

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.166 OF 1997

The State of Maharashtra.

....Appellant.
(Ori. Complainant)

Versus

1. Vithal Budho Bari
Age: 35, Occu. Stamp vendor, r/o Jalgaon.
R/o, Navi peth, Jalgaon, Dist: Jalgaon.

2. Narayan Ananda Rote
Age: 40, Occu. Labour, R/o Asoda
Tq.& Dist. Jalgaon.

3. Dnyandev Dayaram Patil
Age: 45, Occu.Agri., R/o Nashirabad,
Tq. & Dist. Jalgaon.

....Respondents.
(Ori. Accused no.3,1 &4
respectively)

.....
Shri A.S. Shinde, APP for appellant.
Shri V.R. Dhorde, Advocate for respondent no.1.
Shri V.T. Choudhari, Advocate for respondent nos.2 & 3.

.....

**CORAM: A.B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATE: 08.10.2015

ORAL JUDGMENT (Per A.B. Chaudhari, J.) :

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1] Learned counsel for the respondent no.1 states that the respondent no.1 is dead. Hence, the appeal filed by the State against the respondent no.1 is dismissed as abated.

2] Learned counsel for the respondent nos.2 & 3 has made a motion for dismissal of the appeal on the preliminary objection raised by him. His preliminary objection is that originally a private complaint was filed before the Magistrate for offences punishable u/ss.419, 467, 468, 471 r/w 34 of the Indian Penal Code against the respondents – accused persons. There was conviction recorded by the trial Magistrate. Feeling aggrieved thereby, the respondents – accused preferred appeal before the learned Sessions Judge. That appeal came to be allowed and all the respondents – accused persons were acquitted of the charges for which they were convicted. Therefore, if any appeal is to be filed, the same is to be filed by the same complainant who had filed the said private complaint. But in the instant case, the State of Maharashtra has filed the instant appeal against the judgment and order dated 19.2.1997 passed by the learned 3rd Additional Sessions Judge, Jalgaon.

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3] Per contra, the learned APP for the State does not dispute these facts and points out that as a matter of fact, the impugned judgment and order shows that an order of issuance of process u/s 202 of the Code of Criminal Procedure, 1973, was passed by the Judicial Magistrate, First Class, Jalgaon, after verification of statements of the complainant.

4] We have perused the record. We have heard the learned counsel for the parties. We have also gone through the Section 378(4) of the Code of Criminal Procedure, 1973. The said section relates to the appeal against acquittal. We find substance in the preliminary objection raised by Shri V.T. Choudhari, learned counsel for the respondent nos.2 & 3. Admittedly, the appeal preferred by the respondents – accused was allowed by the learned 3rd Additional Sessions Judge, Jalgaon, against the conviction order recorded by the trial Magistrate arising out of a private complaint case filed by Kashinath Shivdas Wani. Further, there was no Police case filed by the concerned Police Station. Therefore, in accordance with provisions of Section 378(4) of the Code of Criminal Procedure, 1973, the appeal against acquittal

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order recorded by the appellate Court could only be filed by the complainant and there is no provision as such enabling the State to file an appeal against the order of acquittal passed by the appellate Court in this case.

5] We, therefore, uphold the objection raised by the learned counsel for the respondent nos.2 & 3 and dismiss the Criminal Appeal No.166/1997 as not maintainable in the light of Section 378(4) of the Code of Criminal Procedure, 1973, as against the respondent nos.2 & 3.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)