

**THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &
ARUNACHAL PRADESH)**

ITANAGAR PERMANENT BENCH

Crl. Appl. No. 4(AP)/2017

1. Dr. Otam Taggu,
Daughter of Shri Talong Taggu,
Medical Officer, District Hospital, Aalo,
District West Siang, Arunachal Pradesh.Petitioner

-Versus-

1. Shri Tageng Padoh,
Chief Judicial Magistrate, Seppa,
District: East Kemang,
Arunachal Pradesh.

2. The State of Arunachal Pradesh,
through the Public Prosecutor, Arunachal Pradesh,
Gauhati High Court, Itanagar Bench.Respondents

**BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA**

Advocates for the Petitioners : Mr. P.K. Tiwari, Mr. K. Saxena,
: Mr. R.L. Thugon, Mr. H.K. Jamoh,
: Mr. M. Pertin.

Advocates for the Respondents : Mr. M. Pertin, Mr. K. Dabi, Mr. J. Kamduk,
: Mr. L. Perme, Mr. J. Dulom,
: Mr. K. Dubey, Mr. W. Sawin,

: Mr. D. Tatak, Mr. Y. Kiri.

Date of hearing & judgment : 18.05.2017.

JUDGMENT AND ORDER

Heard Mr. P.K. Tiwari, learned senior counsel for the appellant. Also heard Mr. M. Pertin, learned senior counsel appearing for the respondent No. 1 as well as Mr. K. Tado, learned Public Prosecutor for the State-respondent No. 2.

2) This appeal under proviso to Section 372 read with Section 382 of the Criminal Procedure Code is directed against the order 17.04.2015 passed by the learned Chief Judicial Magistrate, Aalo, District West Siang, in connection with Aalo P.S. Case No. 134/2013 under Section 353/354 of the Indian Penal Code, thereby rejecting the charge-sheet No. 2/2014 dated 14.05.2014 and discharging the accused/respondent No. 1 herein.

3) This appeal was registered after the delay in presenting the leave petition was condoned and after the application for leave to appeal was also allowed.

4) At the outset before the learned senior counsel for the appellant presented his argument, the learned senior counsel for the respondent took up a preliminary plea that as the respondent No. 1 was discharged by the impugned order, the present appeal was not maintainable as appeal is permitted only against the order of acquittal as provided in the Criminal Procedure Code. It is submitted that as such appeal is not maintainable the same is dismissed in limine.

5) At this juncture, the learned senior counsel for the appellant submits that this Court had the jurisdiction both to entertain the appeal or to exercise the power of Revision under Criminal Procedure Code. Hence, by relying on the ratio of the case of (i) *Jainath Prasad v. The State of Bihar & Anr., (2014) 0 Supreme (Pat) 1034*, (ii) *F.*

Parveen v. T.D. Naidu & Anr., (2009) CrLJ 4009 and (iii) Public Prosecutor, High Court of A.P, Hyd. v. P. Subhash Chandra Reddy, (2003) CrLJ 4776 it is submitted that this appeal may be converted into a revision. In reply the learned senior counsel for the respondent No. 1 submits that in view of provisions of Section 399 of the CPC, this Court may not convert this appeal into a revision as the appellant has an alternative remedy or to approach the learned Sessions Judge for a revision by filing a revision before the said learned court.

6) The learned Public Prosecutor has submitted that the State has nothing to submit in the matter as basically this is a dispute between the private individual.

7) Upon considering the argument advanced by the learned senior counsel for the parties, it may deems fit and proper to quote the relevant paragraphs of the case of *Jainath Prasad (supra), F. Parveen (supra) and Public Prosecutor, High Court of A.P, Hyd (supra)*:

(i) "Jainath Prasad (supra)- 83. From the aforesaid analogy, it is evident that a victim, whether he is the informant or otherwise, as defined in the Code, has got no right to file appeal against an order of acquittal passed by Appellate Court. The only remedy available to the victim, in such circumstances, would be by way of revision under Sections 397 and 401 Cr.P.C. and such challenge, too, would lie only within the parameters permissible under the revisional provisions.

84. In the present case, since the Court of Sessions as an appellate court, has acquitted the accused, there is no right of appeal provided to the victim i.e., the appellant herein and his remedy will lie in filing the revision, which he has done and, hence, in the circumstances indicated above, the revision is maintainable and has to be disposed of in accordance with law.

85. We, thus, respectfully disagree with the view of the learned Single Judge that by virtue of proviso to Section 372, added by 2009 amendment, an appeal would lie at the instance of a victim against order of acquittal passed by an Appellate Court. We accordingly permit this appeal to be converted into revision and, on such conversion, Registry shall list it before an appropriate Bench."

(ii) "F. Parveen (supra)- 13. A reading of the entire Section 378 of the Cr.P.C. and especially sub-clause 4 to 6 will make in clear that no appeal by a witness shall lie against a judgment or order of acquittal made in a case instituted on police report. Only in cases instituted on private complaint, and appeal by the complainant shall be entertained, provided the High Court grants special leave under clause (4) of Section 378 of the Cr. P.C. to file such an appeal against acquittal. Even in cases that come under sub-clauses (1) and (2) of Section 378, namely cases instituted on police complaint, no appeal against acquittal to the High Court shall be entertained except with the leave of the High Court as per sub-clause (3) of Section 378.

14. A reading of the entire Section 378 will make it abundantly clear that the present appeal filed by the appellant against the judgment of acquittal pronounced by the court below is not maintainable. Therefore, we have to consider whether the request made by the learned counsel for the petitioner for converting the appeal into a revision can be entertained. As rightly pointed out by the learned counsel for the first respondent/accused, there is specific provision in Section 401 sub-clause (5) which reads as follows:

"where an appeal lies but an application for revision has been made to the High Court by any person and the High Court is

satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

15. However, when a similar case came before the Hon'ble Supreme Court in Jagbir and another v. State of Punjab reported in AIR 1998 SC 3130, it was held therein that no appeal by a complainant in a case taken cognizance of on a police report against an order of acquittal shall be entertained by the High Court. But, ultimately in the said case, the Hon'ble Supreme Court directed the High Court to treat the appeal petition filed by the complainant as an application for revision of the order of the Sessions Judge and dispose of the same in accordance with law. The relevant paragraph reads as follows:

"Since the appeal must succeed and on a pure question of law, we need not go into the facts of the case. Admittedly, the cognizance in the instant case was taken upon a notice report under Section 190(1)(b), Cr. P.C. Resultantly, it was the State alone who could file an appeal in the High Court against the order of acquittal under Section 378(1), Cr. P.C. after obtaining the leave under sub-section 3 thereof and not the complainant who could only file an application under Section 401, Cr.P.C. for revision of that order. The High Court, therefore, was not at all justified in entertaining the appeal of the complainant and disposing the same in the manner aforesaid. On this score alone, we allow this appeal and restore the order of the trial court. The High Court will now treat the memorandum of appeal filed by the complainant as an application for revision of the order of the Sessions Judge, qua the two appellants only, and dispose of the same in accordance with law"

16. From the above said judgment of the Hon'ble Supreme Court, even though there is no specific provisions for treating a petition of appeal as an application for revision, if the High Court is of the view that if the interest of justice requires so to do the appeal petition can be treated as an application for revision under Section 404. In the instant case, it is obvious that an appeal has been filed on an erroneous belief that such appeal by the defacto complainant is maintainable against the judgment of acquittal. The registry of this Court has also contributed to such a mistake by entertaining the appeal petition without returning the same questioning the maintainability of the appeal by the defacto complainant as the case was instituted on a police report. Therefore, this court hereby comes to the conclusion that the appeal petition filed by the appellant herein is to be treated as a revision against acquittal and the appeal is hereby directed to be renumbered as a criminal revision case."

(iii) **"Public Prosecutor, High Court of A.P, Hyd.(supra)-**
14. Conversion of one category of proceedings into the other is not unknown to law. While in some cases specific provisions are made, in other cases is inferred. The underlying principle is that the Court should not refuse adjudication simply on the ground that a wrong provision has been invoked. Sub-section (5) of Section 401 of Cr.P.C. permits a revision, which was otherwise impermissible to be treated as an appeal and to be dealt with as such. A corresponding provision, however, dealing with reverse situation does not find place in the Cr.P.C.

15. The Supreme Court in *Eknath v. State of Maharashtra*, AIR 1977 SC 1177 after discussing the corresponding provisions of the Cr.P.C. 1889 and Cr.P.c. of 1974, took the view that even the

bar in sub-section (4) of Section 401, Cr. P.C. 1974, does not stand in the way of High Courts exercise of power of revision suo motu. The Orissa High Court in Sudhakar v. Dayanidhi held that wehre it is found that an appeal is not competent, the High Court can still invoke its revisional jurisdiction treating as the memorandum of appeal as the necessary substratum and treat the same as revision and proceed to decide the matter. Similar view was taken by the Calcutta High Court in Monmatha-nath v. Niranjan.

17. Therefore, the objection raised by the learned counsel for the accused is sustained and it is held that the appeal was not maintainable. However, following the judgment of the Supreme Court as well as of those of the Orissa and Calcutta High Court, referred to above, it is directed that the appeal be treated as revision."

8) On considering the above, this Court finds that there is sufficient force in the arguments made by the learned senior counsel for the appellant for conversion of appeal into a revision. This Court is of the view that this Court as well as the court of learned Sessions Judge have concurrent jurisdiction to entertain a revision under the provisions of Criminal Procedure Code and it is open for any party to choose whether he would prosecute the revision before the High Court or before the learned Sessions Court. Moreover, it is observed that the appellant had successfully pursued his application for condonation of delay under Section 5 of the Limitation Act as well as his application for grant of leave to file a appeal successfully before this Court and on both the occasions, the respondent No. 1 did not raise plea as to whether the appeal filed by him would otherwise not be maintainable before this Court. It is seen that under the amended Criminal Procedure Code, the informant has a right to pursue his remedy. As the appellant is found to be aggrieved by the discharge of the respondent No. 1, this Court deems it fit to permit the appellant to pursue his remedy.

9) In view of the ratio laid down by the Hon'ble Patna High Court, Madras High Court as well as Andhra Pradesh High Court in the above quoted decisions, this Court is inclined to convert this appeal into a revision under Section 397 read with Section 401 of the Criminal Procedure Code.

10) Accordingly, the appeal stands closed and the office is directed to re-register this appeal as a revision and list the same in the motion column on 05.06.2017.

JUDGE

Mkumar