

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR**BEFORE****HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL****ON THE 24th OF FEBRUARY, 2022****CRIMINAL APPEAL NO.4120/2020****Between:-**

MADHUKAR PATLE S/O SHRI UKKAN LAL PATLE , AGED ABOUT 52 YEARS, OCCUPATION: AGRICULTURIST VILLAGE NAVEGOWN P.S. RAMPAYELI DISTT. BALAGHAT (MADHYA PRADESH)

.....APPELLANT

(BY SHRI ASHOK AGRAWAL, ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THR. P.S. RAMPAYELI BALAGHAT (MADHYA PRADESH)**
2. **DHANENDRA LILHARE S/O GHOOSALAL LILHARE , AGED ABOUT 40 YEARS, R/O VILLAGE BHOORGARH P.S.KHERLANJI (MADHYA PRADESH)**
3. **JAGANNATH LILHARE S/O GHOOSALAL LILHARE , AGED ABOUT 52 YEARS, R/O VILLAGE BHOORGARH P.S.KHERLANJI (MADHYA PRADESH)**
4. **RETRAM LILHARE S/O GHOOSALAL LILHARE , AGED ABOUT 37 YEARS, R/O VILLAGE BHOORGARH P.S.KHERLANJI (MADHYA PRADESH)**
5. **RAJESH LILHARE S/O JAGANNATH LILHARE , AGED ABOUT 29 YEARS, R/O VILLAGE BHOORGARH P.S.KHERLANJI (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.1 BY SHRI HARISH SHUKLA, PANEL LAWYER)

MISC. CRIMINAL CASE NO. 32020 of 2020**Between:-**

THE STATE OF MADHYA PRADESH THR. POLICE
CHOUKI P.S. POLICE CHOUKI KHAIRLANJI P.S.
RAMPAYLI DIST. BALAGHAT (MADHYA
PRADESH)

.....APPELLANT

(BY SHRI HARISH SHUKLA, PANEL LAWYER)

AND

1. DHANENDRA LILHARE S/O SHRI DHUSALAL LILHARE , AGED ABOUT 40 YEARS, VILL. BHOUGARH THANA KHAIRLANJI DIST. BALAGHAT (MADHYA PRADESH)
2. JAGANNATH LILHARE S/O DHUSALAL LILHARE , AGED ABOUT 52 YEARS, VILLAGE BHOUGARH THANA KHAIRLANJI (MADHYA PRADESH)
3. RATIRAM LILHARE S/O DHUSALAL LILHARE , AGED ABOUT 37 YEARS, VILLAGE BHOUGARH THANA KHAIRLANJI (MADHYA PRADESH)
4. RAJESH LILHARE S/O JAGANNATH LILHARE , AGED ABOUT 29 YEARS, VILLAGE BHOUGARH THANA KHAIRLANJI (MADHYA PRADESH)

.....RESPONDENTS

(NONE FOR THE RESPONDENTS)

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The appeal and M.Cr.C. coming on for admission and I.A.No.11165/2020, respectively, this day, the court passed the following:

ORDER

1. As the both aforesaid Criminal Appeal No.4120/2020 and M.Cr.C.No.32020/2020 arise of the same impugned judgment and order of acquittal dated 04.12.2019 passed by learned Judicial Magistrate First Class, Varaseoni District- Balaghat whereby learned JMFC has acquitted the respondents for the offence punishable under Sections 294, 323, 325, 506-II of IPC, this order shall govern the disposal of both the case.

2. Heard on I.A.No. 11165/2020 (M.Cr.C.No.32020/2020), an

application for condonation of delay. This appeal has been filed with a delay of 12 days.

3. Having regard to the order dated 23.03.2020 passed in Suo-Motu Writ Petition (Civil) No.(s).3/2020 in recognizance for extension of limitation by the Hon'ble Apex Court, the delay caused in filing the appeal is ignored.

I.A.No.11165/2020 is disposed of accordingly.

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 or 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.

4. The language of the proviso to Section 372 of the Cr.P.C. is quite clear. It is clear that there is no provision for any appeal to the High Court against the orders/judgments of conviction and acquittal passed by the Magistrate in a case lodged or registered on the basis of an FIR. The appeal arising out of original judgments/orders of acquittal or of conviction for lesser offence or imposing inadequate compensation passed by the Magistrate shall lie to the Court of Session in view of the proviso to Section 372 of the Cr.P.C.. As per Section 374(3), any person 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 sentenced under Section 325, or in respect of whom an order has been made or a sentence has been passed under Section 360 by any Magistrate, the appeal lies to the Court of Session.

5. The provisions of Section 378(1&2) Cr.P.C. are unambiguous and no leave to appeal can be granted to State Government to file an appeal before the High Court against an order of acquittal passed by Magistrate in a cognizable and non-bailable offence. Sections 378(1&2) read as under :

378. Appeal in case of acquittal.

(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5)-

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision].

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3) also direct the Public Prosecutor to present an appeal-

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision].

6. The language of Section 378(1 & 2) Cr.P.C. is very clear and after Amendment Act (25 of 2005) which came into force from 23.06.2006, as per direction of District Magistrate, Public Prosecutor may present an appeal before the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence.

7. In the case in hand, the victim lodged FIR against the respondents for uttering filthy words in public place and for voluntarily causing simple hurt and criminal intimidation. The FIR was lodged in P.S. Rampayeli District Balaghat (M.P.) and charge sheet was filed by the police. After trial, learned JMFC acquitted the accused persons. In such cases, victim is not required to file an

appeal under Section 378(4) of Cr.P.C. before High Court. As per the proviso to Section 372 of Cr.P.C. such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction to such Court i.e. Court of Session and not the High Court. Only in case of complaint defined in Section 2(d) of the Cr.P.C. where allegations were made orally or in writing to a Magistrate in that case only, in case of acquittal the appeal shall lie before the High Court under Section 378(4) of Cr.P.C.

8. In the case of **Subhash Chand vs. State (Delhi Administration)** reported in (2013) 2 SCC 17 in paragraph nos. 18 and 20, Hon'ble Apex Court observed as follows:

18. If we analyse Section 378(1)(a) & (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. 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 & Cosmetics Act, 1940). Under the PFA Act, cases are instituted on filing of a complaint before the Court of 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 Session Court. This appears to be the right approach and correct interpretation of Section 378 of the Code.

9. As in the case in hand, order of acquittal has been passed in respect of cognizable and non-bailable offence by the Judicial Magistrate First Class, Varaseoni an appeal is to be filed before the Court of Session. As appeal is to be filed before the Court of Session, there are no reasons to grant leave to appeal to State Government and victim to file appeal before the High Court. However, State Government and victim shall be at liberty to file appeal before the Court of Session.

10. In view of the above discussion, Criminal Appeal No. 4120/2020 and M.Cr.C.No.32020/2020 filed by the Victims and State Government, respectively to grant leave to appeal before the High Court are not maintainable as they have to be filed before the Court of Session.

11. Consequently, both Criminal Appeal No. 4120/2020 and M.Cr.C.No.32020/2020 being not maintainable, are **dismissed**.

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