

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 1006 of 2016**

Krishna Kanahiya Pandey S/o Bansidhar Pandey, aged about 46 years,
Occupation - Daynamik Security Service, R/o Bagh Talab, Circuit House
Road Raigarh, Thana & Tahsil- Raigarh, Civil & Revenue District
Raigarh, District Raigarh, Chhattisgarh.

---- **Petitioner****Versus**

1. Dharnidhar Bajpaye S/o Late Leeladhar Bajpaye, aged about 47 years,
Occupation- Business, R/o Thana Road Raigarh, Tahsil- Raigarh, District
Raigarh, Chhattisgarh.
2. State of Chhattisgarh through District Magistrate, Raigarh District
Raigarh, Chhattisgarh.

---- **Respondents**

For Petitioner	:	Shri Sanjay Agrawal, Advocate
For Respondent no.1	:	Shri Vineet Ku. Pandey, Advocate
For Respondent no.2/State:	:	Shri O. P. Sahu, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****08.12.2016**

The petitioner by way of the present petition under Section 482 CrPC has questioned the judgment dated 26.03.2015 passed by the Special Judge, Raigarh in Criminal Appeal No. 01/2013. Vide the said impugned judgment the Court below exercising its appellate powers has set aside the judgment of acquittal dated 01.09.2012 passed by the JMFC, Raigarh in Criminal Case No. 155/2012 whereby the JMFC had acquitted the petitioner in a proceeding drawn under Section 138 of Negotiable Instrument Act.

2. Counsel for the petitioner at the outset submits that the appeal which was preferred by the respondent no.1/ complainant before the Special Judge,

Raigarh was not maintainable, that the lower Appellate Court should not have entertained it, as the appeal would be maintainable only before the High Court under Section 378 (4) of CrPC. According to the counsel for the petitioner, Section 378 (4) CrPC is very explicit wherein it shows that if an order of acquittal passed in a case instituted upon a complaint and the High Court, on an application made to it by the complainant in this regard grants special leave to appeal from the order of acquittal, the complainant can present such an appeal only to the High Court. This by itself very explicitly envisages that against a judgment of acquittal passed by the trial Court the appeal under the provisions of Section 378 (4) CrPC would be before the High Court. Thus, the appeal preferred under Section 378 (4) CrPC before the Special Judge, Raigarh is not sustainable and the impugned judgment passed therein is nullity in the law.

3. Shri Pandey, counsel appearing for respondent no.1 does not dispute the objection raised by the counsel for the petitioner. However, he submits that the respondent no.1/complainant should not be left remediless if at all this Court reaches to the conclusion that the judgment under challenge in the present petition is a nullity and therefore, respondent no.1 may have the liberty of challenging the judgment of acquittal dated 01.09.2012 before the High Court.

4. State counsel also agrees to the argument raised by the counsel for the petitioner and submits that against the order of acquittal, CrMP should have been filed before the High Court seeking leave to appeal under Section 378 (4) of CrPC.

5. Having considered the rival contentions put forth by the counsel for the parties it would be trite at this juncture to refer to a recent decision of the Supreme Court in the case of **Satya Pal Singh v. State of Madhya Pradesh and others** reported in **2015 AIR SCW 6251** wherein the Hon'ble Supreme Court in paragraph-13 has held as under:

“13. Thus, to conclude on the legal issue:

“whether the appellant herein, being the father of the deceased, has statutory right to prefer an appeal to the High Court against the order of acquittal under proviso to Section 372 of Cr.P.C. without obtaining the leave of the High Court as required under sub-section (3) to Section 378 of Cr.P.C.”, this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2 (wa) of Cr.P.C., under proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-section (3) to Section 378 of Cr.P.C. the High Court of M.P. Has failed to deal with this important legal aspect of the matter while passing the impugned judgment and order.”

6. In view of the legal position as has been enunciated in the case of Satya Pal Singh (supra) and also taking note of the provisions of Section 378 (4) CrPC, this Court is of the opinion that the lower Appellate Court has committed an error firstly entertaining the appeal and secondly reversing the judgment of acquittal passed by the trial Court.

7. Thus, in the given factual matrix of the case and also in the light of the judgment of the Supreme Court, the impugned judgment dated 26.03.2015 is not sustainable and the same is accordingly set aside.

8. It would be trite to mention that the setting aside of the impugned judgment dated 26.03.2015 by this Court would not preclude the respondent no.1 complainant from availing his right to appeal against the order of JMFC dated 01.09.2012 in Criminal Case No. 155/2012.

9. With the aforesaid observation, the present petition stands allowed.

Sd/-

P. Sam Koshy
Judge