

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPEAL NO. 473 OF 2016

Chandrakant S/o Narayan Desale .. Appellant

Versus

Arun Pandharinath Sonar & Ors. .. Respondents

.....
Mr V. P. Raje, Advocate h/f Mr Amol Sawant, Advocate for the appellant
Mr K. D. Mundhe, APP for respondent/State
.....

**CORAM : VL. ACHLIYA, J.
DATED : 24.02.2017.**

PER COURT :

1. Learned counsel for the appellant seeks permission to withdraw the appeal with leave to file appeal before the Sessions Court for the reason that the appeal against impugned Judgment & Order ought to have been filed before the Sessions Court at Nandurbar.
2. Perused the impugned Judgment & Order passed by the trial Court.
3. By the impugned Judgment & Order dt. 17.03.2016 passed by Judicial Magistrate First Class, Nandurbar, the accused were acquitted of the

offences u/s 420, 468, 471 and 477-A r/w Section 34 of the IPC. Being aggrieved, the appellant has preferred this appeal. The offences for which the accused were tried and acquitted by the trial Court relate to cognizable and non-bailable offences. Section 378 of the Code of Criminal Procedure provides for appeal in case of acquittal which 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),*
 1. *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;*
 2. *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 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.];*
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 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).*

4. Thus, Section 378(2)(a) of Cr.P.C. spells out that, as against the order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence, the appeal lies to the Court of Session. In case of offences which are non-cognizable and bailable, the appeal lies to High Court against the order passed by the Magistrate. In this view, the appeal ought to have been presented to the Court of Session.

5. On perusal of record, it reveals that while scrutinizing the appeal, the following note has been recorded in the docket.

“Note: This appeal preferred against the order in RCC No. 117/2009 passed by JMFC, Nandurbar. Appeal is not maintainable as remedy is available before Sessions Court. For consideration. (statement made by Adv. regarding maintainability of Appeal)”.

6. In view of the objection noted in the docket, the appeal should not have been registered unless the objection was removed. In this view, the Registrar (Judicial) is directed to suitably advise the officials from Registry the course to be followed when the appeal is found to be not maintainable.

7. In view of the above, the appellant is permitted to withdraw the appeal with liberty to file an appeal before the appropriate Court of law. In case such appeal is filed before the appropriate Court, then the time spent in prosecuting the remedy before the High Court may be taken into consideration while considering the prayer for condoning the delay.

8. Accordingly, the Criminal Appeal stands disposed of as withdrawn with liberty to file appropriate appeal before the Sessions Court, Nandurbar.

[V. L. ACHLIYA]
JUDGE