

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 475 of 2009

Gautamchand Dakliya S/o Bhikhamchand, aged about 60 years, Proprietor, Vinod Readymade House, Thakur Raod Jagdalpur, District Bastar, (CG) R/o Thakur Raod Jagdalpur, District Bastar, CG.

---- Applicant

Versus

- Prakashchand Bhothara S/o Mulchand Bhothara, Bhagyashri Ladies wear, Thakur Road Jagdalpur, District Bastar, CG.

---- Respondent

For Applicant : Smt. Renu Kochar, Advocate

For State/Respondent : Shri Ashish Surana, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

01/04/2019

By this revision under Section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short 'Code') the applicant has challenged the legality and propriety of the judgment dated 16.07.2009 passed by learned Sessions Judge Bastar at Jagdalpur, (CG) in Criminal Appeal No. 12/2009, reversing the judgment of conviction and order of sentence dated 12.01.2009 passed by Judicial Magistrate First Class Jagdalpur, Bastar District Bastar, CG in Criminal Complainant Case No. 252/2009, whereby the trial Court has convicted the non-applicant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and sentenced to undergo RI for three months and fine of Rs. 10,000/-, plus default stipulation.

2. I have heard learned counsel for the parties, perused the judgment impugned and judgment of the trial Court.

3. This is revision against the judgment of acquittal passed by the Appellate Court in a Criminal Case i.e. not in police case on the ground that the trial Court has convicted and sentenced the non-applicant, but in exercise of appellate jurisdiction of the appellate Court has acquitted him.

4. Sub-section (4) of Section 378 of the Code provides remedy of appeal after grant of leave to appeal to the complainant. Sub-section (4) of Section 378 of the Code reads thus:-

“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, grant special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.”

5. Sub-section (4) of Section 401 of the Code creates rider in entertaining the revision against appealable order. Sub-section (4) of Section 401 of the Code reads thus:-

“(4). Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”

As per sub-section (4) of Section 401 of the Code, revision against appealable order or judgment is not maintainable.

6. Section 378 (1) & (2) of the Code provides remedy of appeal against the judgment of acquittal to the State Government and its authority and as per clause (b) of sub-section (2) of Section 378 of the Code, an appeal may be presented 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).

7. As per sub-section (4) of Section 378 of the Code, if such an order of acquittal has been passed in any case instituted upon complaint, then the complainant may file an appeal after grant of special leave to appeal against an order of acquittal. The word such an order of acquittal appears in sub-section (4) is controlled by clause (b) of sub-section (2) and sub-section (1) of Section 378 of the Code.

8. While dealing with the same provisions the High Court of Orissa in the matter of **Md. Nasrul Haque Vs. Rafique Khan and Ors.**¹ has held

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that application for grant of leave filed by the complainant under Section 378 (4) of the Code against an order of acquittal passed by the appellate Court in complaint case is maintainable.

9. While dealing with the same question, the High Court of Punjab in the matter of **Shiv Parshad Vs. Bhagwan Das and another**,² the High Court of Orissa in the matter of **Dukhishyam Sahu Vs. Bidyadhar Sahu**,³ the High Court of Mysore in the matter of **Chairman, Village Panchayath, Nagathihali Vs. N. Thimmasetty Gowda**,⁴ the High Court of Bombay in the matter of **State of Bombay Vs. N. G. Tayawade and another**,⁵ the High Court of Karnataka in the matter of **K.H. Ganesh Rao V. H. Gopal**,⁶ and the High Court of Gujarat in the matter of **Mahammadmiya Kalumiya Vs. Majidkhan Dilkarkhan and another**⁷, have taken in the same view.

10 In sub-section (4) of Section 378 of the Code the legislature has not restricted the meaning of an order of acquittal only to the extent of order passed by the trial Court, but also includes an order passed by the appellate Court in complaint Case.

11. Therefore, the revision filed on behalf of the applicant against an order of acquittal passed by the appellate Court in a complaint case is not maintainable and same is dismissed as not maintainable. However, liberty is reserved to the applicant to file special leave to appeal along with an appeal against the judgment of acquittal passed by the appellate Court. Certified copy of the judgment impugned be returned to counsel for the applicant after furnishing duly Photostat copy of the same.

Sd/-

(Vimla Singh Kapoor)
Judge

Pawan

2 AIR 1958 Punjab 228
3 AIR 1966 Orissa 45
4 AIR 1956 Mysore 62
5 AIR 1959 Bombay 94
6 2010 CRI. L. J. 2687
7 1972 CRI. L. J. 1409