

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 282/2019**

Date of Decision:26.07.2019

IN THE MATTER OF:

LALITA

.....Petitioner

Through: Mr. Anuj Chaturvedi, Advocate and
Ms. Richa Dhawan, Advocate

versus

STATE & ORS

..... Respondents

Through: Ms. Manjeet Arya, APP for State
Mr. Archit Upadhyay, Advocate (DHCLSC)
for R2 and R3

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present revision petition has been filed under Section 397 r/w Section 482 CrPC assailing the order dated 31.01.2019 passed by the Special Judge (P.C. Act) CBI-01 (Central District), Tis Hazari Courts, Delhi in Crl. Appeal No.65/2018.
2. The facts of the prosecution, as noted by the trial court, are that the Respondents No.2 and 3 faced trial in the FIR No.05/2009 registered under Sections 324 r/w 34 IPC at P.S. Nabi Karim. After the trial, vide judgment dated 04.10.2018, the Respondents No.2 and 3 were acquitted of all the charges by the Metropolitan Magistrate.
3. The order of acquittal was challenged by the revisionist/ complainant by way of a Criminal Appeal No. 65/2018 filed under Proviso to Section 372 CrPC before the Court of Sessions.

4. Learned counsels for the parties submitted that the Special Judge, without going into the merits of the case, disposed of the appeal with liberty to file the same before this Court. The relevant portion of the order passed by the Special Judge is reproduced below:-

*“(6) An issue has arisen with regard to the jurisdiction of the Court of Sessions to entertain an appeal against acquittal filed by the victim/ complainant in the light of the Judgment of the Hon’ble Delhi High Court in the case of **J.B. Gupta &Ors. Vs. State Crl. RevisionPetition No. 147/2012** decided on **17.05.2016**. Reliance was placed on the following judgments:-*

1.Mallikarjun Kodagali (dead) Vs. State of Karnataka &Ors. Crl. Appeal No.1281-82/2018 decided on 12.10.2018.

2.Roopendra Singh Vs. State of Tripura &Anr., Crl. Appeal No. 690 of 2017decided 11.04.2017.

(7) However, during the course of arguments, the appellant submitted that without entering into any controversy or academic discussion as to whether the Court of Sessions would have the jurisdiction to entertain an appeal against acquittal filed by the victim/ complainant, she seeks permission to withdraw the present appeal with liberty to file the same before the Delhi High Court for which she may be granted two weeks time and the original documents attached along with the present appeal may kindly be returned to her as per rules.

(8) The Ld. Addl. PP for the Respondent No.1 / State and the respondents no.2 and 3 have no objection to the withdrawal of the appeal by the complainant / victim Lalita.

*(9) Statements of appellant as well as Ld. Addl. PP for the State and both the respondents have been recorded separately in view of which the present appeal is hereby **Disposed off** as withdrawn with liberty to the complainant to file afresh before the Hon’ble Delhi High Court for which the victim / appellant is granted two weeks time. Further, the original documents attached along with the present appeal are directed to be returned to the complainant / appellant subject to her placing*

on record the self-attested copies of the same, as per rules. Trial Court record be sent back along with copy of this order.”

5. While passing the above order, the Special Judge had relied upon a decision passed by a Co-ordinate Bench of this court in J.B. Gupta (supra). In the captioned case, the accused persons were acquitted by the Magistrate for an offence punishable under Section 325/34 IPC. In the appeal filed by the private respondents, the order of acquittal was set aside by the Addl Session Judge. In the revision petition filed by the accused, a Single Bench of this court, while relying on decisions rendered in Subhash Chand v. State (Delhi Administration) reported as **(2013) 2 SCC 17** and Satya Pal Singh v. State of M.P. and Ors. reported as **(2015) 15 SCC 613**, held that the order of acquittal passed by the Magistrate could not have been challenged before the Addl Session Judge and the only remedy available was to obtain leave to appeal from the High Court.

6. In the case of Subhash Chand (supra), the criminal proceedings were instituted on the basis of a complaint filed by the Public Servant under the Prevention of Food Adulteration Act, 1954 (the PFA Act). The point which arose for consideration before the Supreme Court was “*whether in a complaint case, an appeal from an order of acquittal passed by the Magistrate would lie to the Sessions Court under Section 378(1)(a) CrPC or to the High Court under Section 378(4) of the Code*”.

It was held that:-

“18. If we analyse Sections 378(1)(a) and (b), it is clear that the State Government cannot direct the public prosecutor to file an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence because of the categorical bar created by Section 378(1)(b).

Such appeals, that is, appeals against orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence can only be filed in the Sessions Court at the instance of the Public Prosecutor as directed by the District Magistrate. Section 378(1)(b) uses the words “in any case” but leaves out orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence from the control of the State Government. Therefore, in all other cases where orders of acquittal are passed appeals can be filed by the Public Prosecutor as directed by the State Government to the High Court.

20. Since the words “police report” are dropped from Section 378(1)(a) despite the Law Commission’s recommendation, it is not necessary to dwell on it. A “police report” is defined under Section 2(r) of the Code to mean a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173 of the Code. It is a culmination of investigation by the police into an offence after receiving information of a cognizable or a non-cognizable offence. Section 2(d) defines a “complaint” to mean any allegation made orally or in writing to a Magistrate with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence, but does not include a police report. The Explanation to Section 2(d) states that a report made by a police officer in a case which discloses after investigation, the commission of a non-cognizable offence, shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complainant. Sometimes investigation into cognizable offence conducted under Section 154 of the Code may culminate into a complaint case (cases under the Drugs and Cosmetics Act, 1940). Under the PFA Act, cases are instituted on filing of a complaint before the Court of the Metropolitan Magistrate as specified in Section 20 of the PFA Act and offences under the PFA Act are both cognizable and non-cognizable. Thus, whether a case is a case instituted on a complaint depends on the legal provisions relating to the offence involved therein. But once it is a case instituted on a complaint and an order of acquittal is passed, whether the offence be 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. So far as the State is concerned, as per Section 378(1)(b), it can in any case, that is, even in a case instituted on a complaint, direct the Public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any court other than High Court. But there is, as stated by us hereinabove, an important inbuilt and categorical restriction on the State's power. It cannot direct the Public Prosecutor to present an appeal from an order of acquittal passed by a Magistrate in respect of a cognizable and non-cognizable offence. In such a case the District Magistrate may under Section 378(1)(a) direct the Public Prosecutor to file an appeal to the Sessions Court. This appears to be the right approach and correct interpretation of Section 378 of the Code."

7. In the case of Satya Pal Singh (supra), the issue involved was whether the definition of 'victim' would include father of the deceased and whether in an appeal against acquittal, filed under proviso to Section 372 CrPC, the leave of the court was required to be obtained in terms of Section 378(3) CrPC ? In the captioned case, the accused after facing the trial for offences punishable under Sections 498A & 304B IPC, was acquitted by the Sessions Court. The Supreme Court held that such an order of acquittal could be challenged by preferring an appeal to the High Court under the proviso to Section 372 but only after obtaining leave of the High Court as required under Section 378(3) CrPC.

8. It is thus apparent that whereas the decision in Subhash Chand (Supra) was related to a complaint case filed by a Public servant before the court of Magistrate, the decision rendered in Satya Pal Singh (Supra) was related to a Sessions triable case.

9. The issue, whether obtaining leave of the High Court is a pre requisite, came up again before the Supreme Court in the case of Mallikarjun Kodagali (supra). In the captioned case, the accused were acquitted by the Court of District and Sessions Judge. The complainant's appeal, filed under the proviso 372 CrPC in the High Court was dismissed as non-maintainable. The High Court held that since the incident had happened prior to the date of coming into effect of the proviso to section 372 therefore, the appeal was not maintainable. Another appeal filed under Section 378 (4) IPC was also held to be not maintainable on the ground that the case was not instituted on a complaint before a Magistrate. On a challenge made, the Supreme Court, while noting the earlier decisions including in the case of Satya Pal Singh (supra), held as under:-

*“77. Under the circumstances, on the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, **it is quite clear to us that a victim as defined in Section 2(wa) of the Cr.P.C. would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction.** It must follow from this that the appeal filed by Kodagali before the High Court was maintainable and ought to have been considered on its own merits. (Emphasis added)*

78. As far as the question of the grant of special leave is concerned, once again, we need not be overwhelmed by submissions made at the Bar. The language of the proviso to Section 372 of the Cr.P.C. is quite clear, particularly when it is contrasted with the language of Section 378(4) of the Cr.P.C. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word ‘complaint’ has been defined in Section 2(d) of the Cr.P.C. and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR, and therefore it

is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 of the Cr.P.C. is concerned.

10. The decision in Mallikarjun Kodagali (supra) was re-affirmed in the subsequent decision rendered by the Supreme Court in the case of Naval Kishore Mishra Vs. State of U.P. & Ors. reported as **2019 SCC OnLine SC 939**.

11. Section 372 CrPC reads as under:-

“372. No appeal to lie, unless otherwise provided.—No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force

[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]”

12. The legislature by adding the proviso to Section 372 CrPC, inserted by Act 5 of 2009, conferred the victim a substantive, unfettered, independent and statutory right i.e., the right to challenge the acquittal of the accused by filing an appeal. It enables the victim to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction.

13. Section 374 CrPC provides for appeals against order of conviction. It reads as under:-

“374. Appeals from convictions.—(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other court in which a sentence of imprisonment for more than seven years [has been passed against him or against any other person convicted at the same trial], may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or”

xxx

14. A conjoint reading of Sections 372 and 374(3)(a) CrPC in the light of aforementioned passage quoted from the decision rendered in Mallikarjun Kodagali (supra) would show that an order of acquittal passed by a Magistrate can be challenged by a victim before the Court of Session by filing an appeal in the same way as a convict would challenge an order of conviction passed by the Magistrate before the Court of Sessions.

15. Looking at the issue from another angle. Section 378(1)(a) CrPC provides that in case of cognizable and non-bailable offences, where an order of acquittal is passed by a Magistrate, the public prosecutor on the direction of the District Magistrate, can file an appeal to the Court of Sessions. By way of adding proviso to Section 372 CrPC, an equivalent right has been granted to the victim.

16. In Mallikarjun Kodagali (supra), by a separate reasoning rendered by his Lordship Deepak Gupta, J. it was held as under:-

“10. At this stage, it would also be pertinent to mention that under Section 378 of CrPC an appeal against the order of

acquittal passed by a Magistrate in respect of cognizable and non-bailable offences lies to the Sessions Court and no leave to appeal is required. From the Court of Magistrate it is only appeals in respect of offences which are non-cognizable and bailable i.e. less serious offences which would lie to the High Court. In such cases, leave to appeal is a pre-requisite. This was done with a view to ensure that the persons who had faced trial for relatively lesser offences should not have to bear the expenses of an appeal from the Court of Sessions. These are serious criminal matters and relate to much graver offences. Here the concept of leave to appeal was probably introduced because these cases are decided by relatively senior Judges i.e. Sessions Judges. The Legislature felt that in such cases also the appeals against acquittals must be scrutinized with greater care.”

17. From above analysis, I am of the considered view that in the present case, an appeal against the order of acquittal passed by the Magistrate would lie before the Court of Sessions. The reliance placed by the Special Judge on the decision rendered in the case of JB Gupta (Supra) was misplaced.

18. Vide impugned order, the Special Judge, by recording the consent of the counsels, permitted the withdrawal of the appeal from the Court of Session with liberty to file the same before this Court. The appellate jurisdiction on the Sessions Court is conferred by the Statute. Such jurisdiction can neither be assumed nor passed on by recording the consent of the parties. The Special Judge while passing the impugned order though noted the decision rendered in Mallikarjun Kodagali (supra) but failed to appreciate the import of the judgment.

19. Accordingly, in the facts and circumstances of the case, the impugned order is set aside. The present petition is disposed of with the directions that the Criminal Appeal No.65/2018 filed by the revisionist

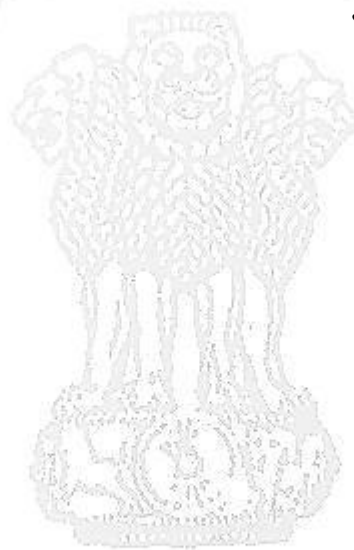
stands revived and restored to its original number. The same shall be listed for directions on 28th August 2019, at the first instance before the Court of Special Judge (Central District).

20. A copy of this order be sent to the concerned Court.

DASTI.

**(MANOJ KUMAR OHRI)
JUDGE**

JULY 26, 2019
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