

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 11 of 2019

Abhay Dinesh Thakkar

Applicant

Versus

Ramesh Idnani

Respondent

Post for pronouncement of the order on 21.11.2019

Sd/-

JUDGE

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 21.08.2019****Order Delivered on : 21/11/2019****CRR No. 11 of 2019**

- Abhay Dinesh Thakkar S/o Shri Udhav Ji Thakkar Aged About 32 Years Occupation- Business, Place- Popular Electronics, Hotel Suvidha, Bilaspur, District- Bilaspur, Chhattisgarh. R/o Shri Ram Plaza Building, Third Floor, Flat No. 15, Near Punjab National Bank, Post Office- Gol Bazar, District- Bilaspur, Chhattisgarh.

---- Applicant**Versus**

- Ramesh Idnani S/o Late Shri Mandharam Indani Aged About 45 Years Occupation- Private Business, R/o Jarhabhatha, Gulley No. 01, S.C. Verma Tower, First Floor, House No.- 379/2, Jarhabhatha, Bilaspur, District- Bilaspur, Chhattisgarh.,

---- Respondent

For Applicant	: Shri Achyut Tiwari, Advocate
For Respondent	: Shri Ashutosh Trivedi, Advocate

Hon'ble Smt. Justice Rajani Dubey**C A V Order****21/11/2019**

Present revision filed under Section 397/401 Cr.P.C. by the applicant challenging the legality and propriety of the judgment dated 22.11.2018 passed by the Sixth Additional Sessions Judge, Bilaspur in Cr.A. No. 240/2018, acquitting the accused/respondent of the offence under Section 138 of the Negotiable Instruments Act as awarded by the Chief Judicial Magistrate, Bilaspur and sentenced to

undergo SI for six months and to pay compensation of Rs. 5,00,000/-.

2. Brief facts of the case are that the applicant has filed complaint case No. 78/2015 against the respondent under Section 138 of the Negotiable Instruments Act and has been prosecuted and convicted by the trial court. Thereafter, on the appeal filed by the respondent, the appellate court has acquitted the respondent. Hence, the present revision.

3. Counsel for the applicant submits that the appellate court has failed to consider the evidence in its proper perspective as well as the statements and the evidence of the witnesses. He submits that the judgment of acquittal is bad, improper, incorrect and illegal. He submits that the appellate court has not considered that the two cheques dated 13.11.2014 were drawn by the respondent and it has been admitted by him. He further submits that the applicant has proved his case by oral and documentary evidence and the respondent has not produced any evidence or witnesses. It is submitted that the appellate court has wrongly interpreted Section 118 of the Negotiable Instrument Act and failed to appreciate the provisions of Section 139 of the Negotiable Instruments Act. Therefore, the order impugned is liable to be set aside.

4. On the other hand, counsel for the respondent supported the impugned order and submits that the revision against order of acquittal is not maintainable. Reliance has been placed in the matter of **Gautamchand Dakliya Vs. Prakashchand Bothra** passed by this Court in Cr.M.P. No. 619/2013 vide order dated 23.01.2014.

5. Heard counsel for the parties and perused the material available on record.

6. This is a revision against the judgment of acquittal passed by the appellate court in a complaint 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. The Apex Court has observed that in one of the matter that whether a case is a case instituted on a complaint depends on the legal provisions relating to the offence involved therein. once it is a case instituted on a complaint and an order of acquittal is passed, whether the offence is bailable or non-bailable, cognizable or non-cognizable, the complainant can file an application under Section 378(4) for special leave to appeal against it in the High Court. Section 378 (4) places no restriction on the complainant... .."

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

“ 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.

Sub-section (4) of Section 401 creates rider in entertaining the revision against appealable order. Sub-section (4) of Section 401 Cr.P.C. reads as under :

“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 Cr.P.C., revision against appealable order or judgment is not maintainable.

7. In view of 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.

In sub-section (4) of Section 378 Cr.P.C. 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 a complaint case.

8. Thus, I am of the considered view that the remedy available to the complainant under Section 138 of the NI Act against order of acquittal is only to seek special leave before filing an appeal under Section 378 (4) Cr.P.C, before the High Court and the applicant is at liberty to file appeal against the judgment of acquittal, if he so desires. Consequently, the appeal filed by the appellant is dismissed as not maintainable.

Sd/-

(Rajani Dubey)
Judge