



Reportable

**IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION**

Special Leave Petition (Crl.) No.3418 of 2026

Subhas Chandra Sarkar **...Petitioner (s)**
Versus
The State of West Bengal & Ors. **...Respondent (s)**

ORDER

The petitioner, who appeared in person, was given assistance by *Amicus Curiae*, appointed by this Court on 25.03.2026; learned Counsel, Mr. Jayesh Gaurav and Mr. Kuldeep Rai.

2. We heard learned *Amicus Curiae*, petitioner-in-person, learned AoR for the respondent-State, Sri Kunal Mimani and learned AoRs appearing for the party respondents, Sri Manish Gupta and Sri Ananta Prasad Mishra.

3. The only question arising in the Special Leave Petition is as to whether the impugned order rejecting the appeal filed before the High Court from an order of acquittal passed by a Judicial Magistrate, leaving liberty to file an appeal before the Sessions Court is proper or not.

4. The first contention of the party-in-person relying on the judgment of this Court in ***Rajan Chadha and Another v. Sanjay Arora***¹ is that the writ petition having been admitted by a learned Single Judge, a Coordinate Bench cannot reject it on the question of maintainability. We are unable to accept the proposition, and it does not emanate from the cited decision. In ***Rajan Chadha***¹, a contempt case reached finality and a learned Single Judge held that the respondent is guilty of intentionally and *malafidely* violating orders of the Court and found that contempt has been committed. The learned Single Judge granted four weeks to the respondent to purge the contempt, failing which, the respondent was directed to file an affidavit stating as to why he should not be punished under the Contempt of Courts Act, 1971. When later, the matter was placed before another learned Single Judge, the show cause notice was discharged, coming to the conclusion that there was no willful and deliberate disobedience by the respondent. This Court found that, at the early point when the learned Single Judge had found contempt and posted the matter to permit the contemnor only to purge the contempt or, on

¹ 2025 SCC OnLine SC 899

failure, to submit explanation as to why he should not be punished, there was no warrant for another learned Single Judge to conclude that no contempt was committed.

5. True, in the present case, the matter was admitted by a learned Single Judge; however, later when it came up for final hearing, another learned Single Judge found, on the basis of the statutory provision, that the appeal is not maintainable before the High Court. This is perfectly in order.

6. The learned *Amicus Curiae* then pointed out Section 378(2) of the Cr.PC that an appeal from an order of acquittal passed by a Magistrate to the Court of Session would lie to the Court of Session only in respect of a cognizable and non-bailable offence and any other order of acquittal by the Original Court or the Appellate Court would be to the High Court.

7. We have to immediately notice that sub-section (2) of Section 378 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS), applies to investigations done by the Delhi Special Police Establishment² or any other agency empowered to investigate into an offence under any Central Act, in which, if

² In short 'DSPE'

an order of acquittal is passed, the Central Government had to sanction the filing of an appeal. Neither the DSPE nor any agency empowered under a Central Act is involved in the investigation of the instant case.

8. Section 419 of the BNSS provides such appeal in case of acquittal to the Court of Session with the sanction of the District Magistrate, only from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence and in all other appeals, from an acquittal passed by an Original Court or an Appellate Court, appeal is enabled to the High Court with the sanction of the State Government. At first blush, the argument is attractive since an appeal from acquittal, insofar as the State Government is concerned with respect to a bailable offence from an order of acquittal, it can only be before a High Court. This is the slight deviation in the BNSS from the Cr.PC.

9. Be that as it may, in the present case, the victim, the father of the person who died in a hospital, was before the Judicial Magistrate pursuant to the registration of an FIR alleging an offence under Section 304A read with Section 34 of the Indian Penal Code, 1860; a bailable offence. The allegation

raised was that the petitioner's son, who was suffering from 'depressive disorders', was admitted to a hospital, where he committed suicide. The petitioner attributes the death by suicide to the negligence of the Doctor and a Nurse. The Judicial Magistrate, 9th Court, Alipore, acquitted the accused, and the appeal from such order of acquittal is the issue agitated here.

10. Proviso to Section 413 of the BNSS regulates the matter, insofar as an appeal from an acquittal by the victim. Section 413 is couched in the negative and prohibits any appeal to lie from any judgment or order of the Criminal Court except as provided by the Sanhita. The proviso reads thus:

'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.'

(underlining by us for emphasis)

11. Hence, the proviso confers on the victim a right to proffer an appeal against any order of acquittal, conviction for a lesser offence or on the ground of inadequate compensation. In which event, such appeal shall lie to the Court to which an

appeal ordinarily lies against the order of conviction of such court. Section 419 of the BNSS provides for an appeal in case of an acquittal, which would not be applicable when the proviso is applied. Insofar as an appeal from conviction, one has to look at Section 415 of the BNSS, wherein sub-section (3) provides as under:

'Save as otherwise provided in sub-section (2), any person,-

(a) convicted on a trial held by Magistrate of the first class, or of the second class; or

(b) sentenced under section 364; or

(c) in respect of whom an order has been made, or a sentence has been passed under section 401 by any Magistrate,

may appeal to the Court of Session.'

12. Hence, when there is a conviction in a trial held by a Magistrate of the First Class or the Second Class, an appeal lies to the Sessions Court. Going by the proviso to Section 413, an appeal filed by a victim against an order of acquittal also has to be before the Court to which an appeal ordinarily lies against the order of conviction of such Court. The order of acquittal passed by a learned Magistrate, hence, has to be appealed before the Court in which a conviction ordered by a Magistrate can be appealed, which is the Sessions Court.

13. We find the order of the High Court to be perfectly in order and uphold the same. The petitioner, if still desirous of filing an appeal, can approach the Jurisdictional Sessions Court. We make it clear that if an appeal is filed within one month from the date of this order, the same shall be admitted and heard on merits, without considering the delay which has been caused only by reason of a *bona fide* proceeding taken by the petitioner.

14. We make it clear that we have not made any observation regarding the merits of the matter or the order of acquittal passed by the Judicial Magistrate of the First Class. The appeal shall be dealt with in accordance with law.

15. The Special Leave Petition is rejected with the above observations.

16. Pending application(s), if any, shall stand rejected.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
SEPTEMBER 22, 2026.**