

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

CRR No.636/2015

M/s Vostock Laboratories and
Dr. Jaikumar S/o Kanchedilal Saraf

Vs.

State of MP

Shri Amit Agrawal, learned counsel for the applicants.
Ms. Mini Ravindran, learned counsel for the respondent/State

JUDGMENT

(Delivered on this 23th day of July, 2015)

This Criminal Revision is directed against the order passed by learned 3rd Additional Sessions Judge, Indore in Criminal Appeal No.150/2013 dated 23.05.2015.

The facts bereft of necessary details in this matter are that the applicants are manufacturers of Oxyphena Butazone Tablet. A sample was taken which was not found matching the standards set for such drug and, therefore, the complaint was filed by the Drug Inspector before learned Chief Judicial Magistrate, Indore. Learned Chief Judicial Magistrate delivered the judgment in this case on 08.11.2012 and

acquitted the applicants. Against this order, the government through District Magistrate, Indore went in appeal before the Sessions Court. The matter was made over to 3rd Additional Sessions Judge, Indore. Preliminary objection was raised by the present applicants before the learned Additional Sessions Judge which was disposed of by the impugned order dated 23.05.2015.

The point raised by the present applicants before learned Additional Sessions Judge was that whether, after amendment in section 378 of Cr.P.C. and in the light of the provisions of Sub section 1 Clause (a) of section 378 of Cr.P.C. appeal against the order of acquittal in a case based on the complaint filed by public servant for an offence which is cognizable and non-bailable, lies before the Court of Sessions or before the High Court under section 378(4) of Cr.P.C.

Before learned Additional Sessions Judge, present applicants placed reliance on the judgment of Hon'ble the Supreme Court in the case of **Subhash Chand Vs. State (Delhi Administration)** reported in AIR 2013 SC 395. Learned Additional Sessions Judge while taking into consideration the case of **Subhash Chand** (supra) made the

following observations in the impugned judgment:-

पूर्वोक्त "सुभाषचन्द्र" के प्रकरण में माननीय उच्चतम न्यायालय ने यह निर्धारित किया है कि धारा 378 (1) (ए) व (बी) द0प्र0सं0 से यह स्पष्ट है कि राज्यसरकार लोक अभियोजक को यह निर्देश नहीं दे सकती है कि वह मजिस्ट्रेट द्वारा संज्ञेय व अजमानतीय अपराध में पारित दोषमुक्ति के निर्णय के विरुद्ध अपील करे। संज्ञेय और अजमानतीय मामलों में केवल जिला दंडाधिकारी ही लोक अभियोजक को सत्र न्यायालय में अपील पेश करने का निर्देश दे सकता है। माननीय उच्चतम न्यायालय ने निर्णय के पैरा 18 में इस बिंदु पर भी विचार किया है कि विधि आयोग की अनुशंसा "पुलिस रिपोर्ट पर से संस्थित प्रकरण" के संबंध में थी। जिसे विधि निर्माताओं ने जानबूझकर छोड़ दिया है। धारा 378(1)(ए)(बी) द0प्र0सं0 और 378 (1)(ए)(बी)

"In any case" शब्द का प्रयोग किया गया है इसकी भी माननीय उच्चतम न्यायालय में व्याख्या करते हुए स्पष्ट किया है इसका तात्पर्य यह है कि प्रकरण चाहे परिवाद पर आधारित हो या पुलिस रिपोर्ट पर, उसमें की गई दोषमुक्ति के विरुद्ध राज्य सरकार धारा 378 (1)(ए) द0प्र0सं0 के मामले में जिला दंडाधिकारी और धारा 378 (1)(ए) द0प्र0सं0 के मामले में जिला दंडाधिकारी लोक अभियोजक को संज्ञेय व अजमानतीय अपराध में जे0एम0एफ0सी0 द्वारा की गई दोषमुक्ति के विरुद्ध अपील पेश करने का निर्देश दे सकता है। इस प्रकार "सुभाषचन्द्र" का प्रकरण प्रत्यर्थी के पक्ष में नहीं बल्कि अपीलार्थी के पक्ष में है।

चूंकि यह प्रकरण संज्ञेय एवं अजमानतीय अपराध के मामले में की गई दोषमुक्ति से संबंधित है, अतः "सुभाषचन्द्र" के प्रकरण में प्रतिपादित सिद्धांत के आलोक में यह अपील इस न्यायालय द्वारा सुनवाई योग्य है। अतः प्रत्यर्थी की ओर से पेश उपरोक्त आवेदन निरस्त किया जाता है।

Aggrieved by this observation and rejecting the objection raised by the present applicants, the applicants filed present criminal revision before this Court.

Learned counsel for the applicants submits that the ratio of the case of **Subhash Chand** (supra) is totally against the view taken by learned Additional Sessions Judge. He observed

that Hon'ble the Supreme Court in this case gave a final finding that where the order of acquittal is passed in complaint case, appeal shall lie before the High Court under section 378(4) of Cr.P.C. and, therefore, the observation and view taken by learned Additional Sessions Judge is erroneous and is liable to be set aside.

Learned counsel for the State submits that section 378(1)(a) do not mention the word 'case instituted on police report' and, therefore, appeal was filed before learned Sessions Judge as such the same is maintainable and the observation made by learned Additional Sessions Judge is correct and proper.

After going through the order passed by Hon'ble the Supreme Court in the case of **Subhash Chand** (supra), Hon'ble the Supreme Court framed the question for consideration in para 7 of the order which reads as under:-

7. The short point which arises for consideration in this appeal is whether in a complaint case, an appeal from an order of acquittal of the Magistrate would lie to the Sessions Court under section 378(1)(a) of the Code or to the High Court under section 378(4) of the Code.

Taking into consideration the recommendations of Law Commission and giving reasons, Hon'ble the Supreme Court answered this question in para 21 which is reproduced as under:-

21. In view of the above, we conclude that a complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court. He cannot file such appeal in the Sessions Court. In the instant case the complaint alleging offence punishable under section 16(1)(1A) read with section 7 of the PFA Act and the Rules is filed by complainant Shri Jaiswal, Local Health Authority through Delhi Administration. The appellant was acquitted by the Metropolitan Magistrate, Patiala House Courts, New Delhi. The complainant can challenge the order of acquittal by filing an application for special leave to appeal in the Delhi High Court and not in the Sessions Court. Therefore, the impugned order holding that this case is not governed by Section 378(4) of the Code is quashed and set aside. In the circumstance the appeal is allowed.

After going through the observation made by Hon'ble the Supreme Court in para 21 of this order, it is apparent that observation and view taken by learned Additional Sessions Judge is not in line with the principles laid down by Hon'ble the Supreme Court in the case of **Subhash Chand** (supra).

Hon'ble Supreme Court has categorically mentioned in para 21 of the order that the only remedy to the complainant in any kind of the complaint against the order of acquittal is to file an application for leave to appeal under section 378(4) of Cr.P.C. and in this view of the matter, the impugned order appears to be against principles laid down by Hon'ble the Supreme Court and is liable to be set aside.

Accordingly, this revision deserves to be allowed and is hereby allowed. The impugned order passed by learned 3rd Additional Sessions Judge, Indore is set aside. Criminal Appeal No.150/2013 pending before learned 3rd Additional Sessions Judge is dismissed and the applicants are discharged. The respondent/State is given liberty to file an application under section 378(4) of Cr.P.C. for grant of leave to appeal.

With these observations and directions, the revision stands disposed of.

C.c as per rules.

(Alok Verma)
Judge

