

(2019) 09 CHH CK 0156

Chhattisgarh High Court

Case No: Criminal Miscellaneous Petition (CRMP) No. 2107 Of 2019

State Of Chhattisgarh

APPELLANT

Vs

Mohanlal Bagde

RESPONDENT

Date of Decision: Sept. 25, 2019

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 378(1)(a), 378(1)(b)
- Indian Penal Code, 1860 - Section 409

Hon'ble Judges: Prashant Kumar Mishra, J; Gautam Chourdiya, J

Bench: Division Bench

Advocate: Fouzia Mirza, Chitendra Singh

Final Decision: Dismissed

Judgement

Prashant Kumar Mishra, J

1. This application seeking leave to appeal against acquittal would challenge the judgment of acquittal rendered by the Judicial Magistrate 1st Class,

Raipur in Case No.559/2005 acquitting the accused of the charges under Section 409 of IPC vide judgment dated 19.03.2019.

2. Instead of preferring the present application in the High Court seeking leave to appeal against the judgment of acquittal rendered by the Judicial

Magistrate 1 st Class, Raipur, the State should have preferred an appeal before the Sessions Court under Section 378 (1) (a) of CrPC in view of the

law laid down by the Supreme Court in the matter of Subhash Chand vs State (Delhi Administration), reported in (2013) 2 SCC 17, wherein the

following has been held in para 18:-

18. If we analyse Section 378(1)(a) & (b), it is clear that the State Government cannot direct the Public Prosecutor to file an appeal against an order

of acquittal passed by a Magistrate in respect of a cognizable and non- bailable offence because of the categorical bar created by Section 378(1)(b).

Such appeals, that is appeals against orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence can only be filed in

the Sessions Court at the instance of the Public Prosecutor as directed by the District Magistrate. Section 378(1)(b) uses the words ""in any case"" but

leaves out orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence from the control of the State Government.

Therefore, in all other cases where orders of acquittal are passed appeals can be filed by the Public Prosecutor as directed by the State Government

to the High Court.

3. The acquittal appeal, against an order of acquittal rendered by the Judicial Magistrate 1st Class in a cognizable and non bailable offence, is

dismissed as not maintainable reserving liberty in favour of the State to prefer acquittal appeal before the Sessions Court within a period of 30 days

from today. If the appeal is preferred before the Sessions Court within 30 days from today, the Sessions Court shall hear the appeal on merits without

raising objection as to the limitation.