

HIGH COURT OF SIKKIM

Record of proceedings

Crl. M. C. No.06/2018

RAJA KHAN & ORS.

.... Petitioners

Versus

STATE OF SIKKIM

.... Respondent

Date: 14.08.2018

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HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.

For Petitioners : Mr. Aditya Makkhim and Mr. Ladong Rinzing Lepcha,
Advocates.

For Respondent : Mr. Karma Thinlay with Ms. Pollin Rai, Assistant
Public Prosecutor.

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By Order dated 05.08.2016 the learned Chief Judicial Magistrate South and West Sikkim at Namchi found sufficient material on record to proceed against the Accused No.1 for the offences under Sections 468, 471 and 420/34 of the Indian Penal Code, 1860 (IPC) but found no material against the present Petitioners and thus discharged them. Aggrieved thereby the State-Respondent preferred an application under Section 397 read with Section 399 of the Code of Criminal Procedure, 1973 (Cr.P.C.) assailing the order of discharge. The learned Sessions Judge vide impugned order dated 21.07.2018 reversed the decision of the Trial Court setting aside the order dated 05.08.2016 and relegating the present Petitioners back to face trial. The Petitioner are aggrieved by the said impugned order and has preferred this application under Section 482 of the Cr.P.C. seeking for an order quashing the impugned order dated 21.07.2018 passed in Criminal Revision Case Number 02 of 2016.

Heard the learned Counsel for the Petitioners. It is his submission that the order of discharge passed by the learned Chief Judicial Magistrate would amount to an acquittal under Section 255 Cr.P.C. and thus the State-Respondent ought to have preferred

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an Appeal instead of Revision and therefore the Revisional Court had no jurisdiction to decide upon the *lis*. To a pointed query by this Court as to whether this issue was raised before the Revisional Court the learned Counsel would quickly point out the synopsis of argument filed by the Petitioners before the learned Sessions Judge in the said proceedings which has also been filed as Annexure-4 to the present petition in which the point was taken. The learned Counsel seeks to rely upon the judgment passed by the Punjab and Haryana High Court in re: ***Jagdeep Chand Bali v. State of Haryana***¹ in Criminal Misc Case No. 28769-M of 1999 dated 13.02.2001 in support of his submission that an order of discharge would amount to an order of acquittal under Section 255 Cr.P.C. The learned Counsel for the Petitioners submits that this is the solitary question which needs to be decided by this Court in the present petition.

Issue notice. Ms. Pollin Rai, learned Assistant Government Advocate accepts notice on behalf of State-Respondent. Since the learned Counsel for the Petitioners seeks to raise only a solitary legal point for determination by this Court it is agreed that the records filed before this Court is sufficient for the purpose.

List on 04.09.2018 for hearing.

Judge
14.08.2018

tsh Index: ~~yes~~/No
 Internet: yes/~~No~~

¹ 2001 (2) R.C.R. (Criminal) 448