

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.534 of 2016

Arising Out of PS.Case No. -331 Year- 2004 Thana -BIHARSHARIF District- NALANDA
(BIHARSHARIFF)

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Md. Nayyar Iqbal son of Late Abdul Wahid, resident of Kazi Mohulla, P.S.:
Biharsharif, District- Nalanda.

..... Appellant

Versus

The State of Bihar

..... Respondent

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Appearance :

For the Appellant/s : Mr. Rekha Prasad, Advocate

For the Respondent/s : Sri Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 01-08-2016

The appellant is aggrieved by the judgment dated 7th April, 2016 passed by the learned Chief Judicial Magistrate, Nalanda, Biharsharif in G. R. No.1995 of 2004, arising out of Bihar P. S. Case No. 331 of 2004 by which five accused persons tried for the offences punishable under Sections 447, 323, 324, 325, 341 and 504 read with 34 of the Indian Penal Code have been acquitted.

2. The appeal has been preferred under Section 374(2) and 389(1) of the Code of Criminal Procedure (for short 'CrPC'). The office has sent the record of the case pointing out several defects.

3. It is submitted by the learned counsel for the appellant that the application ought to have been filed under

Section 378 of the CrPC and not under Section 374(2) or 389(1) of the CrPC.

4. In my considered opinion, the plea taken by the learned counsel for the appellant is misconceived. Admittedly, the acquittal has been recorded in a case arising out of first information report instituted by the police. An appeal against the judgment of acquittal under Section 378(1)(a) of the CrPC would be maintainable subject to the provisions of sub-sections (3) and (5) before the court of Sessions Judge, if an appeal is filed on behalf of the State in respect of a cognizable and non-bailable offence. A private party or the informant cannot file an appeal under Section 378 of the CrPC.

5. The proviso to Section 372 of the CrPC gives a right to the victim to prefer an appeal against any order passed by the court acquitting the accused or convicting for lesser offence or imposing inadequate compensation and such appeal would lie to the court to which an appeal ordinarily lies against order of conviction of such court.

6. In the present case, the judgment of acquittal has been recorded by the court of Chief Judicial Magistrate, Nalanda, Bihar Sharif. If so advised, the informant may challenge the impugned judgment before the court of Sessions under the

proviso to Section 372 of the CrPC.

7. In view of the discussion made above, the present appeal before this Court is not maintainable under any of the provisions of the CrPC.

8. In that view of the matter, the appeal is disposed of as not maintainable.

(Ashwani Kumar Singh, J.)

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