

21.08.2024
Serial no. 25
CT.-35
[G.S.D]

CRA 196 of 2019

In the matter of : Nakul Chandra Pattanayak

... .. Appellant

Mr. S. Misra

Mr. Lakshmi Nath Bhattacharyya

... for the appellant

The records of the appeal reflect that the appellant was aggrieved by the order of acquittal passed by the Id. Judicial Magistrate, 3rd Court, Tamluk, Purba Medinipur in connection with Pankura P.S. Case No. 10 of 2018 dt. 20.01.2008 corresponding to T.R. No. 425 of 2008.

The records of the appeal reflect that the appellant being the defacto-complainant preferred a Special Leave to Appeal, wherein, leave was granted to prefer the appeal.

Having regard to the provisions of Section 378 of the cr.p.c., any case instituted on police report, the defacto-complainant cannot prefer an application under sub-section 378 of the cr.p.c. The proper course which is to be adopted is by way of preferring an application under Section 372 of the cr.p.c.

In view of the nature of the offence complained of and the prescribed punishment under the relevant provisions of the Code, such application under Section 372 of the cr.p.c. shall be maintainable before the Id. Sessions Court.

Having regard to the same, on the point of maintainability, the Criminal Appeal being CRA 196 of 2019 is **dismissed as infructuous** with liberty being granted to the appellant to approach the Id. jurisdictional Sessions Court being the Id. Sessions Judge, Purba Medinipur under the relevant provisions of law, as stated above. If any application is preferred for condonation of delay, the period of pendency of the present appeal before this court be taken into account by the Id. Sessions Judge, considering that there was an inadvertent mistake on the part of the lawyer, for which litigant should not suffer.

Pending connected application, if any, is also disposed of.

Department is directed to send back the LCR along with a copy of this order immediately to the Id. trial court.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

(Tirthankar Ghosh, J.)