

THE HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No.	9613 of 2019
Parties Name:	M/S Bhagwati Stone Crusher Vs. Sheikh Nizam Mansoori
Bench Constituted	Hon'ble Shri Justice Vishal Dhagat
Whether approved for reporting	Yes/No
Name of Advocates for parties	For appellant:- Shri Abhijeet Awasthi, learned counsel. For respondent: None.
Law laid down	Dismissal of private complaint under Section 204 (4) for non-payment of P.F.
Significant paragraph numbers	4. will not amount to acquittal of accused.

(J U D G M E N T)
01/05/2020

Appellant has filed this criminal appeal being aggrieved by order dated 04/05/18 contained in Annexure-1 passed in Complaint Case No.30/16 by Judicial Magistrate First Class, Jabalpur, M.P. By said order complainant has not paid the process fee therefore complaint of appellant was dismissed under Section 204(4) of Code of Criminal Procedure.

2. The order passed by Judicial Magistrate First Class was challenged before Additional Sessions Judge, Jabalpur in Criminal Revision No.13/19. Learned session judge held that dismissal of complaint under Section 204(4) of Code of Criminal Procedure will amount to acquittal under Section 256 of Code of Criminal Procedure. It was further held by the Court that if accused is acquitted in complaint case then there is provision of appeal under Section 378(4) of Code of Criminal Procedure before the High Court. In view of the same, criminal revision filed by the appellant is not maintainable and same was dismissed.

3. Appellant has filed this appeal under Section 378(4) of Code of Criminal Procedure as leave to appeal against the order passed by Judicial Magistrate First Class, Jabalpur. As per Section 378 of Code of Criminal Procedure, if an order of acquittal is passed in the complaint case then if High Court grants special leave to appeal from order of acquittal then complainant may present such an appeal to the High Court.

4. From the wordings in Section 378(4) of Code of Criminal Procedure, it is clear that application for leave to appeal will be filed before the High Court against an order of acquittal. Dismissal of complaint under Section 204(4) of Code of Criminal Procedure is not an order of acquittal. Where a complaint is dismissed for non-payment of process fee, such an order cannot be treated as an order of acquittal. Legislature has not used the words acquittal in Section 204(4) of Code of Criminal Procedure. The word used in this section is dismissal of complaint. Dismissal of complaint for non-payment of process fee will not amount to acquittal of the accused person and therefore application for leave to appeal or appeal under Section 378 (4) is not maintainable. Proper course for the appellant is to file a criminal revision where after order of further enquiry order of dismissal for non-payment of process fee can be set aside.

5. Order dated 06.11.2019 will not have any affect in deciding the appeal finally because maintainability of appeal was not considered in said order and no finding is given in respect to it.

6. In view of aforesaid facts and circumstances of the case, this criminal appeal filed under Section 378(4) is **dismissed**.

7. Appellant will be at liberty to assail the order passed in criminal revision by filing a petition under Section 482 of the Code of Criminal Procedure.

(Vishal Dhagat)

Judge

sp/-