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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.929 of 2014

The State of Chhattisgarh, Through District Magistrate, Rajnandgaon (C.G.)

----- Petitioner

Versus

Rajesh Khandelwal, S/o Harishankar Khandelwal, aged about 42 years, R/o Ganjline, Rajnandgaon, PS Rajnandgaon, Distt. Rajnandgaon (C.G.)

----- Respondent

For Petitioner: Mr. Neeraj Jain, Govt. Advocate.

For Respondent: Mr. G.S. Ahluwalia, Advocate.

Hon'ble Shri Justice T. P. Sharma and  
Hon'ble Shri Justice Inder Singh Uboweja

ORDER

20/03/2015

T.P. Sharma, J.

1. This is petition for leave to appeal against the judgment of acquittal passed by the Sessions Judge, Rajnandgaon, in Criminal Appeal No.13/2014 on 6-5-2014, whereby the respondent who was convicted by the trial Court has been acquitted by the appellate Court while exercising the appellate jurisdiction.
2. In the light of clause (b) of sub-section (1) of Section 378 read with sub-section (3) of Section 378 of the CrPC, appeal or leave to appeal against the order passed by the appellate Court exercising appellate jurisdiction / revisional jurisdiction under clause (a) of sub-section (1) of Section 378 of the CrPC, is not competent.
3. Section 378 of the CrPC reads thus,

**"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) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal –

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) 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.

(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) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2)."

4. Consequently, the petition for leave to appeal is summarily dismissed as not maintainable reserving liberty to the petitioner / State to redress the grievance before proper forum.

5. Certified copy of the judgment impugned be returned to counsel for the petitioner / State on his submitting the duly attested photostat copy of the same.

Sd/-  
T.P. Sharma  
Judge

Soma

Sd/-  
Inder Singh Uboweja  
Judge