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

+ CRL.REV.P. 711/2013 & CrI.M.A.No.18647/2013

SU-KAM POWER SYSTEMS LTD Petitioner
Through:Mr.Diwakar Singh, Advocate

versus

SHREE BALAJI ENTERPRISES Respondent
Through:Mr.Rishi Pal Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **28.08.2015**

Learned counsel for the petitioner seeks permission to withdraw this revision petition as the same has been filed erroneously. In the complaint under Section 138 of the Negotiable Instruments Act the respondent was acquitted by the Metropolitan Magistrate. Against such an order of acquittal, the petitioner preferred an appeal before the Sessions Court. The Sessions Court affirmed the order of the Metropolitan Magistrate.

The present revision petition is filed against the appellate order.

This Court is afraid that the petition is not maintainable.

In the event of acquittal in a case instituted on complaint, an appeal is to be preferred in the High Court after obtaining the leave.

Section 378 of the Cr.P.C. reads as under:

“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 acquittal passed by any Court other than a High Court 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) 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).”

The remedy for the complaint, therefore, is to prefer a leave to appeal before this Court under Section 378(4) of Cr.P.C.

Learned counsel for the petitioner seeks permission to withdraw the present petition in order to enable him to prefer a fresh application under Section 378(4) of Cr.P.C. seeking leave to appeal against the judgment of the trial court.

The revision petition is dismissed as withdrawn with the liberty aforesaid.

ASHUTOSH KUMAR, J

AUGUST 28, 2015
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