

#R-23

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12.10.2015

CRL.A.786/2008

NORTH DELHI POWER LTD

..... Appellant

Through: Mr. Abhimanyu Singh Khatri,
Advocate for Mr. Vikram Nandrajog,
Advocate

versus

RAVINDER SINGH

..... Respondent

Through: None

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an appeal under section 156 of the Electricity Act, 2003 assailing the judgment and order dated 12.05.2008 passed by the learned Additional Sessions Judge, Special Electricity Court, Rohini, Delhi in Complaint Case No.994/2007.

2. At the outset, learned counsel appearing on behalf of the respondent submits that the present appeal, as filed, is not maintainable in view of the bar as contained in the provisions of section 378(4) of the Code of Criminal Procedure, 1973. Counsel would urge that in view of the said provision, no

appeal can be entertained against an acquittal by a trial court, except with the prior leave of the High Court, as mandated by the said provision. Counsel would invite my attention to a decision of the Hon'ble Supreme Court in *Subhash Chand vs. State (Delhi Administration)* reported as (2013) 2 SCC 17 in order to buttress his submission.

3. The Supreme Court's conclusions in this behalf are contained in para 19 and 23 of the report as follows:-

“19. Sub-section (4) of Section 378 makes provision for appeal against an order of acquittal passed in a case instituted upon complaint. It states that in such case if the complainant makes an application to the High Court and the High Court grants special leave to appeal, the complainant may present such an appeal to the High Court. This sub-section speaks of “special leave” as against sub-section (3) relating to other appeals which speaks of “leave”. Thus, the complainant's appeal against an order of acquittal is a category by itself. The complainant could be a private person or a public servant. This is evident from sub-section (5) which refers to application filed for “special leave” by the complainant. It grants six months' period of limitation to a complainant who is a public servant and sixty days in every other case for filing application. Sub-section (6) is important. It states that if in any case the complainant's application for “special leave” under sub-section (4) is refused no appeal from the order of acquittal shall lie under sub-section (1) or under sub-section (2). Thus, if “special leave” is not granted to the complainant to appeal against an order of acquittal the matter must end there. Neither the District Magistrate nor the State Government can appeal against that order of acquittal.

The idea appears to be to accord quietus to the case in such a situation.

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23. In view of the above, we conclude that a complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court. He cannot file such appeal in the Sessions Court. In the instant case the complaint alleging offences punishable under Sections 16(1) & (1-A) read with Section 7 of the PFA Act and the Rules is filed by complainant Shri Jaiswal, Local Health Authority through Delhi Administration. The appellant was acquitted by the Metropolitan Magistrate, Patiala House Courts, New Delhi. The complainant can challenge the order of acquittal by filing an application for special leave to appeal in the Delhi High Court and not in the Sessions Court. Therefore, the impugned order [Criminal Misc. Case No. 427 of 2009, decided on 7-1-2011 (Del)] holding that this case is not governed by Section 378(4) of the Code is quashed and set aside. In the circumstances the appeal is allowed.”

4. Admittedly, no leave, as mandatorily required, was prayed for on behalf of the appellant herein, from the High Court, before instituting the present appeal. Consequently, the same as filed is not maintainable.

5. Dismissed.

SIDDHARTH MRIDUL, J

OCTOBER 12, 2015/dn