SUBHASH CHAND

v.

STATE (DELHI ADMINISTRATION)
(Criminal Appeal No.50 of 2013)

JANUARY 8, 2013

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

Code of Criminal Procedure, 1973 – s.378 (as amended by Act 25 of 2005) – Complaint case filed by State / State Authority – Appeal from order of acquittal of the Magistrate – Whether would lie to the Sessions Court u/s.378(1)(a) CrPC or to the High Court u/s.378(4) CrPC –Held: A complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court – In the instant case the complaint alleging offences punishable u/ s.16(1)(1A) r/w s.7 of the PFA Act and the PFA Rules was filed against the appellant complainant Local Health Authority through Delhi Administration but the appellant was acquitted by the Metropolitan Magistrate – The complainant could challenge the order of acquittal by filing an application for special leave to appeal in the High Court and not in the Sessions Court – Therefore, impugned order holding that the case was not governed by s.378(4) CrPC quashed and set aside – Prevention of Food Adulteration Act, 1954 – s.16(1)(1A) r/w s.7 – Prevention of Food Adulteration Rules, 1955.

The High Court, by the impugned judgment, dismissed petition filed by the appellant holding that an appeal filed by the State against an order of acquittal shall lie to the Sessions Court under Section 378(1) CrPC and not under Section 378(4) CrPC to the High Court.

The question which arose for consideration in the instant appeal was whether in a complaint case, an

A appeal from an order of acquittal of the Magistrate would lie to the Sessions Court under Section 378(1)(a) CrPC or to the High Court under Section 378(4) CrPC.

Allowing the appeal, the Court

B HELD:1.1. To understand the controversy, it is necessary to have a look at Section 378 CrPC prior to its amendment by Act 25 of 2005 and Section 378 amended thereby. [Para 10] [202-C]

C 1.2. Under earlier un-amended Section 378(1) CrPC, the State Government could, 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 D passed by the Court of Session in revision. Section 378(2) covered cases where order of acquittal was passed in any case in which the offence had been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 or by any E other agency empowered to make investigation into an offence under any Central Act other than the Code. In such cases, the Central Government could also direct the Public Prosecutor to present an appeal to the High Court from an order of acquittal. Section 378(3) stated that appeals under sub-sections (1) and (2) of Section 378 of F the Code could not be entertained except with the leave of the High Court. Sub-section (4) of Section 378 of the Code provided for orders of acquittal passed in any case instituted upon complaint. According to this provision, if on an application made to it by the complainant, the High G Court grants special leave to appeal from the order of acquittal, the complainant could present such an appeal to the High Court. Sub-section (5) of Section 378 of the Code provided for a period of limitation. Sub-section (6) of Section 378 of the Code stated that if in any case, the H application under sub-section (4) for the grant of special

leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-sections (1) or (2). Thus, if the High Court refused to grant special leave to appeal to the complainant, no appeal from that order of acquittal could be filed by the State or the agency contemplated in Section 378(2). It is clear from these provisions that earlier an appeal against an order of acquittal could only lie to the High Court. Sub-section (4) was aimed at giving finality to the orders of acquittal. [Para 11] [203-G-H; 204-A-F]

1.3. Post the amendment of Section 378 CrPC, by Act 25 of 2005, on analysis of 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. [Para 16] [208-G-H; 209-A-C]

1.4. Sub-Section (4) of Section 378 makes provision for appeal against an order of acquittal passed in case instituted upon complaint. It states that in such case if the complainant makes an application to the High Court and the High Court grants special leave to appeal, the complainant may present such an appeal to the High

A Court. This sub-section speaks of 'special leave' as against sub-section (3) relating to other appeals which speaks of 'leave'. Thus, complainant's appeal against an order of acquittal is a category by itself. The complainant could be a private person or a public servant. This is
B evident from sub-section (5) which refers to application filed for 'special leave' by the complainant. It grants six months period of limitation to a complainant who is a public servant and sixty days in every other case for filing application. Sub-Section (6) is important. It states that if
C in any case complainant's application for 'special leave' under sub-Section (4) is refused no appeal from order of acquittal shall lie under sub-section (1) or under sub-section (2). Thus, if 'special leave' is not granted to the complainant to appeal against an order of acquittal the
D matter must end there. Neither the District Magistrate not the State Government can appeal against that order of acquittal. The idea appears to be to accord quietus to the case in such a situation. [Para 17] [209-C-G]

1.5. A police report is defined under Section 2(r) of
E the Code to mean a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173 of the Code. It is a culmination of investigation by the police into an offence after receiving information of a cognizable or a non-cognizable offence. Section 2(d) defines a
F complaint to mean any allegation made orally or in writing to a Magistrate with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence, but does not include a police report. Explanation to Section 2(d) states
G that a report made by a police officer in a case which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complainant. Sometimes
H investigation into cognizable offence conducted under

Section 154 of the Code may culminate into a complaint case (cases under the Drugs & Cosmetics Act, 1940). Under the PFA (Prevention of Food Adulteration Act, 1954), cases are instituted on filing of a complaint before the Court of Metropolitan Magistrate as specified in Section 20 of the PFA Act and offences under the PFA Act are both cognizable and non-cognizable. Thus, whether a case is a case instituted on a complaint depends on the legal provisions relating to the offence involved therein. But once it is a case instituted on a complaint and an order of acquittal is passed, whether the offence be bailable or non-bailable, cognizable or non-cognizable, the complainant can file an application under Section 378(4) for special leave to appeal against it in the High Court. Section 378(4) places no restriction on the complainant. So far as the State is concerned, as per Section 378(1)(b), it can in any case, that is even in a case instituted on a complaint, direct the Public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any court other than High Court. But there is an important inbuilt and categorical restriction on the State's power. It cannot direct the Public Prosecutor to present an appeal from an order of acquittal passed by a Magistrate in respect of a cognizable and non-cognizable offence. In such a case the District Magistrate may under Section 378(1)(a) direct the Public Prosecutor to file an appeal to the Session Court. This appears to be the right approach and correct interpretation of Section 378 of the Code. [Para 18] [209-H; 210-A-H; 211-A]

1.6. Act No.25 of 2005 brought about a major amendment in the Code. It introduced Section 378(1)(a) which permitted the District Magistrate, in any case, to 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 cognizable and non-bailable

A offence. For the first time a provision was introduced whereunder an appeal against an order of acquittal could be filed in the Sessions Court. Such appeals were restricted to orders passed by a Magistrate in cognizable and non-bailable offences. Section 378(1)(b) specifically
B and in clear words placed a restriction on the State's right to file such appeals. It states that 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
C Court not being an order under clause (a) or an order of acquittal passed by the Sessions Court in revision. Thus, the State Government cannot present an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence. Clause 37 of
D the 154th Report of the Law Commission of India and Clause 37 of the Code of Criminal Procedure (Amendment) Bill, 1994 state that in order to guard against the arbitrary exercise of power and to reduce reckless acquittals Section 378 was sought to be amended to provide appeal against an order of acquittal
E passed by a Magistrate in respect of cognizable and non-bailable offence. Thus, this step was taken by the legislature to check arbitrary and reckless acquittals. It appears that being conscious of rise in unmerited acquittals, in case of certain acquittals, the legislature has
F enabled the District Magistrate to direct the Public Prosecutor to present an appeal to the Sessions Court, thereby avoiding the tedious and time consuming procedure of approaching the State with a proposal, getting it sanctioned and then filing an appeal. [Para 19]
G [211-C-H; 212-A-B]

1.7. Till Section 378 was amended by Act 25 of 2005 the State could prefer appeals against all acquittal orders. But the major amendment made in Section 378 by Act 25
H of 2005 cannot be ignored. It has a purpose. It does not

throw the concern of security of the community to the winds. In fact, it makes filing of appeals against certain types of acquittal orders described in Section 378(1)(a) easier, less cumbersome and less time consuming. [Para 20] [212-C-D]

1.8. A complainant can, thus, file an application for special leave to appeal against an order of acquittal of any kind only to the High Court. He cannot file such appeal in the Sessions Court. In the instant case the complaint alleging offences punishable under Section 16(1)(1A) read with Section 7 of the Prevention of Food Adulteration Act, 1954 and the Prevention of Food Adulteration Rules, 1955 was filed by complainant Local Health Authority through Delhi Administration. The appellant was acquitted by the Metropolitan Magistrate. The complainant can challenge the order of acquittal by filing an application for special leave to appeal in the High Court and not in the Sessions Court. Therefore, the impugned order holding that this case is not governed by Section 378(4) CrPC is quashed and set aside. [Para 21] [212-E-H]

Khemraj v. State of Madhya Pradesh **1976 (1) SCC 385: 1976 (2) SCR 753;** *State (Delhi Adminsitration) v. Dharampal* **2001(10) SCC 372: 2001 (4) Suppl. SCR 448;** *Akalu Ahir & Ors. v. Ramdeo Ram* **1973 (2) SCC 583: 1974 (1) SCR 130;** *State v. Ram Babu & Ors.* **1970 AWR 288;** *Food Inspector v. Moidoo* **1988 (2) KLT 205;** *Prasannachary v. Chikkapinachari & Anr.* **1959 AIR (Kant) 106;** *State of Maharashtra v. Limbaji Sayaji Mhaske, Sarpanch Gram Panchayat* **1976 (Mah.) LJ 475;** *State of Punjab & Anr. v. Jagan Nath* **1986 (90) PLR 466 and** *State of Orissa v. Sapneswar Thappa* **1987 Cri.L.J. 612 – held inapplicable.**

Law Commission of India, **154th report and 221st report – referred to.**

A **Case Law Reference:**

1976 (2) SCR 753	**held inapplicable**	**Para 9**
2001 (4) Suppl. SCR 448	**held inapplicable**	**Para 9**
B **1974 (1) SCR 130**	**held inapplicable**	**Para 9**
1970 AWR 288	**held inapplicable**	**Para 9**
1988 (2) KLT 205	**held inapplicable**	**Para 9**
1959 AIR (Kant) 106	**held inapplicable**	**Para 9**
C **1976 (Mah.) LJ 475**	**held inapplicable**	**Para 9**
1986 (90) PLR 466	**held inapplicable**	**Para 9**
1987 Cri.L.J. 612	**held inapplicable**	**Para 9**

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 50 of 2013.

From the Judgment & Order dated 07.01.2011 of the High Court of Delhi at New Delhi in Criminal Misc. No. 427 of 2009.

E Sidharth Luthra (Amicus Curiae), P.P. Malhotra, ASG, Devina Sehgal, Meenakshi Lekhi, Harish Pandey, Sachin Jain, Yasir Rauf, Ranjana Narayan (for Anil Katiyar) for the appearing parties.

F The Judgment of the Court was delivered by

(SMT.) RANJANA PRAKASH DESAI, J. 1. Leave granted.

G 2. This appeal, by special leave, is directed against judgment and order dated 07/01/2011 passed by the High Court of Delhi in Criminal Misc. Case No.427 of 2009 whereby the High Court dismissed the petition filed by the appellant holding that an appeal filed by the State against an order of acquittal shall lie to the Sessions Court under Section 378(1)

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of the Code of Criminal Procedure, 1973 (for short, "**the Code**") and not under Section 378(4) of the Code to the High Court.

3. The appellant is the supplier-cum-manufacturer of the food article namely Sweetened Carbonated Water. He is carrying on business in the name and style of M/s. Subhash Soda Water Factory. On 6/6/1989 at about 4.15 p.m., one P.N. Khatri, Food Inspector, purchased a sample of sweetened carbonated water for analysis from one Daya Chand Jain, Vendor-cum-Contractor of Canteen at Suraj Cinema, Dhansa Road, Najafgarh, Delhi. After following the necessary procedure, the sample was sent to the Public Analyst for analysis. On analysis, the Public Analyst opined that the sample does not conform to the prescribed standard. After conclusion of the investigation, the respondent–State through its Local Health Authority - P.K. Jaiswal filed a Complaint bearing No.64 of 1991 against the appellant and Daya Chand in the Court of the Metropolitan Magistrate, New Delhi alleging that the appellant and the said Daya Chand had violated the provisions of Sections 2(ia), (a), (b), (f), (h), (l), (m), Section 2(ix) (j), (k) and Section 24 of the Prevention of Food Adulteration Act, 1954 (for short, "**PFA Act**") and Rule 32, Rule 42 (zzz)(i) and Rule 47 of the Prevention of Food Adulteration Rules, 1955 (for short, "**the Rules**") and committed an offence punishable under Section 16(1)(1A) read with Section 7 of the PFA Act and the Rules. Since Daya Chand died during the pendency of the case, the case abated as against him. The appellant was tried and acquitted by learned Magistrate by order dated 27/2/2007.

4. Being aggrieved by the said order dated 27/2/2007, the respondent-State preferred Criminal Appeal No.13 of 2008 in the Sessions Court under Section 378(1)(a) of the Code. The appellant raised a preliminary objection in regard to the maintainability of the said Appeal before the Sessions Court in view of Section 378(4) of the Code. He contended that an appeal arising from an order of acquittal in a complaint case

A shall lie to the High Court. The said objection was rejected by the Sessions Court by order dated 4/2/2009.

5. Aggrieved by the said order dated 4/2/2009, the appellant preferred Criminal Misc. Case No.427 of 2009 before the High Court. By order dated 9/7/2009, the High Court held B that the Sessions Court has no jurisdiction to entertain an appeal filed in a complaint case and directed that the appeal be transferred to it. Accordingly, Criminal Appeal No.13 of 2008 pending before the Sessions Court was transferred to the High Court and re-numbered as Criminal Appeal No.642 of 2009. C

6. The respondent-State carried the said order dated 9/7/2009 to this court by Special Leave Petition (Crl.) No.9880 of 2009 (Criminal Appeal No.1514 of 2010). By order dated 13/8/2010, this court remanded the matter to the High Court and D directed that the matter be decided afresh after taking into consideration Sections 378(1) and 378(4) of the Code and the relevant provisions of the PFA. On remand, the High Court passed the impugned judgment and order dated 7/1/2011.

7. The short point which arises for consideration in this E appeal is whether in a complaint case, an appeal from an order of acquittal of the Magistrate would lie to the Sessions Court under Section 378(1) (a) of the Code or to the High Court under Section 378(4) of the Code.

F 8. At our request, Mr. Sidharth Luthra, learned Additional Solicitor General has assisted us as Amicus Curiae. We have heard Ms. Meenakshi Lekhi, learned counsel appearing for the petitioner and Mr. P.P. Malhotra, learned Additional Solicitor General appearing for the State. Written submissions have G been filed by the counsel which we have carefully perused. Mr. Luthra took us through the relevant excerpts of Law Commission's reports. He took us through the Code of Criminal Procedure (Amendment) Bill, 1994 (Bill No. XXXV of 1994). He also took us through un-amended and amended H Section 378 of the Code. After analyzing the relevant provisions,

Mr. Luthra submitted that no appeal lies against an order of acquittal in cases instituted upon a complaint to the Sessions Court. Ms. Lekhi also adopted similar line of reasoning.

9. Mr. Malhotra learned Additional Solicitor General adopted a different line of argument and therefore, it is necessary to note his submissions in detail. Counsel pointed out how the law relating to appeals against orders of acquittal has evolved over the years. Counsel submitted that under the Code of Criminal Procedure, 1861 no appeal against an order of acquittal could be filed. The Code of Criminal Procedure, 1872 permitted only the State Government to file an appeal against acquittal order. Section 417 of the Criminal Procedure Code, 1898 permitted only the State to file an appeal against acquittal order. In 1955 it was amended so as to permit the complainant to file an appeal against acquittal order. Under the Code of Criminal Procedure, 1973, Section 417 was substituted by Section 378. Counsel pointed out that under Section 378(4) a complainant could prefer appeal against order of acquittal, if special leave was granted by the High Court. However, in all cases the State could present appeal against order of acquittal. Counsel then referred to Section 378 of the Code as amended by Act No. 25 of 2005 and submitted that the only change in sub-section (1) is adding clauses (a) and (b) to it. Counsel described this change as minor and submitted that the State's right to file appeal against orders of acquittal remains intact and is not taken away. Counsel relied on the words 'State Government may, in any case' and submitted that these words preserve the State's right to file appeal against acquittal orders of all types. There is no limitation on this right whatsoever. This right is preserved according to the counsel because the State is the protector of people. Safety and security of the community is its concern. Even if a complainant does not file an appeal against an order of acquittal, the State Government can in public interest file it. Counsel also addressed us on the question of plurality of appeals. That issue is not before us. It is, therefore, not necessary to refer to that

A submission. In support of his submissions counsel placed reliance on *Khemraj v. State of Madhya Pradesh*[1], *State (Delhi Adminsitration) v. Dharampal*[2], *Akalu Ahir & Ors. v. Ramdeo Ram*[3], *State v. Ram Babu & Ors.*[4], *Food Inspector v. Moidoo*[5], *Prasannachary v. Chikkapinachari & Anr.*[6], *State* B *of Maharashtra v. Limbaji Sayaji Mhaske*[7], *Sarpanch Gram Panchayat, State of Punjab & Anr. v. Jagan Nath*[8] and *State of Orissa v. Sapneswar Thappa*[9].

10. To understand the controversy, it is necessary to have a look at Section 378 of the Code prior to its amendment by C Act 25 of 2005 and Section 378 amended thereby.

11. Section 378 of the Code prior to its amendment by Act 25 of 2005 read as under:

D "Appeal in case of acquittal.

378. 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 E appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court 2*[or an order of acquittal passed by the Court of Session in revision.]

F (2) If such an order of acquittal is passed in any case

1. 1976 (1) SCC 385.
2. 2001 (10) SCC 372.
3. 1973 (2) SCC 583.
G 4. 1970 AWR 288.
5. 1988 (2) KLT 205.
6. 1959 AIR (Kant) 106.
7. 1976 (Mah.) LJ 475.
8. 1986 (90) PLR 466.
H 9. 1987 Cri.L.J. 612.

in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub- section (1) or under sub-section (2)."

Thus, under earlier Section 378(1) of the Code, the State Government could, 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

A High Court or an order of acquittal passed by the Court of Session in revision. Section 378(2) covered cases where order of acquittal was passed in any case in which the offence had been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act,
B 1946 or by any other agency empowered to make investigation into an offence under any Central Act other than the Code. In such cases, the Central Government could also direct the Public Prosecutor to present an appeal to the High Court from an order of acquittal. Section 378(3) stated that appeals under sub-
C sections (1) and (2) of Section 378 of the Code could not be entertained except with the leave of the High Court. Sub-section (4) of Section 378 of the Code provided for orders of acquittal passed in any case instituted upon complaint. According to this provision, if on an application made to it by the complainant,
D the High Court grants special leave to appeal from the order of acquittal, the complainant could present such an appeal to the High Court. Sub-section (5) of Section 378 of the Code provided for a period of limitation. Sub-section (6) of Section 378 of the Code stated that if in any case, the application under sub-section (4) for the grant of special leave to appeal from an
E order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-sections (1) or (2). Thus, if the High Court refused to grant special leave to appeal to the complainant, no appeal from that order of acquittal could be filed by the State or the agency contemplated in Section 378(2).
F It is clear from these provisions that earlier an appeal against an order of acquittal could only lie to the High Court. Sub-section (4) was aimed at giving finality to the orders of acquittal.

12. Before we proceed to analyze the amended Section
G 378 of the Code, it is necessary to quote the relevant clause in the 154th Report of the Law Commission of India, which led to the amendment of Section 378 by Act 25 of 2005. It reads thus:

H *"6.12.* ***Clause 37:*** *In order to guard against the*

arbitrary exercise of power and to reduce reckless acquittals, Section 378 is sought to be amended providing an appeal against an order of acquittal passed by a Magistrate in respect of cognizable and non-bailable offence filed on a police report to the Court of Session as directed by the District Magistrate. In respect of all other cases filed on a police report, an appeal shall lie to the High Court against an order of acquittal passed by any other court other than the High Court, as directed by the State Government. The power to recommend appeal in the first category is sought to be vested in the District Magistrate and the power in respect of second category would continue with the State Government."

The Code of Criminal Procedure (Amendment) Bill, 1994 has the same note on Clause 37.

13. Though, the Law Commission's 154th report indicated that Section 378 was being amended to provide that an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence filed on a police report would lie to the court of Sessions, the words "police report" were not included in the amended Section 378. In this connection, it is necessary to refer to the relevant extract from the Law Commission's 221st report of April, 2009. After noting amendment made to Section 378 the Law Commission stated as under:

"2.9 All appeals against orders of acquittal passed by Magistrates were being filed in High Court prior to amendment of Section 378 by Act 25 of 2005. Now, with effect from 23.06.2006, appeals against orders of acquittal passed by Magistrates in respect of cognizable and non-bailable offences in cases filed on police report are being filed in the Sessions Court, vide clause (a) of sub-section (1) of the said section. But, appeal against order of acquittal passed in any case instituted upon complaint continues to be filed in the High Court, if special leave is

A granted by it on an application made to it by the complainant, vide sub-section (4) of the said section.

2.10 Section 378 needs change with a view to enable filing of appeals in complaint cases also in the Sessions Court, of course, subject to the grant of special leave by it."

These two extracts of the Law Commission's report make it clear that though the words 'police report' are not mentioned in Section 378(1) (a), the Law Commission noted that the C effect of the amendment was that all appeals against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence in cases filed on police report are being filed in the Sessions Court. The Law Commission lamented that there is no provision enabling filing of appeal in D complaint cases in the Sessions Court subject to the grant of special leave by it. Thus, the Law Commission acknowledged that there is no provision in the Code under which appeals in complaint cases could be filed in the Sessions Court. We agree with this opinion for reasons which we shall now state.

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14. Having analysed un-amended Section 378 it is necessary to have a look at Section 378 of the Code, as amended by Act 25 of 2005. It reads as under:

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*"**378. Appeal in case of acquittal.***

[(1) Save as otherwise provided in sub-section (2) and subject to the provisions of subsections (3) and (5), -

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

(b) the State Government may, in any case, direct the H *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 [not being an order under clause (a)] [or an order of acquittal passed by the Court of Session in revision].

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code. [the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal-

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) 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.]

(3)[No appeal to the High Court] under subsection (1) or subsection (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon Complaint and the High Court, on an application made to it by the complainant in this behalf, grants, special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under subsection (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and

A *sixty days in every other case, computed from the date of that order of acquittal.*

(6) If in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal B *shall lie under sub-section (1) or under subsection (2)."*

15. At the outset, it must be noted that as per Section 378(3) appeals against orders of acquittal which have to be filed in the High Court under Section 378(1)(b) and 378(2)(b) C of the Code cannot be entertained except with the leave of the High Court. Section 378(1)(a) provides that, in any case, if an order of acquittal is passed by a Magistrate in respect of a cognizable and non-bailable offence the District Magistrate may direct the Public Prosecutor to present an appeal to the court D of Sessions. Sub-Section (1)(b) of Section 378 provides that, in any case, the State Government may direct the Public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court not being an order under clause (a) or an order E of acquittal passed by the Court of Session in revision. Sub-Section(2) of Section 378 refers to orders of acquittal passed in any case investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 or by any other agency empowered F to make investigation into an offence under any Central Act other than the Code. This provision is similar to sub-section(1) except that here the words 'State Government' are substituted by the words 'Central Government'.

16. If we analyse Section 378(1)(a) & (b), it is clear that G 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 H 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.

17. Sub-Section (4) of Section 378 makes provision for appeal against an order of acquittal passed in case instituted upon complaint. It states that in such case if the complainant makes an application to the High Court and the High Court grants special leave to appeal, the complainant may present such an appeal to the High Court. This sub-section speaks of 'special leave' as against sub-section (3) relating to other appeals which speaks of 'leave'. Thus, complainant's appeal against an order of acquittal is a category by itself. The complainant could be a private person or a public servant. This is evident from sub-section (5) which refers to application filed for 'special leave' by the complainant. It grants six months period of limitation to a complainant who is a public servant and sixty days in every other case for filing application. Sub-Section (6) is important. It states that if in any case complainant's application for 'special leave' under sub-Section (4) is refused no appeal from order of acquittal shall lie under sub-section (1) or under sub-section (2). Thus, if 'special leave' is not granted to the complainant to appeal against an order of acquittal the matter must end there. Neither the District Magistrate not the State Government can appeal against that order of acquittal. The idea appears to be to accord quietus to the case in such a situation.

18. Since the words 'police report' are dropped from Section 378(1) (a) despite the Law Commission's recommendation, it is not necessary to dwell on it. A police report is defined under Section 2(r) of the Code to mean a

A report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173 of the Code. It is a culmination of investigation by the police into an offence after receiving information of a cognizable or a non-cognizable offence. Section 2(d) defines a complaint to mean any allegation made
B orally or in writing to a Magistrate with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence, but does not include a police report. Explanation to Section 2(d) states that a report made by a police officer in a case which discloses after investigation, the
C commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complainant. Sometimes investigation into cognizable offence conducted under Section 154 of the Code may culminate into a complaint case (cases
D under the Drugs & Cosmetics Act, 1940). Under the PFA Act, cases are instituted on filing of a complaint before the Court of Metropolitan Magistrate as specified in Section 20 of the PFA Act and offences under the PFA Act are both cognizable and non-cognizable. Thus, whether a case is a case instituted on a
E complaint depends on the legal provisions relating to the offence involved therein. But once it is a case instituted on a complaint and an order of acquittal is passed, whether the offence be bailable or non-bailable, cognizable or non-cognizable, the complainant can file an application under Section 378(4) for special leave to appeal against it in the High
F Court. Section 378(4) places no restriction on the complainant. So far as the State is concerned, as per Section 378(1)(b), it can in any case, that is even in a case instituted on a complaint, direct the Public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any
G court other than High Court. But there is, as stated by us hereinabove, an important inbuilt and categorical restriction on the State's power. It cannot direct the Public Prosecutor to present an appeal from an order of acquittal passed by a Magistrate in respect of a cognizable and non-cognizable
H offence. In such a case the District Magistrate may under

Section 378(1)(a) direct the Public Prosecutor to file an appeal to the Session Court. This appears to be the right approach and correct interpretation of Section 378 of the Code. A

19. Mr. Malhotra is right in submitting that it is only when Section 417 of the Criminal Procedure Code, 1898 was amended in 1955 that the complainant was given a right to seek special leave from the High Court to file an appeal to challenge an acquittal order. Section 417 was replaced by Section 378 in the Code. It contained similar provision. But, Act No.25 of 2005 brought about a major amendment in the Code. It introduced Section 378(1)(a) which permitted the District Magistrate, in any case, to 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 cognizable and non-bailable offence. For the first time a provision was introduced whereunder an appeal against an order of acquittal could be filed in the Sessions Court. Such appeals were restricted to orders passed by a Magistrate in cognizable and non-bailable offences. Section 378(1)(b) specifically and in clear words placed a restriction on the State's right to file such appeals. It states that 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 not being an order under clause (a) or an order of acquittal passed by the Sessions Court in revision. Thus, the State Government cannot present an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence. We have already noted Clause 37 of the 154th Report of the Law Commission of India and Clause 37 of the Code of Criminal Procedure (Amendment) Bill, 1994 which state that in order to guard against the arbitrary exercise of power and to reduce reckless acquittals Section 378 was sought to be amended to provide appeal against an order of acquittal passed by a Magistrate in respect of cognizable and non-bailable offence. Thus, this step is taken by the legislature to check arbitrary and B C D E F G H

A reckless acquittals. It appears that being conscious of rise in unmerited acquittals, in case of certain acquittals, the legislature has enabled the District Magistrate to direct the Public Prosecutor to present an appeal to the Sessions Court, thereby avoiding the tedious and time consuming procedure of B approaching the State with a proposal, getting it sanctioned and then filing an appeal.

20. It is true that the State has an overall control over the law and order and public order of the area under its jurisdiction. Till Section 378 was amended by Act 25 of 2005 the State C could prefer appeals against all acquittal orders. But the major amendment made in Section 378 by Act 25 of 2005 cannot be ignored. It has a purpose. It does not throw the concern of security of the community to the winds. In fact, it makes filing of appeals against certain types of acquittal orders described D in Section 378(1)(a) easier, less cumbersome and less time consuming. The judgments cited by Mr. Malhotra pertain to Section 417 of the Criminal Procedure Code, 1898 and Section 378 prior to its amendment by Act 25 of 2005 and will, therefore, have no relevance to the present case.

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21. In view of the above, we conclude that a complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court. He cannot file such appeal in the Sessions Court. In the instant case the F complaint alleging offences punishable under Section 16(1)(1A) read with Section 7 of the PFA Act and the Rules is filed by complainant Shri Jaiswal, Local Health Authority through Delhi Administration. The appellant was acquitted by the Metropolitan Magistrate, Patiala House Courts, New Delhi. The complainant can challenge the order of acquittal by filing an application for G special leave to appeal in the Delhi High Court and not in the Sessions Court. Therefore, the impugned order holding that this case is not governed by Section 378(4) of the Code is quashed and set aside. In the circumstances the appeal is allowed.

H B.B.B. Appeal allowed.