



**IN THE HIGH COURT OF SIKKIM AT GANGTOK  
(CRIMINAL APPELLATE JURISDICTION)**

**Single Bench: Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge.**

**CRL. L. P. No. 6 of 2015**

**Appellant:** KAIL Limited,  
previously known as Kitchen Appliance India Ltd., a Company registered under Companies Act, 1956, having its registered/administrative office at C-6, Ashok Steel Compound, 159, C.S.T. Road, Kalina Santacruz (E), Mumbai 400098 and also its registered Branch Office at 3, Sarat Bose Road, Hakim Para, WBSC Card Bank Ltd., 2<sup>nd</sup> Floor, Sliguri- 734001, through its constituted Power of Attorney Holder Mr. Manoj Bhattacharyya, resident of Block – BP, Sector –V, Salt Lake City, Kolkata – 700091.

***VERSUS***

**Respondents :** (1) Mr. Jamel Akhtar  
S/o Abdul Aziz,  
Proprietor of M/s New Alpha Electronics, Central Bank Building “Ground Floor”, Gayzing, West Sikkim and also residing at House No. 59, Village & Street Gayzing, P.S. Gyalshing, District West Sikkim, within the jurisdiction aforesaid.

(2) State of Sikkim,  
Through the Chief Secretary,  
Government of Sikkim.

**Appearance:-**

Mr. Manish Kr. Jain, Advocate for the Applicant/ Petitioner.

Mr. Ajay Rathie with Ms. Pema Wangmo Bhutia, Advocates for the Respondent No.1.

Mrs. Pollin Rai, Asst. Govt. Advocate for the Respondent No. 2.



**Application for leave to appeal under Section 378(4) of the  
Code of Criminal Procedure, 1973.**

**ORDER**

(28.8.2015)

**Meenakshi Madan Rai, J**

(1) This is to consider an application under Section 378(4) of the Code of Criminal Procedure, 1973.

(2) Heard Learned Counsel for the Applicant and Learned Counsel for the Respondent No.1.

(3) Learned Assistant Government Advocate for the Respondent No. 2 had no submissions to make.

(4) Learned Counsel for the Applicant submitted that the Learned Trial Court vide its impugned Order dated 20.4.2015 in Private Complaint Case No.1 of 2015, discharged the Accused/ Respondent No.1 on grounds which are against the canons of Law laid down in various Judgments of the Hon'ble Apex Court.

(5) That the matter being one under Section 138 of the N.I. Act, 1881, the Learned Court ought to have taken into consideration the Dishonoured Cheque and the Bank Return Memo and prepared a substance of accusation and thereafter disposed of the matter on merits, however, instead of doing so, the Accused was discharged at the threshold without taking into consideration any of the above. That, the Magistrate has committed a serious illegality by passing the impugned Order, as she failed to comply with the Provisions of Chapter XXII of the Code of Criminal Procedure, 1973 pertaining to



trial of summons cases as applicable to matters under the N.I. Act cases. Hence, the prayer for Leave to Appeal.

(6) Learned Counsel for the Respondent No.1, for his part contended that in the first instance the Applicant ought to have approached this Court under Section 372 of the Code of Criminal Procedure, 1973 and not under Section 378(4) of the same Code. That, the Learned Magistrate has committed no illegality in passing the impugned Judgment which was done on basis of no *prima facie* material being found against the Respondent No.1. That, infact, the Respondent No.1 has no *locus standi* to file the instant application or the Appeal as they have failed to establish that previously their Company name was known as Kitchen Appliance India Ltd. and now go by the name of KAIL Ltd. and hence, in the above facts and circumstances the application be dismissed.

(7) The rival submissions have been duly considered by me.

(8) Coming to the question of applicability of Section 372 and not of Section 378(4) of the Code of Criminal Procedure, 1973, the Hon'ble Apex Court in ***Damodar S. Prabhu vs. Sayed Babalal H. :*** (2010) 5 SCC 633 *inter alia* held as follows;

*“20. It may be noted here that Section 143 of the Act makes an offence under Section 138 triable by a Judicial Magistrate, First Class (JMFC). After trial, the progression of further legal proceedings would depend on whether there has been a conviction or an acquittal.*

- *In the case of conviction, an appeal would lie to the Court of Sessions under Section 374(3)(a) CrPC; thereafter a revision to the High Court under Sections 397/401 CrPC and finally a petitioner before the Supreme Court, seeking special leave to appeal under*



*Section 136 of the Constitution of India. Thus, in case of conviction there will be four levels of litigation.*

• *In the case of acquittal by JMFC, the complainant could appeal to the High Court under Section 378(4) CrPC, and thereafter for special leave to appeal to the Supreme Court under Article 136. In such an instance, therefore, there will be three levels of proceedings.”*

Hence, in view of the ratio in the said Judgment, this aspect merits no further discussion.

(9) After considering the submissions put forth by both Learned Counsel and while weighing the rival contentions, I find substance in the submission of Learned Counsel for the Applicant, who contends that the Learned Trial Court by passing the impugned Order, violated the Provisions of Section 251 to Section 259 of the Code of Criminal Procedure, 1973, in as much as Section 143 of the N.I. Act, 1881 directs the Courts to comply with the Provisions of Section 262 to Section 265 of the Code of Criminal Procedure, 1973 and consequently Section 251 to Section 259 of the same Code. That, the Learned Trial Court vide its impugned Order failed to apply the Law in its correct perspective.

(10) As the paramount concern of this Court is to prevent miscarriage of justice, Special Leave to Appeal is granted.

(11) Accordingly, Petition allowed and disposed of accordingly.

Sd/ -  
(Meenakshi Madan Rai)  
Judge  
28.8.2015