

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.69 OF 2023

Devdatta Krushnarao Puranik & Anr. Applicants

versus

The State of Maharashtra & Anr. Respondents

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- Mr. Vikrant Palsikar i/b. Shantanu Deshpande, Advocate for Applicant.
- Mr. Arfan Sait, APP for the State/Respondent No.1.
- Mr. Om Latpate i/b. Lakshyaved R. Odhekar, Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 14th SEPTEMBER, 2023**

P.C. :

1. The Applicants were the original accused Nos.1 and 2 in SCC/252/2018 before the Judicial Magistrate First Class, Pimpalgaon, District Nashik. The Magistrate vide his Judgment and Order dated 06/08/2022 acquitted the Applicants. The case was instituted on a private complaint. After the Applicants were acquitted, the original complainant i.e. the Respondent No.2 herein filed an Appeal before the Additional Sessions Judge,

Niphad, vide Criminal Appeal No.67 of 2022. The Appellate Court issued notices to the present Applicants vide his order dated 16/09/2022.

2. Learned counsel for the Applicants submitted that the Appeal before the Sessions Court is not maintainable in view of the provision of section 378(4) of Cr.P.C. The proper remedy against the order of acquittal would be to file application for leave to file Appeal in this Court. Therefore, filing of the Appeal in the Sessions Court is not supported by law. It is filed with malafide intentions. Therefore the entire Appeal be quashed.

3. I have considered these submissions. As of today, the Additional Sessions Judge has issued notice to the Applicants. Therefore, it is always open for the Applicants to approach that Court in answer to the notices, by themselves or through their advocate and point out that Appeal is not maintainable in the Sessions Court. If and when the Court passes any order against the Applicant, on maintainability of the appeal after that the

Applicant can approach this Court. At this stage, there is no reason to assume that the learned Additional Sessions Judge, Niphad, will not look at the provisions of Cr.PC. In my opinion, the present application is premature. The Applicants are at liberty to approach the Additional Sessions Judge, Niphad, through their advocate and point out their objection about the maintainability of the said Appeal. In case that issue is decided against the Applicants, they can approach this Court. Therefore, today I am not inclined to entertain this application. With these observations, the application is dismissed.

(SARANG V. KOTWAL, J.)