

Abdu Ram Vs. State and ors.

Abdu Ram Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/707418

Court : Delhi

Decided On : Oct-11-2001

Reported in : 95(2002)DLT703; 2002(61)DRJ799

Judge : Arijit Pasayat, C.J. and; R.C. Chopra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2, 190, 193, 200 to 204, 378, 378(1), 378(2), (3), (4) and (5); [Delhi Special Police Establishment Act, 1946](#)

Appeal No. : Criminal Appeal No. 479 of 2001

Appellant : Abdu Ram

Respondent : State and ors.

Advocate for Def. : A.K. Singh and ; Anil Soni, Advs.

Advocate for Pet/Ap. : Nem

Disposition : Appeal dismissed

Judgement :

Arijit Pasayat, C.J.

1. This is an appeal under Section 378(4) of the Code of Criminal Procedure, 1973 (in short the 'Code'). Challenge is to the judgment and order dated 12th April 2001

passed by learned Additional Sessions Judge, New Delhi in Sessions Case No. 114/00. Though the date was specifically fixed today by order 1st August 2001 at the request of the parties, none appears to represent the appellant. Mr. A.K. Singh learned counsel appearing for respondent No. 2 submits that the appeal itself is not maintainable, in view of the clear language of Section 378(4). According to him, the appellant is not the complainant and therefore the appeal itself is to be dismissed as non-competent.

2. Section 378 deals with the appeal in case of acquittal. The said Section reads as follows:

'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), 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 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 also direct the Public Prosecutor to present an appeal, subject to the provisions of Sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under Sub-section (1) or Sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of

six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under Sub-section (1) or under Sub-section (2).'

3. A bare perusal of Sub-section (4) shows that the appeal can be presented by the complainant. Admittedly the case at hand is a Government Report case and the appeal has not been filed by the informant. As the records reveal one Babloo s/o Khalu Ram was the informant. Sub-section (4) of Section 378 makes it clear that only in cases instituted upon complaint the complainant may prefer appeal from the order of acquittal after obtaining leave. As indicated above, the case at hand was a Government Report case. Provisions of Section 378(4) do not permit a complainant to prefer any appeal against the order of acquittal passed in Government Report case. Whenever a case is taken cognizance by the police, and a Government Report case is registered, investigated and tried as such the nature of the case remains unaltered. It remains a Government Report case.

4. The expression 'complainant' has not been defined in the Code. But he can only be a person who was examined as complainant under Section 200. No other person can be deemed to be a complainant, however much he may be interested in the prosecution of the case. The right of appeal under Sub-section (4) of Section 378 is limited only to cases instituted upon a complaint. The Code does not contain any definition of the expression 'institution of a case'. However an examination of the provisions of Section 190 and 193 makes it clear that when a Magistrate takes cognizance of an offence upon receiving a complaint on facts which constitute such offence, a case is instituted in the Magistrate's Court and such a case is one instituted on a complaint. Section 2(d) of the Code makes it clear that petition will be treated as a complaint only when there is accusation against some person and the prayer is for taking action upon a complaint under Sections 200 to 204 of the Code. The expression 'case' in Sub-section (4) means a proceeding which at the end results either in discharge, conviction or acquittal of the accused. Sub-section (1) empowers the State Government to prefer an appeal

from an order of acquittal 'in any case'. The expression 'in any case' include (a) Government Report (Police Report) cases (b) cases covered by Sub-section (2), and (c) cases instituted upon complaint, whether the complainant is a public servant or any other complainant. Sub-section (4), however provides that in a case instituted upon complaint, the High Court can grant special leave to appeal from the order of acquittal. But there is no right to the informant to file appeal against acquittal passed in a Government Report Case.

5. The present appeal has to be judged in terms of Section 378(4) of the Code, and therefore we dismiss the same as incompetent.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com