

Deep Narayan Singh Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Sep-29-1994

Reported in : 1995(0)MPLJ648

Judge : D.P.S. Chouhan, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 340, 341 and 344

Appeal No. : Cri. Appeal No. 1136 of 1994

Appellant : Deep Narayan Singh

Respondent : State of Madhya Pradesh

Advocate for Def. : None

Advocate for Pet/Ap. : Anil Khare, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

D.P.S. Chouhan, J.

1. The order appealed against is the order dated 20-7-1994 (Annexure-A-2) to the Memo of Appeal. This order is passed under Section 344, Criminal Procedure Code. The appeal is styled as appeal under Section 341, Criminal Procedure

Code. The appeal could only be filed against the order passed under Section 340, Criminal Procedure Code. The distinction between Sections 340 and 344, Criminal Procedure Code is that the order under Section 340, Criminal Procedure Code is appealable whereas the order under Section 344, Criminal Procedure Code is not appealable.

2. Learned counsel invited the attention of the Court to sub-section (2) of Section 344, Criminal Procedure Code and on that basis he treated the impugned order as order under Section 340, Criminal Procedure Code. The submission is unsustainable. Sub-section (3) of Section 344, Criminal Procedure Code is extracted below :-

'344 (3). Nothing in this section shall affect the power of the Court to make a complaint under Section 340 for the offence, where it does not choose to proceed under this section.'

This section does not give the option to the litigant but it gives the option to the Court, if the Court does not choose to proceed under Section 344, Criminal Procedure Code, then, the Court may proceed under Section 340, Criminal Procedure Code, of course if the case is covered under Section 340, Criminal Procedure Code. Sub-section (4) of Section 344, Criminal Procedure Code does not provide for appeal. It only provides for stay of the proceedings of the appeal or revision which is directed against the judgment or order in which the opinion referred to in sub-section (1) of Section 344 has been formed.

3. The appeal is misconceived and is accordingly dismissed.