
(2002) 03 JH CK 0065
In the Jharkhand High Court
Case No : Govt. Appeal No. 4 of 2002

State of Jharkhand

APPELLANT

Vs

Jwala Singh and Another

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(1)
High Court of Jharkhand Rules, 2001 — Rule 84

Citation : (2002) 03 JH CK 0065

Hon'ble Judges : Vinod Kumar Gupta, C.J.; Vishnudeo Narayan, J

Bench : Division Bench

Advocate : I.N. Gupta, app, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal against an order of acquittal is purportedly filed under Sub-section (1) of Section 378 of the Code of Criminal Procedure, 1973, even though in the cause title of the Memo of appeal it has wrongly been mentioned that the appeal is under Sub-section (5) of Section 378 also. Since admittedly (as is evident from a reading of the judgment under challenge in this appeal), the case in which the order of acquittal was passed was not instituted upon a complaint, but was instead instituted on a police report, Sub-section (5) of Section 378 would have no application in this case and this appeal would thus be governed by and under Sub-section (1) of Section 378, Cr PC. We, however, wish to observe about two technical and legal problems/defects in this case: the first relates to this Court and the second is about the maintainability of the appeal itself.

2. In so far as the defect relating to this Court is concerned, the Registry has registered this appeal as "Govt. Appeal No. 4 of 2002". Prior to the coming into force of the High Court of Jharkhand Rules, 2001, appeals against orders of acquittal were, indeed, being registered as "Govt. Appeals", but after coming into force of the aforesaid Rules, vide Rule 84, the nomenclature of these types of cases has been changed and an appeal filed u/s 378 of the Code of Criminal

Procedure against an order of acquittal is now required to be registered as "Acquittal Appeal". This is clearly evident from Entry 5 of Rule 84 (Supra). Ignoring the aforesaid prescribed nomenclature under the Rules of 2001, the Registry has wrongly styled the appeal as "Govt. Appeal No. 4 of 2002".

3. In so far as the maintainability of the appeal itself is concerned, Sub-section (1) of Section 378, Cr PC clearly stipulates, suggests, prescribes and lays down that the State Government may, in an appropriate case, direct the Public Prosecutor to present an appeal to the High Court from an order of acquittal. For ready reference we reproduce Sub-section (1) of Section 378 of the Code of Criminal Procedure, which reads thus :

"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 any Court other than a High Court or an order of acquittal passed by the Court of Session in revision."

4. The mandatory requirement for an appeal under Sub-section (1) of Section 378 to be maintainable is that it must be filed under instructions from and at the instance of the State Government and that too through a Public Prosecutor, Since the clearance/approval by the State Government is the sine qua non to the filing of an appeal by the Public Prosecutor, in the memo of appeal, a specific averment to the aforesaid effect is mandatorily required to be made. Not only that, it is desirable that the Memo of appeal is also accompanied by some documentary evidence/proof to suggest and establish the fact that the appeal is being filed after the approval accorded by the State Government and that it is being filed by the Public Prosecutor, or by or on his behalf through some Addl. Public Prosecutor, etc. In the present case, what we see is that in the memo of appeal, neither is there any averment to that effect, nor is the memo of appeal accompanied by any supporting document suggesting that the State Government had indeed accorded its approval for filing of this appeal. Any appeal, therefore, against an order of acquittal which does not contain a specific averment to the aforesaid effect and/or is not accompanied by documentary evidence in support of the State Government having accorded such approval is not maintainable and as such liable to be dismissed.

5. For the foregoing reasons, we have no hesitation in dismissing this appeal. The appeal is, accordingly, dismissed. Because this order has far-reaching consequences in future cases, we direct that the copies be sent to the learned Advocate General and the Secretary, Law Department, Jharkhand for their information.