

(2016) 06 KAR CK 0056
In the Karnataka High Court
Case No : Criminal Appeal No. 1367 of 2015

State of Karnataka

APPELLANT

Vs

Ramesh

RESPONDENT

Date of Decision : 08-06-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Citation : (2017) 1 Crimes 289 : (2016) 3 Crimes 206 : (2016) ILRKarnataka 2875 : (2016) 3 KCCR 2783

Hon'ble Judges : Mohan M. Shantanagoudar and Budihul R.B, JJ.

Bench : Division Bench

Advocate : Sri P.M. Nawaz, SPP-1, for the Appellant;

Final Decision : Dismissed

Judgement

1. The judgment and order of acquittal passed by the II Additional CMM Court, Bangalore dated 22.1.2015 passed in C.C.No.23501/2015 is impugned in this Criminal Appeal filed by the State.

2. The accused were tried and acquitted of the offences punishable under Sections 323, 504, 326, 42.7 read with Section 34 of IPC. It is not in dispute that the offence punishable under Section 326 is cognisable and non-bailable. Hence, it is clear that the Court below has tried the matter involving cognisable and non-bailable offence apart from other offences and has acquitted the accused by the impugned judgment and order.

3. Section 373(l)(a) and (b) of Cr.P.C., 1973 reads thus:

"378. Appeal in case of acquittal. - [(1) Save as otherwise provided in subsection (2), and subject to the provisions of sub-sections (3) and (5), -

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognisable and non-bailable offence;

(b) 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 an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]

4. The bare perusal of the aforementioned provision makes abundantly clear that it is not open for the Public Prosecutor to present the appeal before the High Court against the order of acquittal passed by the Magistrate in respect of cognisable and non-bailable offence. There is categorical bar for presenting such an appeal before the High Court under Section 378(1)(a) of Cr.P.C. On the other hand, the said provision mandates that the appeal needs to be presented before the Sessions Court. In view of the same, this appeal filed by the Public Prosecutor/State against the order of acquittal passed by the Magistrate in respect of cognisable and non-bailable offence is not maintainable. Though it is not necessary to support our verdict by any judgment in view of clear provision in the Code of Criminal Procedure, we place on record that our verdict is supported by the observations made by the Apex Court in the case of Subhash Chand v. State (Delhi Administration) reported in (2013)2 SCC 17, paragraph-18, which reads thus:

"18. If we analyse Sections 378(1)(a) and (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 cognisable 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 cognisable 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 cognisable 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."

5. We make it clear that in any criminal case involving various offences punishable under different sections of Indian Penal Code in respect of cognisable and non-bailable offences as well as non-cognisable and bailable offences, if the accused is acquitted of the offences, the appeal against the order of acquittal in such an event also needs to be filed by the State through Public Prosecutor before the Sessions Court, inasmuch as "the criminal case" is only one. Though such criminal case may involve various punishing sections, the criminal case cannot be bifurcated. So also, as against an order of acquittal passed by the Magistrate in any criminal case, two appeals cannot be filed by the State, one against cognisable offences and another against non-cognisable offences. Hence, the appeal lies before the Sessions Court against the order of acquittal, in which the accused is acquitted of the offences, which are both cognisable as well as non-cognisable and bailable as well as non-bailable (as the matter on hand).

6. Hence, the appeal needs to be dismissed as not maintainable and accordingly, the same stands dismissed as not maintainable.
7. It is open for the State to prefer the appeal before the Sessions, if need be.
8. Registry is directed to return all the relevant papers by obtaining photostat copies of the same to the State Public Prosecutor for enabling the State to prefer appeal before the Sessions Court.
9. Copy of this judgment shall be sent to the Director of Prosecution, Director General of Police and to the Principal Secretary, Home Department, Government of Karnataka, for their information and for necessary action.