

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**Cr.MMO No. 127 of 2014.**

**Reserved on :19<sup>th</sup> June, 2018.**

**Decided on : 29<sup>th</sup> June, 2018.**

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Sh. Sain Ram Jhingta

**.....Petitioner.**

Versus

Parwinder Kumar Chopra & another

**....Respondents.**

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***Coram:***

***The Hon'ble Mr. Justice Sureshwar Thakur, Judge.***

*Whether approved for reporting?<sup>1</sup> Yes.*

**For the Petitioner:** Mr. Ramesh Kumar Sharma,  
Advocate.

**For the Respondents:** Mr. G.C. Gupta, Senior Advocate  
with Ms. Meera Devi, Advocate.

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**Sureshwar Thakur, Judge.**

Through the instant petition, cast under the provisions of Section 482 of the Cr.P.C., the complainant/petitioner herein, seeks quashing, of, the verdict recorded by the learned Additional Sessions Judge-II, Shimla, camp at Rohru, H.P., upon, Cr. Revision Petition No. RBT-7-R/10 of 14/12, whereunder, he

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

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affirmed the order of acquittal pronounced, upon, the accused, by, the learned trial Magistrate concerned.

2. Briefly stated that facts of the case are that the complainant had rented out one shop to Sh. Surender Kumar in the year 2004, on monthly rent of Rs.3000/- for one year and later on, it was increased to Rs.3500/- per month. This shop is being used as tea stall. Sh. Surender Kumar was died and the shop was being run by the accused. The accused had unauthorizedly installed two water tanks of plastic and two wash basin in his shop, which are causing damage to the building by leakage of water. The complainant requested the accused to remove the water tank and wash basin, but of no avail. The accused had also extended the roof for his wrongful gain, which is causing danger to the building. With the aforesaid averments, an application was addressed to the Magistrate concerned and it was sent to police station

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concerned for taking appropriate action. The police investigated into the allegations.

3. On conclusion of the investigations, into the offences, allegedly committed by the accused, a Kalandra was prepared by the Investigating Officer concerned, and, stood filed before the learned trial Court.

4. Notice of accusation, stood put, to the accused by the learned trial Court, for theirs committing an offence punishable under Section 427 of the IPC. In proof of the prosecution case, the prosecution examined five witnesses. On conclusion of recording of the prosecution evidence, the statements of the accused under Section 313 of the Code of Criminal Procedure were recorded by the learned trial Court, wherein, they claimed innocence, and, pleaded false implication.

5. On an appraisal of the evidence on record, the learned trial Court, returned findings of acquittal upon the accused/respondent herein, for theirs purportedly

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committing an offence punishable under Sections 427, of, the IPC. In a Criminal Revision Petition preferred therefrom, by the complainant/petitioner herein, before, the learned Addl. Sessions Judge concerned, the latter affirmed, the findings of acquittal, recorded in the judgment, pronounced, by the learned trial Court.

6. The complainant/petitioner herein stands aggrieved, by the findings recorded by the learned Addl. Sessions Judge concerned, bearing concurrence, vis-a-vis, the findings of acquittal, recorded qua the accused, by the learned trial Court.

7. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

8. The apt provisions, borne in Section 372 of the Cr.P.C., provisions whereof stand extracted hereinafter, confer a right upon the victim/complainant, to prefer an

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appeal against an order of acquittal, rendered by the court concerned.

**“S. 372. No appeal to lie unless otherwise provided-**

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

{Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.}”

The mandate of the above referred provisions, is, to be read in conjunction, with, the provisions of Section 378, of the Cr.P.C., provisions whereof stand extracted hereinafter:-

**“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 appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High

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Court <sup>2</sup> 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 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.

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(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)."

In clause (a) to sub-section (1) of Section 378, of the Cr.P.C., an empowerment is conferred, upon, the District Magistrate, (i) to make a direction, upon, the Public Prosecutor, to present an appeal before the Court of Sessions, against an order of acquittal, rendered by the learned trial Court, vis-a-vis, cognizable and non bailable offence. However, clause (b) to sub-section (1) of Section 378 of the Cr.P.C., rather carves an exception, vis-a-vis, the mandate of clause (a) to sub-section (1) of Section 378 of the Cr.P.C., inasmuch, as the statutory empowerment bestowed under clause (a) of sub-section (1) of Section 378 of the Cr.P.C., (ii) upon, the District Magistrate, to direct the Public Prosecutor concerned, to present an appeal before the Court of Sessions, against

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an order of acquittal rendered by the learned trial Court, vis-a-vis, the cognizable and non-bailable offence, standing excepted, by, the mandate of clause (b) of sub-section (1) of Section 378 of the Cr.P.C. Hereat, the apt statutory exception, borne in clause (b) of sub-section (1), of Section 378, vis-a-vis, the mandate comprised, in clause (a) to sub-section (1) of Section 378 of the Cr.P.C., is, obviously construable, qua its appertaining, vis-a-vis, the mandate comprised in Section 372 of the Cr.P.C., (iii) given, the mandate, of, clause (a) to sub-section (1) of Section 378 of the Cr.P.C., singularly, appertaining to the statutory empowerment, of the District Magistrate, to direct the Public Prosecutor, to present an appeal to the Court of Session, against, an order of acquittal rendered, by the learned trial Court, vis-a-vis, cognizable and non-bailable offence. In other words, when the apt portion of clause (b) of sub-section (1) of Section 378 of the Cr.P.C., carrying the coinage "not being an order under clause



(a)” thereof, hence carries the connotation qua obviously, and, visibly its embodying, an exception to the mandate of clause (a) of sub-section (1), of, Section 378 of the Cr.P.C., (iv) thereupon, when hereat, the District Magistrate had not directed, the Public Prosecutor, to, prefer an appeal before the court of Sessions, against, the order of acquittal pronounced by the learned trial Court, (v) thereupon, with the victim/complainant, hence, obviously falling outside the mandate of clause (a) to sub-section (1) of Section 378 of the Cr.P.C., and, when as a natural corollary thereof, with clause (b) of sub-section (1) of Section 378 of the Cr.P.C., rather operating as an exception, vis-a-vis, the mandate borne, in , clause (a) to sub-section (1) of Section 378 of the Cr.P.C., and, also its attraction hereat hence being aroused, (vi) thereupon, the concomitant effect thereof, is, dehors the State not filing, any appeal, against, the order of acquittal, before the Court of Sessions, rather it being incumbent, upon,

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the victim/complainant, to assail the order of acquittal, by his preferring, an appeal, before this Court, cast under clause (b) of sub-section (1) of Section 378 of the Cr.P.C. However, the victim/complainant, did not, avail the apt statutory remedy, rather he proceeded to assail the order, of acquittal, rendered by the learned trial Court, by his preferring a Criminal Revision Petition, before the court of Sessions, criminal revision petition whereof, was, not under the apt statute, either preferable nor maintainable therebefore.

9. Be that as it may, even the mandate of sub-section (3), and, its making a prescription qua preferment of an appeal, by the aggrieved, within, the ambit of clause (b) of sub-section (1) of Section 378 of the Cr.P.C., rather enjoining, the High Court, to maintain the apt appeal, only, upon its preceding thereto, granting the apposite leave, to the victim/complainant, (i) thereupon, too, the preferment of a criminal revision

petition, before the learned Additional Sessions Judge concerned, against, the order of acquittal rendered by the learned trial Court, was a grossly inappropriate mode. The further sequel thereof, is, qua the institution, of, the instant petition, cast, under the provisions of Section 482 of the Cr.P.C., by the victim, before this Court, being in gross derogation of the apt statutory mandate borne, in clause (b) to sub-section (1) of Section 378 of the Cr.P.C., and, also is in blatant derogation, of, mandate of sub-section (3) of Section 378 of the Cr.P.C., rendering, it, hence, to be grossly not maintainable before this Court. Consequently, when the availment, of, the provisions, of, section 482 of the Cr.P.C., is only upon prior thereto, the apt statutory modes or mechanisms, being availed or resorted to, by the victim/complainant, whereas, the apt statutory mode(s) or mechanism(s), prior thereto, rather remaining unavailed, by the victim/complainant, thereupon, the availment, of the extraordinary residuary

jurisdiction, of, this Court, by the victim/complainant, by his casting a petition under Section 482 of the Cr.P.C., is a gross abuse, of, the process of Court.

10. Dehors the above, even on merits, both the learned Courts below, have made an in-depth analysis, of the evidence on record, comprised in the testification borne, in the cross-examination of the complainant, wherein, he has acquiesced qua the factum, of, his not providing any water connection to the accused, vis-a-vis, the demised premises. Similarly, PW-2 in his cross-examination, has acquiesced to the aforesaid factum. Furthermore, the effects, of, the aforesaid acquiescences, of, the victim/complainant, is, obviously, of, his not providing the basic amenity, of, water vis-a-vis the demised premises, hence, when availability thereof, was imperative, for, enabling the accused, to hence successfully run his commercial activity, in the demised premises, (i) hence, installation of water tanks, by the

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accused, cannot be, construed to be laid with any apposite mens rea, (ii) more so, when the sequelling damage, to, the building of the landlord, comprised, in the purported leakage of water , from, the water tanks onto the slab, is, dispelled by PW-4, by his, in his cross-examination, making a testification, of the apposite dampness or gathering of moisture, on the slab, rather being a sequel of heavy rains, (iii) imperatively also with the reading of the testification of PW-5, borne in his cross-examination, unveiling, of his not detecting any leakage from the water tanks, and, from the wash basin, as installed by the accused, in the tenanted commercial premises nor hence any consequent damage being caused to the building, by the accused. In aftermath, the aforesaid pronouncement made by PW-5 in his testification, does obviously torpedo, the charge framed against the accused. The effect of the aforesaid discussion is that the appreciation of evidence, by both,

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the learned courts below, hence, not suffering from any perversity or absurdity.

11. For the foregoing reasons, there is no merit in the instant petition, and, it is dismissed accordingly. The impugned orders/judgements are maintained and affirmed. All pending applications also stand disposed of. Records, if any, received, be sent back forthwith.

**29<sup>th</sup> June, 2018.**  
**(jai)**

**(Sureshwar Thakur)**  
**Judge.**