



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 383 of 2023

- Tarkeshwar Sahu

----Applicant

Versus

- Amit Lihare S/o Nirbhay Das Lihare

---- Non-Applicant

CAUSE TITLE DOWNLOADED FROM CIS PERIPHERY

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For Applicant : Mr Rudranath Mukherjee, Advocate

For Non-Applicant: Mr. Virendra Verma, Advocate
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Hon'ble Shri Justice Deepak Kumar Tiwari

Order On Board

08.01.2024

1. This Criminal Revision has been preferred under Section 397 and 401 of the Cr.P.C, being aggrieved by the judgment of acquittal dated 13.01.2023 passed by 8th Additional Sessions Judge, District Durg in Criminal Appeal no. 142/2022 arising out of order dated 28.09.2022 passed by the Judicial Magistrate First Class, Durg in Criminal case no. 35279/2018, whereby the learned Appellate Court has dismissed the appeal filed under Section 372 of the Cr.P.C by observing that in a complaint case filed under Section 138 of Negotiable Instrument Act,





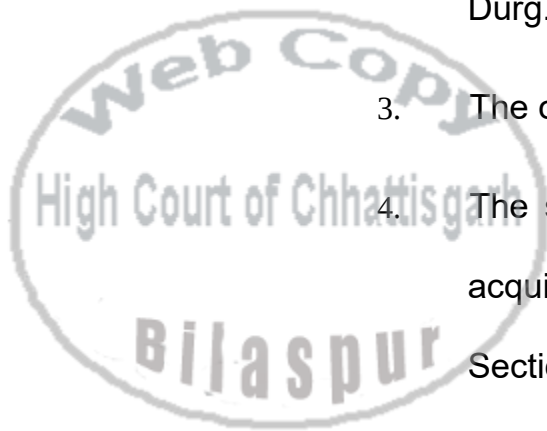
a complainant can file an application for special leave to appeal against an order of acquittal of any kind only to High Court by invoking the powers under Section 378 (4) of the Cr.P.C. Hence, this Criminal Revision has been preferred.

2. At the outset, learned counsel Shri Mukherjee would submit that he may be given the liberty to file special leave to appeal against the impugned judgment dated 28.09.2022 passed by the Judicial Magistrate First Class, Durg.

3. The other side has not opposed the said prayer.

4. The seminal question is that whether the appeal against acquittal in prosecution for the offence punishable under Section 138 of Negotiable Instrument Act, 1881 would lie under Section 378(4) of the Code of Criminal Procedure, 1973 or would be as per proviso to Section 372 of the Cr.P.C. In the matter of **Mallikarjun Kodagali (Dead) represented through Legal Representatives vs. State of Karnataka and Others** reported in [(2019 2 SCC 752)], the relevant para- 76 reads thus:

“76. As far as the question of the grant of special leave is concerned, once again, we need not be overwhelmed by submissions made at the Bar. The language of the proviso to Section 372 CrPC is quite clear, particularly when it is contrasted with the language of Section 378(4) CrPC. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint.





The word “complaint” has been defined in Section 2(d) CrPC and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR, and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 is concerned.”

5. The term ‘complaint’ as defined in Section 2(d) of the Code. Going on by the definition, any allegation made orally or in writing to a Magistrate that some person, whether known or unknown, has committed an offence, will fall within the meaning of ‘complaint’. Pertinently, the definition specifically excludes a police report. It is also necessary to note that Section 378(4) provides the complainant with the right to file appeal against acquittal in a case instituted upon a complaint, once special leave to appeal is granted by the High Court. In **Mallikarjun Kodagali** (supra), the Supreme Court held Section 378(4) to be confined to an order of acquittal passed in a case instituted upon a complaint. The position is further clarified by the observation that the word ‘complaint’ as defined in Section 2(d) of the Cr.P.C. refers to any allegation made orally or in writing to a Magistrate and has nothing to do with the lodging or registration of an FIR.
6. In view of the aforesaid, appeal against the order of acquittal in prosecution for the offence punishable under Section 138 of the N.I. Act lies to the High Court under





Section 378(4) of the Cr.P.C. So, the view taken by the learned Sessions Judge is hereby affirmed and this revision has no substance and the applicant is at liberty to avail appropriate remedy available to him in accordance with law, if so advised.

7. Accordingly, this revision is disposed of.

Sd/-

(Deepak Kumar Tiwari)
Judge

