinct and different from an order of discharge. Section 227 Code of Criminal Procedure provides that if after consideration of the records of the case and after hearing the parties the judge considers that there is not sufficient ground for proceeding against the accused he shall discharge the accused and record his reasons for doing so. The order of the Magistrate is reasoned. Discharge is granted before commencement of the trial for inadequacy of materials for trial while acquittal follows after trial because the allegations could not be proved by the available.

6 The application is dismissed as not maintainable, but without prejudice to the rights of the Petitioner afresh in accordance with law.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE