

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NO. 27 OF 2013**

State of Goa,
[Represented by Shri. S. M. Paranjape] (major)
The Chief Inspector
Inspector of Factories and Boilers,
Altinho, Panaji, Goa. **... Appellant**

Versus

- 1] Shri. Abhay Kumar Agarwal, (major)
Occupier,
M/s. Global Inspat Ltd.,
Plot No. 16, M – 18, 19,
Cuncolim, Goa.
- 2] Shri. Yashwant Singh, Manager, (major)
M/s. Global Inspat Ltd.,
Plot No. 16, M – 18, 19,
Cuncolim, Goa. **... Respondents.**
(Original Accused)

Mr. Mahesh Amonkar, Public Prosecutor for the appellant.
Mr. Nitin Sardessai, Senior Advocate with Mr. L. Raghunandan,
Advocates for the respondents.

Coram :- K. L. WADANE, J.

Judgment Reserved on :- 06/02/2015.

Judgment Pronounced on :- 26/02/2015.

JUDGMENT :

Present appeal is directed against the order passed by the Judicial Magistrate, First Class, Margao in Criminal Case No. 14/FA/09/D dated 17/12/2009, by which the learned Magistrate has dismissed the complaint in default and the accused are acquitted. Hence, the present appeal.

2] The complainant – appellant lodged complaint against the respondents alleging that they are occupier and manager of M/s. Global Ispat Ltd., Cuncolim, Goa and they have committed an offence under Section 92 of the Factories Act, 1948.

3] After filing of the complaint, the learned Magistrate issued the summons to the respondents and the same were duly served upon them. The notice was also issued to the complainant – appellant, which was duly served upon him, but the complainant – appellant failed to remain present in the Court on the date fixed for hearing. So also, the learned Public Prosecutor remained absent. Hence, the complaint was dismissed for default, therefore the present appeal.

4] I have heard the arguments of Shri Mahesh Amonkar, learned Public Prosecutor for the appellant and Shri Nitin Sardesai, learned senior Advocate for the respondents.

5] On scrutiny of the record and upon hearing both the advocates following points arise for my determination.

Points	Findings
1) Whether the present appeal is ... maintainable ?	“In the negative”
2) What order ?	... “Appeal is dismissed”

6] On perusal of the earlier orders it is seen that when the present appeal was presented before this Court, at that time there was certain delay in filing the appeal, hence delay was condoned as well as leave to appeal was granted keeping the question of maintainability open.

7] During the course of arguments the learned Public Prosecutor mostly relied upon the provisions of Rule 18 sub-rule 'c' of The Goa, Daman and Diu Factories Rules, 1985, which reads as follows;

18. Powers of Inspectors -

An Inspector shall, for the purpose of the execution of the Act, have power to do all or any of the following things, that is to say : -

(a)

(b)

(c) to prosecute, conduct or defend before a Court any complaint, or other proceedings arising under the Act or in discharge of his duties as an Inspector :

8] In addition of the above provisions the learned Public Prosecutor Shri Amonkar has relied upon the provisions of sub-section 4 of Section 378 of Criminal Procedure Code and Shri Sardessai has relied upon the provisions of sub-section 2 of Section 378 of Criminal Procedure Code, which reads as follows :

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 may, 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)

(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)

(6)

9] By referring the above provisions the learned Public Prosecutor Shri Amonkar has argued that the present appeal is presented by the Inspector under the powers conferred upon him as per the above referred provisions and accordingly he has preferred the appeal. Furthermore, the State Government has accorded the sanction to present the appeal through the Public Prosecutor.

10] As against this Shri Nitin Sardesai, the learned senior counsel for the respondents has relied upon the provisions of Section 378 (2) of Criminal Procedure Code.

11] By referring the above said provisions Shri Sardesai, the learned senior counsel argued that the Central Government has not authorized the Public Prosecutor to present the appeal as investigated under the provisions of Section 378 (2) of Criminal Procedure Code. According to Shri Sardesai authorization by the Central Government is must. No doubt, the Inspector has power to prosecute a complaint before the Court in discharge of his duties as an Inspector. However, a specific authorization is needed in view of the above referred provisions.

12] In short, Shri Amonkar, the learned Public Prosecutor is relying upon the provisions of Section 378 (4) of Criminal Procedure Code, whereas Shri Sardesai, the learned senior counsel for the respondents is relying upon the provisions of Section 378 (2). On careful perusal of the above provisions of Section 378 of Cr. P. C. it appears that sub-section 2 of Section 378 deals with the offences under any Central Acts and in any case which empowers the Public Prosecutor to present appeal with prior permission of the Central Government. Admittedly, in the present case the alleged offence is under the provisions of the Factories Act

which is the Central Act. Therefore the provisions of sub-section 2 of Section 378 of Cr. P. C. are more appropriately applicable to the facts of the present case. Shri Sardessai, the learned senior counsel has therefore rightly relied upon the observations made in a case reported in 2010 (5) SCC 1. In para no. 45 the Hon'ble Apex Court has observed as follows :

In our opinion, the legislature has maintained a mutually exclusive division in the matter of appeal from an order of acquittal inasmuch as the competent authority to appeal from an order of acquittal in two types of cases referred to in sub-section (2) is the Central Government and the authority of the State Government in relation to such cases has been excluded. As a necessary corollary, it has to be held, and we hold, that the State Government (of Bihar) is not competent to direct its Public Prosecutor to present appeal from the judgment dated 18/12/2006 passed by the Special Judge, CBI (HAD), Patna.

13] In view of the provisions of Section 378 (2) of Criminal Procedure Code and the observations made in the above cited authority, I am of the opinion that, the present appeal is not maintainable. Therefore, it is dismissed and disposed of.

K. L. WADANE, J.