

JAGBIR AND ANR.

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v.

STATE OF PUNJAB

SEPTEMBER 3, 1998

[M.K. MUKHERJEE AND SYED SHAH MOHAMMED  
QUADRI, JJ.]

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*Code of Criminal Procedure, 1973 :*

*Ss. 190(1)(b) and 378—Cognizance of offence upon police report—Trial—Acquittal by trial court—Appeal by complainant u/s. 378(4)—High Court convicting and sentencing two of the accused—Held, in the instant case it was the State only who could have filed appeal u/s. 378(1) against order of acquittal after obtaining leave under sub-section (3) thereof and not the complainant, who could only file an application u/s.401 for revision of that order—High Court will treat the memorandum of appeal as application for revision of order of Sessions Judge qua the two appellants only and dispose of the same in accordance with law.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 121 of 1996.

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From the Judgment and Order dated 27.11.95 of the Punjab & Haryana High Court in CrI. A. No. 373-DBA of 1980.

Ajay Siwach for Prem Malhotra for the Appellant.

R.S. Sodhi for the Respondent.

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The following Order of the Court was delivered :

Consequent upon a charge sheet (challan) submitted by the police and a committal enquiry that followed, the two appellants and others were placed on trial before an Additional Sessions Judge, Ferozpur. The trial ended in an acquittal of all of them; and aggrieved thereby, Birbal, the complainant, filed an appeal before the High Court after obtaining leave under Section 378(4) Cr.P.C. In disposing of the appeal the High Court set aside the acquittal of the two appellants and convicted them under Section 302/34 I.P.C., while upholding the acquittal of others. Aggrieved by the

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A order of the conviction and sentence recorded against them the appellants filed this appeal under Section 379 Cr.P.C.

Since the appeal must succeed 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 police report under Section 190(1)(b) Cr.P.C.

B 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 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. The appellants who are in jail be released forthwith unless wanted in connection with any other case.

R.P.

Appeal allowed.