

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 411 of 2008

Order reserved on 21.01.2019

Order pronounced on 02.05.2019

Balbir Singh Bagga, S/o Sardar Bharat Singh Bagga, aged about 49 years, R/o Bagga Auto Mobile Main Road Dalli Rajhara, Police Station Rajhara, Tahsil Balod, District Durg (C.G.)

----Applicant

Versus

Dharmuram Tamar, S/o Likhanram Taram, R/o No. 1 Quarter, No. M-2 B Type Township, Near Cricker Ground Dalli Rajhara, Police Station Rajhara, District Durg (C.G.)

---- Respondent

For Applicant	:	Shri Rakesh Pandey , Advocate and Shri Abhishek Pandey, Advocate
For Respondent	:	Shri Amit Kumar Sahu, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

This revision petition is against the judgment dated 29.04.2008 passed by the Additional Sessions Judge (FTC), Balod, District Durg in Criminal Appeal No.11/2007 setting aside the judgment dated 26.03.2007 passed by Judicial Magistrate First Class, Balod convicting the accused/applicant under Section 138 of the Negotiable Instruments Act and sentencing him to undergo SI for 6 months and pay fine of Rs.5000/- 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 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

1 1996 | OLR 329

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

Jyotishi/Ajay

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