IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 3595 of 2018

Smt. Pushparani Dutta

Versus

Ranajit Dutta and Others

For the Petitioner	:	Mr. Biswapriya Samanta, Adv.
For the O.P. Nos. 1 to 3	:	Mr. Uday Shankar Chattopadhyay, Adv. Mr. Suman Banerjee, Adv. Ms. Rajashree Tah, Adv. Ms. Shreejita Sen, Adv.
For the State	:	Mr. Joydeep Roy, Adv. Mr. Aritra Bhattacharya, Adv.
Heard on	:	25.02.2025
Judgment on	:	04.04.2025

Ajay Kumar Gupta, J:

1. This is an application under Article 227 of the Constitution of India filed by the petitioner challenging the legality, propriety and correctness of the Impugned Judgment and Order dated 11.12.2017 passed by the Learned Judicial Magistrate, 2nd Court, Burdwan in Complaint Case No. 212 of 1999/Trial No. 99 of 1999.

2. By the said Judgment and Order, the Learned Magistrate acquitted the opposite party nos. 1 to 3/accused persons from the Charge under Section 498A of the Indian Penal Code, 1860.

3. The brief facts of the case are relevant for the purpose of disposal of this case as under: -

3a. The petitioner/complainant was married to Ranajit Dutta, opposite party no. 1/accused no. 1 on 14.07.1991 according to Hindu Rites and Customs. The marriage was subsequently registered on 30.12.1991 at Burdwan Sub-Registry Office before a Marriage Registrar. The accused no. 3/opposite party no. 2 herein (wife of Late Bishnunarayan Dutta-accused no. 2) was sister-in-law and accused no. 4/opposite party no. 3 herein was the daughter of sister-in-law of complainant/petitioner.

3b. It alleged by the complainant that due to the early death of her parents, her elder sisters gifted her 15 vories gold ornaments,

furniture and other valuable articles at the time of her marriage. However, the accused persons demanded a further sum of Rs. 50,000/- in cash and a scooter. But, the elder sister of the complainant/petitioner failed to provide the scooter and the entire amount. They could only pay Rs. 10,000/-. The accused persons continued to pressure upon the complainant to bring the remaining amount and the scooter from her elder sisters, resulting in increased torture.

3c. However, the elder sister of the complainant provided the accused persons Rs. 10,000/- more, but, that amount did not fulfil their greed and ultimately during the midyear of 1994, the accused persons ousted her from the matrimonial home. The elder sister of the complainant took her again to her matrimonial home, but, the accused persons continued the torture upon her. As a result, the complainant became seriously ill. She was not allowed to talk any person, moreover, the accused persons instigated her to commit suicide by swallowing poison, so that after her death, the accused no. 1 may marry again with another lady.

3d. As a result of cruelty, the complainant became so seriously ill that she was about to die and her elder sister, getting the information from other person admitted her at Care & Cure Nursing Home, Burdwan. However, the accused persons never took any

information of her. The complainant also tried to settle the matter amicably with the accused persons on so many times, so that she can live a happy conjugal life, but all her efforts were in vain. When the elder sister of the complainant approached the accused person to take the complainant to her home, they simply denied and told them that without getting the scooter and remaining balance amount, the complainant will not be permitted to enter into their house. Even the accused persons refused to return the Stridhan articles of the complainant.

3e. In such circumstances, the complainant had to file a petition under Section 156(3) of the CrPC before the Learned Chief Judicial Magistrate, Burdwan. The Learned Magistrate rejected the prayer for registering an FIR, however, registered it as a complaint case on 26.04.1999 and transferred it to the Court of the Learned Judicial Magistrate, 2nd Court, Burdwan on the same date for inquiry and trial.

3f. After examining the complainant and her witness under Section 200 of CrPC on SA on 04.05.1999, a prima facie case u/s 498A of IPC was prima facie established against the accused persons. Therefore, summons were issued against all the accused persons. The accused persons surrendered before the Learned Court below and were enlarged on bail on 09.08.1999. In course of the trial, accused

no. 2, Bishnunarayan Dutta died and the case was filed forever against him vide order dated 03.04.2002.

3g. The charge under Section 498A of IPC was framed against the accused persons. The charge was read over and explained to the accused who pleaded not guilty and claimed to be tried. The complainant and witnesses were also examined fully and accused persons were examined under Section 313 of the CrPC where they denied the charges and refused to present any defence witnesses.

3h. After considering the evidence and hearing the parties, the Learned Judicial Magistrate, 2nd Court, Burdwan passed a judgment on 11.12.2017 thereby acquitted the opposite party nos. 1 to 3/accused persons from the Charge under Section 498A of the Indian Penal Code, 1860. Be that as it may, the contention of the petitioner is that the Learned Trial Court mechanically and without applying judicious mind committed gross error in the findings.

3i. The ingredients of section 498A of the Indian Penal code have been proved beyond all reasonable doubt. Yet, the Learned Trial Court surreptitiously acquitted the accused persons.

3j. Therefore, it is liable to be set aside in the interest of justice. As a result, the petitioner has filed an application under Article 227 of the Constitution of India to avail immediate relief against such

gross erroneous findings apparent on the face of the record in spite of availability of the statutory remedy by preferring an appeal against the aforesaid Magisterial order of acquittal under the Code of Criminal Procedure, 1973. Hence, this Criminal Revisional application.

4. Learned counsel appearing on behalf of the petitioner/complainant vehemently argued and submitted that though the petitioner had statutory remedy by preferring an appeal against the order of acquittal as provided under Section 372 of the Code of Criminal Procedure, 1973 but the petitioner intentionally filed revisional application under Article 227 of the Constitution of India, when she found gross error on the face of record and also found fault with the impugned judgment and order of the Learned Trial Court. Social justice may prevail over the legal justice, when gross error apparent on the face of record as such there is no bar to filed an application under Article 227 of the Constitution of India.

5. Learned counsel appearing on behalf of the opposite party nos. 1 to 3, on the other hand, raised a preliminary objection regarding maintainability of the revisional application. He further submitted that the impugned Judgment and order of acquittal dated 11.12.2017 has been passed by the Learned Trial Court arising out of a Complaint Case and as such the only remedy that was available to

the petitioner against such order of acquittal is invoking Section 378(4) of the Code of Criminal Procedure and not under Section 372 of the said Code or under Article 227 of the Constitution of India as submitted on behalf of the petitioner/ complainant.

6. It was further submitted that the period of limitation for preferring an Appeal under Section 378(4) of the CrPC as prescribed under Section 378(5) of the CrPC is 60 days, when the complainant is not a public servant. Since the petitioner has not preferred any appeal within the period of limitation, the judgment has attained finality and the same cannot be questioned in any manner.

7. It was further submitted that the right of appeal against the order of acquittal as provided under Section 378(4) of the CrPC is not an absolute right but a qualified one requiring the appellant to obtain "Special Leave" to appeal against such order. In the instant case, no leave has been obtained by the petitioner for assailing such order of acquittal. There is no scope for treating the same as an Appeal under Section 378(4) of the CrPC in absence of such special leave.

8. It was further submitted that the instant Revisional application has been filed by the petitioner after 366 days from the date of order of acquittal even though the certified copy of the judgment was made available on 22.12.2017. There is no iota of

explanation as to reasons for such delayed. Such conduct suggests the mala fide intention on the part of the petitioner.

9. It was further submitted that as the petitioner has not preferred any appeal against the impugned order of acquittal, she is precluded from challenging the same by filing a Revisional application under Article 227 of the Constitution of India. Reliance has placed on judgments passed in the case of ***Joseph Stephen and Others Vs. Santhanasamy and Others***[1], particularly paragraphs 8.2, 13, 13.1 and 13.2 thereof and ***Subhash Chand Vs. State (Delhi Administration)***[2], particularly paragraphs 13, 18 and 19 thereof.

10. In the first judgment, the Hon'ble Supreme Court held in paragraph nos. 8.2, 13, 13.1 and 13.2 as under:-

> *"**8.2.** (ii) In a case where the victim has a right of appeal against the order of acquittal, now as provided under Section 372CrPC and the victim has not availed such a remedy and has not preferred the appeal, whether the revision application is required to be entertained at the instance of a party/victim instead of preferring an appeal?*
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> ***13.** Now so far as Issue (ii), namely, in a case where no appeal is brought though appeal lies under the Code, whether revision application still to be*

[1] (2022) 13 SCC 115;
[2] (2013) 2 SCC 17.

entertained at the instance of the party who could have appealed, the answer lies in sub-section (4) of Section 401CrPC itself. Sub-section (4) of Section 401CrPC reads as under:

> *"**401. (4)** Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed."*

13.1. *It cannot be disputed that now after the amendment in Section 372CrPC after 2009 and insertion of the proviso to Section 372CrPC, a victim has a statutory right of appeal against the order of acquittal. Therefore, no revision shall be entertained at the instance of the victim against the order of acquittal in a case where no appeal is preferred and the victim is to be relegated to file an appeal. Even the same would be in the interest of the victim himself/herself as while exercising the revisional jurisdiction, the scope would be very limited, however, while exercising the appellate jurisdiction, the appellate court would have a wider jurisdiction than the revisional jurisdiction. Similarly, in a case where an order of acquittal is passed in any case instituted upon complaint, the complainant (other than victim) can prefer an appeal against the order of acquittal as provided under sub-section (4) of Section 378CrPC, subject to the grant of special leave to appeal by the High Court.*

> ***13.2.*** *As observed by this Court in Mallikarjun Kodagali [Mallikarjun Kodagali v. State of Karnataka, (2019) 2 SCC 752 : (2019) 1 SCC (Cri) 801] , so far as the victim is concerned, the victim has not to pray for grant of special leave to appeal, as the victim has a statutory right of appeal under Section 372 proviso and the proviso to Section 372 does not stipulate any condition of obtaining special leave to appeal like sub-section (4) of Section 378CrPC in the case of a complainant and in a case where an order of acquittal is passed in any case instituted upon complaint. The right provided to the victim to prefer an appeal against the order of acquittal is an absolute right. Therefore, so far as Issue (ii) is concerned, namely, in a case where the victim and/or the complainant, as the case may be, has not preferred and/or availed the remedy of appeal against the order of acquittal as provided under Section 372CrPC or Section 378(4), as the case may be, the revision application against the order of acquittal at the instance of the victim or the complainant, as the case may be, shall not be entertained and the victim or the complainant, as the case may be, shall be relegated to prefer the appeal as provided under Section 372 or Section 378(4), as the case may be. Issue (ii) is therefore answered accordingly."*

11. In the 2nd judgment, the Hon'ble Supreme Court held in paragraph nos. 13, 18 and 19 as under: -

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

> *"**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 Court or an order of acquittal passed by the Court of Session in revision.*
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> *(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.

(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 the 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 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, 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-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, 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 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.

18. *If we analyse Sections 378(1)(a) and (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.

19. *Sub-section (4) of Section 378 makes provision for appeal against an order of acquittal passed in a 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, the 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 the complainant's application for "special leave" under sub-section (4) is refused no appeal from the 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 nor 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."

12. In reply, the learned counsel appearing on behalf of the Petitioner/complainant denies and disputes the contention of the learned counsel appearing on behalf of the accused persons and submitted that the offence punishable under Section 498A of IPC is a matrimonial offence categorised as a crime against the women, which highly impact on society at large and for the purpose of seeing and /or observing that justice should not only be done but the same manifest to have done. He emphasized that the Constitutional remedy in the form of Article 227 of the Constitution of India reign Supreme over the statutory remedy of appeal provided in the Code of Criminal Procedure.

13. It was further submitted by the learned counsel that the High Court can exercise its power of judicial review in Criminal matters. The power of superintendence by the High Court is not only an administrative nature but is also of judicial nature under Article 227 of the constitution of India. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and it has no limits as such the instant revisional application is maintainable under Article 227 of the Constitution of India. The existence of remedy of appeal and revision is not a bar to invoke the jurisdiction of the High Court under Article 227 of the Constitution of India.

14. The learned counsel further submitted that the doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has to option to elect either of them.

15. Learned counsel has placed reliance on judgments in support of his contentions as aforesaid as under: -

> ***i.*** *Sadhuram Bansal Vs. Pulin Behari Sarkar and Others*[3] *Particularly para 29 and 30 thereof;*
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> ***ii.*** *National Insurance Co. Ltd. Vs. Mastan & Anr.*[4]*;*

[3] (1984) 3 SCC 410;
[4] AIR 2006 SC 577;

iii. *Pepsi Foods Ltd. and Another vs. Special Judicial Magistrate and Others*[5] *particularly 22, 26 and 30 thereof;*

iv. *State of Himachal Pradesh Vs. Dhanwant Singh*[6] *Particularly paragraph 5 thereof;*

v. *Samjuben Gordhanbhai Koli Vs. State of Gujarat*[7] *particulary paragraph 5 thereof;*

vi. *Punjab State Warehousing Corporation, Faridkot Vs. M/s. Sh. Durga Ji Traders & Ors.*[8] *Particularly paragraph 6 and 9 thereof;*

vii. *Dhariwal Tobacco Products Limited and Others Vs. State of Maharashtra and Anr.*[9] *Particularly paragraphs 1, 6 and 12 thereof;*

viii. *Achinta Kumar Saha Vs. State & Anr.*[10] *Particularly paragraph 1 thereof;*

ix. *Kalachand Saha Vs. State*[11] *particularly paragraph 12 thereof.*

16. In the third judgment, the Hon'ble Supreme Court held in paragraph nos. 22, 26 and 30 as under:-

*"**22.** It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : JT (1990) 4 SC 650] this Court*

[5] (1998) 5 SCC 749;
[6] 2004 (1) CLJ (SC);
[7] (2010) 13 SCC 466.
[8] (2012) 1 C Cr LR (SC) 895;
[9] (2009) 2 SCC 370;
[10] 1992 C Cr LR (Cal) 102;
[11] 1987 C Cr LR (Cal) 47.

examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under

Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

26. *Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.*

30. *It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far-off place in Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245(2) of the Code or to face trial when the complaint and the*

preliminary evidence recorded makes out no case against them. It is certainly one of those cases where there is an abuse of the process of the law and the courts and the High Court should not have shied away in exercising their jurisdiction. Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view the High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is discretionary but this was a case where the High Court should have exercised it."

17. In the fourth judgment, the Hon'ble Supreme Court held in paragraph no. 5 as under: -

*"**5.** Insofar as the statutes providing for finality of the order or decision passed or rendered in accordance with the provisions of the statutes are concerned, it may be stated that it is well settled that such a statutory provision cannot take away the constitutional right given by Articles 32, 226 and 227 of the Constitution. In this connection, reference may be made to what was observed in para 10 of Lila Vati Bai v. State of Bombay [AIR 1957 SC 521]. After referring to the provision in Sections 5 and 6 of the Act concerned stating that the determination in question by the State Government shall be conclusive*

evidence of the declaration so made, it was stated that it did not mean that the jurisdiction of the High Court under Article 226 or of the Supreme Court under Article 32 or on appeal had been impaired. It was also pointed out that in a proper case these Courts in the exercise of their special jurisdiction under the Constitution have the power to determine how far the provisions of the statutes have or have not been complied with in arriving at the determination in question."

18. In the fifth judgment, the Hon'ble Supreme Court held in paragraph no. 5 as under: -

*"**5.** We make it clear that the power of the President of India under Article 72 or of the Governor under Article 161, being a constitutional power cannot be under the restriction imposed by Section 433-A CrPC. Section 433-A CrPC can restrict the power under Section 432 CrPC or Section 433 CrPC but it cannot restrict the constitutional powers under Article 72 or Article 161 of the Constitution, just as no limitation statute can restrict the constitutional power of the High Court under Article 226 of the Constitution. This is because the Constitution is a higher law and the statute is subordinate to it."*

19. In the sixth judgment, the Hon'ble Supreme Court held in paragraph nos. 6 and 9 as under:-

> *"**6.** Learned counsel appearing for the appellant has assailed the impugned judgment mainly on the ground that the discretion vested in the High Court under Section 482 of the Code being very wide, in the instant case the High Court grossly erred in declining to exercise its jurisdiction on the ground that an alternative remedy was available to the appellant against an order of acquittal of the accused. Relying on the decision of this Court in Aseem Shabanli Merchant v. Brij Mehra [(2005) 11 SCC 412 : (2006) 1 SCC (Cri) 776] , the learned counsel has urged that having regard to the serious nature of the charges against the respondents, the complaint should not have been dismissed in default on account of non-appearance of the complainant, who had been otherwise exempted from personal appearance, and the case ought to have been tried on merits. In support of his contention that dismissal of the complaint because of a singular default in appearance on the part of the complainant, was improper, the learned counsel relied upon the decision of this Court in Mohd. Azeem v. A. Venkatesh [(2002) 7 SCC 726]. It is also argued that having regard to the nature of the case, the High Court committed a patent error in dismissing the petition under Section 482 of the Code on the ground of availability of an*

alternative remedy. In support of the proposition that availability of an alternative remedy per se is no ground for dismissal of an application under Section 482 of the Code, the learned counsel commends us to the decision of this Court in Dhariwal Tobacco Products Ltd. v. State of Maharashtra [(2009) 2 SCC 370 : (2009) 1 SCC (Cri) 806] .

9. *Bearing in mind the aforestated legal position in regard to the scope and width of the power of the High Court under Section 482 of the Code, we are of the opinion that the impugned decision is clearly indefensible. As noted above, the High Court has rejected the petition under Section 482 of the Code on the ground of availability of an alternative remedy without considering the seriousness of the nature of the offences and the fact that the trial court had dismissed the complaint on a hypertechnical ground viz. since the complainant had been appearing in person, despite the order dated 16-4-1999, exempting him from personal appearance, the said exemption order became redundant and the complainant should have sought a fresh exemption from personal appearance. We feel that such a view defies any logic. An order of exemption from personal appearance continues to be in force till it is revoked or recalled. We are convinced that in the instant case, rejection of the appellant's petition under Section 482 of the Code has resulted in miscarriage of justice. Availability of an alternative remedy of filing an appeal is not an absolute bar in entertaining a*

petition under Section 482 of the Code. As aforesaid, one of the circumstances envisaged in the said section, for exercise of jurisdiction by the High Court is to secure the ends of justice. Undoubtedly, the trial court had dismissed the complaint on a technical ground and therefore, interests of justice required the High Court to exercise its jurisdiction to set aside such an order so that the trial court could proceed with the trial on merits."

20. In the seventh judgment, the Hon'ble Supreme Court held in paragraph nos. 1, 6 and 12 as under: -

*"**1.** Leave granted. Whether an application under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code") can be dismissed only on the premise that an alternative remedy of filing a revision application under Section 397 of the Code is available, is the question involved herein.*

***6.** Indisputably issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. This Court in a large number of decisions beginning from R.P. Kapur v. State of Punjab [AIR 1960 SC 866] to Som Mittal v. Govt. of Karnataka [(2008) 3 SCC 574: (2008) 2 SCC (Cri) 1: (2008) 1 SCC (L&S) 910] has laid down the criterion for entertaining an application under Section 482. Only because a revision petition is maintainable, the same by itself, in our considered opinion, would not*

*constitute a bar for entertaining an application under Section 482 of the Code. Even where a revision application is barred, as for example the remedy by way of Section 115 of the Code of Civil Procedure, 1908, this Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. (See Surya Dev Rai v. Ram Chander Rai [(2003) 6 SCC 675].) Even in cases where a second revision before the High Court after dismissal of the first one by the Court of Session is barred under Section 397(2) [**Ed.** : The intended provision seems to be Section 397(3). In this regard See (1) Krishnan v. Krishnaveni, (1997) 4 SCC 241 : 1997 SCC (Cri) 544; (2) Puran v. Rambilas, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124; (3) Kailash Verma v. Punjab State Civil Supplies Corpn., (2005) 2 SCC 571 : 2005 SCC (Cri) 538.] of the Code, the inherent power of the Court has been held to be available.*

***12.** It is interesting to note that the Bombay High Court itself has taken a different view. In a decision rendered by the Aurangabad Bench of the Bombay High Court, a learned Single Judge in Vishwanath Ramkrishna Patil [(2006) 5 Mah LJ 671], where a similar question was raised, opined as under: (Mah LJ pp. 675-76, paras 10-12)*

"10. … It is difficult to curtail this remedy merely because there is a revisional remedy available. The alternate remedy is no bar to invoke power under

Article 227. What is required is to see the facts and circumstances of the case while entertaining such petition under Article 227 of the Constitution and/or under Section 482 of Criminal Procedure Code. The view therefore, as taken in both the cases V.K. Jain [V.K. Jain v. Pratap V. Padode, (2005) 30 Mah LJ 778] and Saket Gore [Saket Gore v. Aba Dhavalu Bagul, 2005 All MR (Cri) 2514] , no way expressed total bar. If no case is made out by the petitioner or the party to invoke the inherent power as contemplated under Section 482 of the Criminal Procedure Code and/or the discretionary or the supervisory power under Article 227 of the Constitution of India they may approach to the Revisional Court, against the order of issuance of process.

11. Taking into consideration the facts and circumstances of those cases, the learned Judge has observed in V.K. Jain [V.K. Jain v. Pratap V. Padode, (2005) 30 Mah LJ 778] and Saket Gore [Saket Gore v. Aba Dhavalu Bagul, 2005 All MR (Cri) 2514] that it would be appropriate for the parties to file revision application against the order of issuance of process. There is nothing mentioned and/or even observed that there is total bar to file petition under Section 482 of the Criminal Procedure Code and/or petition under Article 227 of the Constitution of India.

12. The Apex Court's decision already referred to above, nowhere prohibited or expressly barred to

invoke Section 482 of the Criminal Procedure Code or Article 227 of the Constitution of India against the order of issuance of process."

21. In the eighth judgment, the Hon'ble Calcutta High Court held in paragraph no. 1 as under: -

"1. Our jurisdiction conferred by Article 227 of the Constitution can be taken away or otherwise affected only by or under the authority of the Constitution and not by any legislation whatsoever without such authority. That is why the provisions of Article 323A and Article 323B constituting Part XIVA of the Constitution had to be inserted by way of Constitutional Amendment in 1976 to enable Parliament and other Legislatures to exclude our Constitutional Jurisdiction under Articles 226 and 227 in respect of matters to be adjudicated or tried by Tribunals to be constituted pursuant to the provisions of those Articles. When the paramount law of the land has conferred a jurisdiction, no other law can alter, circumscribe or take its way save under the express authority of that paramount law."

22. In the last judgment, the Hon'ble Calcutta High Court held in paragraph no. 12 as under:-

"12. Mr. Chaudhury has submitted that revision application does not lie before this Court, because S.60 of the E.C. Act provides for appeal and where there is provision for appeal, without taking recourse to that process, a party cannot come up by way of revisional application. It is missed by him, however, that the application has been filed under Art.227 of the Constitution. Needless to say that the provision of the E.C. Act cannot circumscribe or limit the power of the court under Art.227. The E.C. Act in anyway cannot abridge the constitutional right. No decision perhaps is needed for that, but if any citation is necessary, the case reported in (1983) 87 Cal WN 358, may be referred to. The order of the Ld. Collector having been passed without jurisdiction; it must be set aside under Art.227 of the Constitution."

DISCUSSION AND FINDINGS BY THIS COURT:

23. Heard the arguments of the rival parties and submissions made therein, this Court finds the opposite parties/accused persons raised a preliminary issue of maintainability of the revisional application filed under Article 227 of the Constitution of India. So, the questions arise for consideration are as under: -

1. Whether the revisional application is maintainable under Article 227 of the Constitution of India when statutory remedy is available to the petitioner by filing appeal against the order of acquittal under the provision of CrPC?

2. Whether the impugned judgement and order of acquittal date11.12.2017 is liable to be set aside to prevent the abuse of process of law?

24. Before dealing/entering into the arguments advanced by the parties and for proper adjudication of this case, it would be appropriate and convenience to refer the important sections/provisions as follows:

Section 372 of the CrPC reads as follows: -

*"**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."

Section 378 of the CrPC reads as follows: -

*"**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), —*

(a) the District Magistrate may, in any case, 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;

(b) 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 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, 5 [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 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).”

Article 227 of the Constitution of India reads as follows:

"227. Power of superintendence over all courts by the High Court. -

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court power of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

25. From careful perusal of the aforesaid sections, it appears Section 372 of the CrPC is the provision for filing appeal. The said proviso confers a statutory right upon the victim, as defined under Section 2(wa) CrPC to prefer an appeal against an order passed by the trial court either acquitting the accused or convicting him/her for a lesser offence or imposing inadequate compensation.

26. The amendment to the provision of Section 372 CrPC was prompted by the 154th Law Commission Report. The said Law Commission Report has undertaken a comprehensive review of CrPC and its recommendations were found to be very appropriate in amending CrPC particularly in relation to the provisions concerning arrest, custody and remand, procedure to be followed in summons and warrant cases, compounding of offences and special protection in respect of women and inquiry and trial of persons of unsound mind. Further, the Law Commission in its Report has noted the relevant aspect of the matter, namely, that the victims are the worst sufferers in a crime and they do not have much role in the court proceedings. They need to be given certain rights and compensation so that there is

no distortion of the criminal justice system. The said Report of the Law Commission has also taken note of the views of the criminologist, penologist and reformers of criminal justice system at length and has focused on victimology, control of victimisation and protection of the victims of crimes and the issues of compensation to be awarded in favour of them. Therefore, Parliament on the basis of the aforesaid Report of the Law Commission, which is victim-oriented in approach, has amended certain provisions of CrPC and in that amendment the proviso to Section 372 CrPC was added to confer the statutory right upon the victim to prefer an appeal before the High Court against the acquittal order, or an order convicting the accused for the lesser offence or against the order imposing inadequate compensation.

Emphasis supplied.

27. Whereas Section 378 provides two streams of appeals against the acquittal. The first stream of appeals is against the order of acquittals to be preferred by the State Government/Central Government and the same would be under Sub-section (1) and (2) of Section 378 and before such an appeal is entertained, a leave of the High Court requires to be taken, as provided for under Sub-section (3) of the Section 378 of the CrPC. The said provision is not applicable in the present case because in the present case order of acquittal passed in a complaint case.

28. In such a case, another stream of appeals is applicable against the order acquittals in the complaint case, wherein, by virtue of section 378 (4), the complainant has to seek special leave to appeal from the High Court under Sub-section (5). Further, the application for grant of special leave to appeal must be filed if the complainant is a public servant within 6 months from the date of order of acquittal and in all other cases, within 60 days from the date of order of acquittal. So, limitation for filing appeal is 60 days against the order of acquittal is applicable.

29. This Court would like to place reliance on judgment passed in ***Surya Dev Rai Vs. Ram Chander Rai & Ors.***[12], wherein the Hon'ble Supreme Court held particularly in paragraph nos. 22 to 27, 32 and 38 as under:

> ***"Supervisory jurisdiction under Article 227***
>
> *22. Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by clauses (2) and (3) of Article 227 with which we are not*

[12] (2003) 6 SCC 675 : 2003 SCC OnLine SC 829

concerned hereat. It is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

23. The history of supervisory jurisdiction exercised by the High Court, and how the jurisdiction has culminated into its present shape under Article 227 of the Constitution, was traced in ***Waryam Singh v. Amarnath [AIR 1954 SC 215: 1954 SCR 565]****. The jurisdiction can be traced back to Section 15 of the High Court's Act, 1861 which gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court. Section 107 of the Government of India Act, 1915 and then Section 224 of the Government of India Act, 1935, were similarly worded and reproduced the predecessor provision. However, sub-section (2) was*

added in Section 224 which confined the jurisdiction of the High Court to such judgments of the inferior courts which were not otherwise subject to appeal or revision. That restriction has not been carried forward in Article 227 of the Constitution. In that sense Article 227 of the Constitution has width and vigour unprecedented.

Difference between a writ of certiorari under Article 226 and supervisory jurisdiction under Article 227

24. The difference between Articles 226 and 227 of the Constitution was well brought out in Umaji Keshao Meshram v. Radhikabai [1986 Supp SCC 401]. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal

has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. ***Firstly****, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and, in this sense, it is akin to appellate, revisional or corrective jurisdiction.* ***Secondly****, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may*

simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the legislature in

exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

27. In ***Chandrasekhar Singh v. Siya Ram Singh*** *[(1979) 3 SCC 118: 1979 SCC (Cri) 666] the scope of jurisdiction under Article 227 of the Constitution came up for the consideration of this Court in the context of Sections 435 and 439 of the Criminal Procedure Code which prohibits a second revision to the High Court against decision in first revision rendered by the Sessions Judge. On a review of earlier decisions, the three-Judge Bench summed up the position of law as under: (SCC pp. 121-22, para 11)*

(i) that the powers conferred on the High Court under Article 227 of the Constitution cannot, in any way, be curtailed by the provisions of the Code of Criminal Procedure;

(ii) the scope of interference by the High Court under Article 227 is restricted. The power of superintendence conferred by Article 227 is to be exercised sparingly and only in appropriate cases, in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors;

(iii) that the power of judicial interference under Article 227 of the Constitution is not greater than the power under Article 226 of the Constitution;

(iv) that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as the court of appeal; the High Court cannot, in exercise of its jurisdiction under Article 227, convert itself into a court of appeal.

32. The principles deducible, well-settled as they are, have been well summed up and stated by a two-Judge Bench of this Court recently in State v. Navjot Sandhu [(2003) 6 SCC 641: JT (2003) 4 SC 605], SCC pp. 656-57, para 28. This Court held:

(i) the jurisdiction under Article 227 cannot be limited or fettered by any Act of the State Legislature;

(ii) the supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with an interlocutory order;

(iii) the power must be exercised sparingly, only to keep subordinate courts and tribunals within the bounds of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise.

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) ……

(2) ……

(3) ……

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court

would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction, the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of

the subordinate court as the court should have made in the facts and circumstances of the case."

30. Considering the aforesaid provisions as well as dicta/ratio pronounced by the Hon'ble Supreme Court in the aforesaid cases, it reveals the application filed under Article 227 of the Constitution of the India is maintainable. However, there is some limitation in applicability.

31. Supervisory jurisdictions may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of

the High Court to refuse to exercise the power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

32. The Criminal revision filed against the judgement and order of acquittal passed by the Trial court in complaint case is barred by Section 401 (4) as appeal lies to the High Court in such a matter either under Section 372 or 378 (4) of CrPC. But here this criminal revision has been filed under Article 227 of the constitution of India against the final decision of the Trial Court. The Trial court acquitted the accused person from the offence punishable under Section 498A of the Indian Penal Code. However, High Court can entertain application under Article 227 of the Constitution of India, when it is found in cases occasioning grave injustice or failure of justice such as when

(i) The Court or Tribunal has assumed a jurisdiction which it does not have;

(ii) Has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice; and

(iii) The jurisdiction though available is being exercised in a manner which tantamount to overstepping the limits of jurisdiction.

33. After carefully gone into the judgment and order passed by the Learned Trial Court, this Court is unable to convince the arguments that the Learned Trial Court has caused any grave injustice or failure of justice while deciding the case. The Learned Trial Court had a jurisdiction and exercised its jurisdiction to try and decide the case on merits.

34. This Court also does not find any patent defect or an error of jurisdiction or law. In addition, it appears that the petitioner has filed this Criminal Revisional application under Article 227 of the Constitution of India only to avoid delay in filing appeal.

35. After conclusion of criminal trial, Learned Judicial Magistrate has decided the case on merits, the Learned Trial Court rightly held that the complainant and witnesses failed to prove the case against the accused persons beyond reasonable doubt, as such, there is no need to interfere with the findings of the learned Trial Court. Hence, there is no scope to allow this Criminal Revisional application.

36. In the light of above discussions made by this Court and in view of observations made by the Hon'ble Supreme Court in the

above cited judgments, this Court fully satisfies that this Criminal Revisional application has devoid of merit and liable to be dismissed.

37. Accordingly, **CRR 3595 of 2018** is, thus, **dismissed**. Connected applications, if any, are also, thus, disposed of.

38. Let a copy of this Judgment be sent to the Learned Court below for information.

39. Interim order, if any, stands vacated.

40. Case Diary, if any, be returned to the learned counsel for the State.

41. Parties shall act on the server copies of this Judgment uploaded on the website of this Court.

42. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)