

IN THE COURT OF THE 1ST ADDL. SESSIONS JUDGE- CUM-
SPECIAL JUDGE (VIGILANCE) BHUBANESWAR.

Present :

Shri N.Sahu, LL.B.,
1st Addl. Sessions Judge,
Bhubaneswar.

CrI. Appeal No. 12/24 of 2011

(Arising out of the order passed in I.C.C.No.
724/2007 by Sri J.Rout, the learned
J.M.F.C.,Bhubaneswar).

Chittaranjan Das, aged about 54 years,
S/o.Shatrughna Das, At present Qr.No.EF/-9,
Utkal University, Vani Vihar, BBSR. Appellant.

-Versus-

Rabindra Kumar Mallik, aged about 57 years,
S/o. Nirakar Mallik, At present-Sr. Asst., Food
Corporation of India, Umuri Depot, Koraput,
represented through his advocate Niranjan Kanungo,
BBSR Bar. Respondent.

For the Appellant : In person.
For the Respondent: Sri N.Kanungo & Associates.

Date of argument : 22.10.2014.
Date of judgment : 01.11.2014.

J U D G M E N T

1. On 18.7.11 the present appellant filed one Appeal-petition praying to take cognizance of the offences as prescribed u/s.195, 196, 294, 295, 296, 314, 340, 341, 343(1), 344, 345, 349, 350 of Cr.P.C. with further prayer to convict the accused by sentencing him to imprisonment stating that the lower court (Sri J.Rout, JMFC, Bhubaneswar) refused to make a complaint u/s.340 (1)(2) Cr.P.C.

Ordersheet, dt.16.7.2011 of the LCR in ICC No.724/2007 shows that this petitioner had filed a petition u/s.340 Cr.P.C. and both sides were heard on the petition and the case was adjourned to 20.7.2011 for orders. On 20.7.11 the learned Magistrate heard both sides on the

petitions, dt.19.7.10, 29.9.10, 11.4.11, 20.4.11, 1.7.11 and 16.7.11 filed by the complainant-appellant. The learned lower Court held that the petitions filed by the complainant are no way connected with the case and totally irrelevant for just decision of the case and rejected the same being devoid of merit. When the above petitions were pending before the lower court, this complainant has filed the present appeal on 18.7.2011. That apart, in the meantime the said case has been disposed of by the lower court on 20.8.2011 and the accused has been acquitted.

2. During pendency of the appeal, on 22.10.2014 the appellant filed a petition under Chapter-XXIX Cr.P.C. praying to reverse the order of the lower court and for retrial of the accused u/s.386 Cr.P.C. In **para III** of the said petition, the petitioner has specifically mentioned that the JMFC, Bhubaneswar without considering the materials passed the impugned judgment, dt.20.8.2011. Copy of the petition was served on the advocate for the respondent who orally objected the same. Parties were heard. The learned counsel for the respondent submitted that if the complainant is aggrieved by the judgment of acquittal passed by the learned lower Court, he should have approached before proper forum within the time limit as prescribed under the Cr.P.C., so, the petition, dt.22.10.2014 filed by the appellant cannot be taken into consideration for deciding the present appeal which was filed by him on 18.7.2011.

3. Perused the materials on record. The case No. ICC-724/2007 was a complaint case initiated by the present complainant. In the petition, dt.22.10.2014 the appellant has prayed to reverse the order, dt.20.8.2011 and to direct for retrial of the accused and to pass sentence according to law. The said order was the final order wherein the accused was acquitted of the offences u/s.448, 294, 323, 382 and 506 IPC. In this regard, a reference may be made to Section 378(4) Cr.P.C. which reads as follows :-

“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.”

4. Here, I am concerned with the appeal which was filed on 18.7.2011. Obviously, the final order (Judgment), dt.20.8.2011 was passed during pendency of the present appeal. As such, the petition, dt.22.10.2014 filed by the complainant under Chapter-XXIX of Cr.P.C. is rejected being no way connected for deciding the present appeal. This appeal has to be decided keeping in view the facts which were existing on the date of presentation of the appeal petition, dt.18.7.2011. But, as discussed above, the petitions mentioned in the appeal petition were not disposed of by the learned lower court as on 18.7.2011. Those petitions were disposed of by the learned JMFC, Bhubaneswar on 20.7.2011. So, fact remains that the appellant had filed the present appeal before the petitions were finally disposed of by the learned lower Court. From the aforesaid discussion, it is held that this appeal petition, dt.18.7.2011 is not maintainable. Hence, it is ordered.

ORDER

The Appeal is dismissed on contest.

1st Addl. Sessions Judge,
Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 1st day of November, 2014.

1st Addl. Sessions Judge,
Bhubaneswar.

