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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 25.02.2015**

% **CRL.A. 652/2008**

NORTH DELHI POWER LTD ..... Appellant

Through: Mr. Vikram Nandrajog and Mr.  
Sushil Jaswal, Advocates

versus

SAROVER HOSPITAL & ANR ..... Respondents

Through: Mr. R.N. Sharma and Mr. Avinash  
Vats, Advocates

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NORTH DELHI POWER LTD ..... Appellant

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**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**VIPIN SANGHI, J. (OPEN COURT)**

1. These appeals are listed for hearing. However, learned counsel for the respondent has drawn the attention of the Court to two previous orders dated 16.07.2009 and 18.05.2010, to submit that, firstly, the preliminary objection of the respondent needs to be considered.

2. The submission of learned counsel for the respondent is that the present appeals had been preferred, as if the appellant had a statutory right of appeal, and in ignorance of Section 378 Cr PC which, inter alia, provides that against an order of acquittal passed in any case instituted upon a complaint, an application has to be made by the complainant before the High Court to seek grant of special leave to appeal from the order of acquittal, and only upon grant of such special leave, the complainant may prefer an appeal to the High Court. Section 378(5) provides that no application under sub section (4) for 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 the order of acquittal.

3. It is seen from the record that no application to seek leave to appeal has been preferred in the present case. On 16.07.2009, the respondent raised the aforesaid objection, which is recorded as follows:

*“An objection is taken by learned counsel for the respondent that the present appeal is not maintainable inasmuch as no leave to appeal has been sought by the appellant against the order of acquittal passed by the trial court.*

*Learned counsel for the appellant prays for leave to examine the legal objection.*

*On his request, list on 22<sup>nd</sup> September, 2009”.*

4. Despite the said objection being raised, the appellant did not take corrective steps of preferring a leave application along with an application seeking condonation of delay – the order of acquittal is dated 02.06.2008.

On 18.05.2010, once again, the said aspect was brought to the notice of the Court, when the following order came to be passed in CrI. A 652/2008:

*"Learned counsel for the respondent points out that the present appeal has been preferred u/s 378(4) Cr.P.C. However, no application to seek leave to appeal u/s 378(4) Cr.P.C has been moved by the appellant. Straightaway an appeal has been preferred which is not permissible as special leave to appeal ought to have been sought. He further submits that it is too late in the day for the appellant to seek special leave to appeal in as much as the application should have been preferred within sixty days from the date of acquittal. He refers to Section 378(5) in this regard. Learned counsel for the appellant wishes to examine this issue.*

*It is also urged by learned counsel for the respondent that as the respondent has been acquitted, the trial court had directed the refund of the amount of Rs.5 lakhs which the respondent-accused had deposited at the time of grant of bail. The refund had to be made within twelve days from the date of the acquittal. However vide order dated 07.08.2008, this Court had stayed the operation of the impugned order dated 02.06.2008 and the said interim order still continues to operate. In my view since the respondent accused stands acquitted, there is not justification in the appellant retaining the said amount of Rs. 5 lakhs. I therefore, direct that the said amount be deposited in this Court within a period of two weeks. Upon the deposit being made, the same shall be put in a fixed deposit for a period of one year and the same shall be renewed from time to time till further orders. It shall be open to the respondent to move an application to withdraw the said amount upon furnishing of adequate security. Adjourned to 09.08.2010".*

5. I may observe that at two places in the said order, in respect of Section 378, the same has been typed as Section 278. The said typographical error has been corrected by me today in Court under my initials.

6. Even after the passing of the order dated 18.05.2010, the corrective steps, as aforesaid, were not taken.

7. Learned counsel for the appellant submits that since the appeal already stands admitted and was listed for regular hearing, the aforesaid objection taken by the respondent does not survive.

8. On 28.09.2010, the Court admitted the appeal by passing the following order:

“Crl A. No.652/2008

*Admit.*

*List in due course.*

*Trial Court record be requisitioned”.*

9. From the aforesaid order, it cannot be said that the Court considered the aspect relevant to assess whether or not to grant leave to appeal to the appellant. It appears that the Court merely based on the premise that the appellant has a statutory right of appeal, admitted the same.

10. In my view, there is no merit in the aforesaid submission. The statutory scheme contained in Section 378 is clear. Section 378 (4), (5) and (6) read as follows:

*“378. Appeal in case of acquittal.-*

*(1) ..... .*

*(2) ..... .*

*(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) 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)".*

11. From the aforesaid statutory scheme, it is abundantly clear that against an order of acquittal passed in any case instituted upon a complaint, the complainant may approach the High Court to seek special leave to appeal, and unless such leave is sought and granted, the appeal against the order of acquittal shall not lie.

12. In the present case, the appellant has not sought the leave of the Court. Mere admission of the appeal without consideration of the objection raised by the respondent would not have the effect of nullifying the said objection, which is premised on the statutory scheme. Thus, I am of the view that the present appeals are not maintainable and the same are, accordingly, dismissed.

Dasti.

**VIPIN SANGHI, J.**

**FEBRUARY 25, 2015**

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