

Subhash Chand Vs. State

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Court : Delhi

Decided On : Jan-07-2011

Judge : Shiv Narayan Dhingra, J.

Acts : Code Of Criminal Procedure (CRPC) - Sections 482, 378(1)(a), ; [Prevention of Food Adulteration Act, 1954](#)

Appeal No. : Crl. MC No. 427/2009

Appellant : Subhash Chand

Respondent : State

Advocate for Def. : Mr. O.P. Saxena, Adv.

Advocate for Pet/Ap. : Ms. Aashaa Tiwari, Adv.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the reporter or not?

3. Whether judgment should be reported in Digest?

1. This petition under Section 482 Cr.P.C has been preferred by the petitioner assailing an order dated 4th February 2009 passed by learned Additional Sessions Judge, Delhi whereby he dismissed the objections raised by the petitioner about maintainability of the appeal.

2. Brief facts relevant for the purpose of deciding this petition are that the Food Inspector under provisions of [Prevention of Food Adulteration Act, 1954](#) filed a complaint against the petitioner. In that complaint case, the petitioner was acquitted by the learned MM. Against the order of acquittal, the Delhi Administration preferred a criminal appeal under Section 378(1)(a) of the Criminal Procedure Code before the learned Sessions Judge. The petitioner raised objections that since the petitioner was prosecuted in a complaint case, the appeal would lie only under Section 378 (4) of the Code against acquittal of the petitioner and not under Section 378(1) Cr.P.C. The learned Sessions Judge turned down this objection on the ground that Section 378(1) of the Code was applicable in respect of cognizable and non-bailable offences whether the case was a complaint case or State case and Section 378(4) of the Code would not be attracted since he considered that an appeal against the order of acquittal in a complaint case would lie to High Court in respect of offences not specified in Section 378(1) of the Code i.e. non-cognizable and bailable offences.

3. This petition raises two issues; (i) whether the State can prefer an appeal in a complaint case against acquittal of the accused; and (ii) when the State prefers an appeal against the order of acquittal in a complaint case whether Section 378(4) would be applicable or Section 378(1) would be applicable.

4. Section 378 of the Code was amended by the Act No.25 of 2005. Prior to amendment, even the State Government could prefer an appeal against acquittal by Magistrate or Sessions Judge only before the High Court. However, after the amendment it was provided that in case of acquittal by the Magistrate, the appeal could be preferred before the Sessions Judge and only in case acquittal by the Sessions Court, the appeal could be preferred before the High Court. However, leave to appeal, which was necessarily to be obtained by the State for preferring an appeal before the High Court was dispensed with in case of appeal against acquittal being preferred before the Court of Sessions. Sub section 4 of Section 378 of the Code was not amended. Sub section 4 provides of appeals before High Court by the complainant against acquittal of the accused by seeking special leave from the High Court. Thus, the only difference prior to amendment between the State and complainant was that while State was supposed to obtain leave of the

High Court, the complainant was supposed to obtain special leave of the High Court. The period of limitation for complainant was specified in sub section 378 of the Code.

5. The competence of the State Government to file an appeal against acquittal in a complaint case is not dealt with by section 378 of the Code. The State has a vested interest in maintaining law and order and in punishing the criminals. When the State finds that a person has been wrongly acquitted by the trial court, the State has a right to prefer an appeal against such wrong acquittals. It is not necessary that the State's right to appeal is restricted only to those cases that are initiated for trial before the courts on police reports. There are several Acts where law provides that complaint should be filed before the court. For example, Customs Act, Food Adulteration Act are such two statutes. The State has high stake in preventing offences under above acts and it is the responsibility of the State to ensure that the food is not adulterated and there is no illegal trafficking of goods i.e. smuggling affecting economy of the State. The State has a right to appeal against wrongful acquittal in all such cases.

6. I, therefore, consider that State is competent to file an appeal against acquittal for such offence where the law provides that the prosecution is to be initiated on the basis of a complaint of Head of Department or of a particular officer.

7. Once the State is found competent to file an appeal, I think that the provisions of Section 378(1) would apply and not Section 378(4) of the Code would apply whenever State prefers an appeal. Section 378(4) of the Code was provided to give right to the complainant to file appeals against acquittal when the State does not act. A person is compelled to file a complaint case because the State does not act in certain matters and the citizen is left to fend for himself. Even in a complaint case, the Magistrate may involve State by seeking report of police about commission of offence and the case may continue as a complaint case though there is a police report also that the offence was really committed. In such a case of acquittal if the State does not prefer an appeal complainant has a right to prefer an appeal. Section 378(4) of the Code gives this right to the complainant. However, the conditions of limitation are different for the complainant and for the

State as provided in the statute itself.

8. Accordingly, this petition is dismissed. The State has a right to prefer an appeal and once the State prefers an appeal, section 378(1) of the Code will be applicable and Section 378(4) would not be applicable.

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