

# R.K. Chandolia vs Union Of India & Anr on 22 April, 2022

**Author: Vipin Sanghi**

**Bench: Navin Chawla, Vipin Sanghi**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 13/2022 & CM APPL. 1054-55/2022

R.K. CHANDOLIA

..... Appellant

Through: Mr.Aman Lekhi, Sr. Adv. with  
Mr.Mudit Jain, Adv.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr.Kirtiman Singh, CGSC for UOI  
with Mr.Waize Ali Noor &  
Ms.Kunjala Bhardwaj, Advs.  
Mr.Sanjay Jain, ASG & Mr.Ripu  
Daman Bhardwaj, CGSC for CBI  
with Mr.Rishi Raj Sharma &  
Ms.Noor Rampal, Advs.

+ LPA 14/2022 & CM APPL. 1056-57/2022

RAJIV AGARWAL

.....

Through: Mr.Aman Lekhi, Sr. Adv. with  
Mr.Mudit Jain, Adv.

versus

UNION OF INDIA & ANR.

..... Respo

Through: Mr.Kirtiman Singh, CGSC for UOI  
with Mr.Waize Ali Noor &  
Ms.Kunjala Bhardwaj, Advs.  
Mr.Sanjay Jain, ASG & Mr.Ripu  
Daman Bhardwaj, CGSC for CBI  
with Mr.Rishi Raj Sharma &  
Ms.Noor Rampal, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 22.04.2022

1. The present Letters Patent Appeals are directed against the judgment dated 23.11.2020, passed by the learned Single Judge in W.P.(C) 7978 of 2020, titled Rajiv Agarwal v. Union of India & Anr.; W.P.(C) 8617 of 2020, titled R K Chandolia v. Union of India & Anr.; and other Writ Petitions. The learned Single Judge has dismissed the said writ petitions preferred by the respective writ petitioners.

2. The said writ petitions primarily raised the issue that the Central Government had not directed the Public Prosecutor to present the appeals against the judgments of acquittal rendered by the Special Judge - CBI, in FIR bearing No. RC-DAI-2009-A-0045, registered on 21.10.2009 by the Central Bureau of Investigation (in short, 'the CBI'), under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and several provisions of the Indian Penal Code, 1860. The learned Single Judge has not found merit in the writ petitions and dismissed the same.

3. The submission of Mr. Lekhi, the learned senior counsel for the appellants, is that the respondents failed to produce any direction to the Public Prosecutor to present the appeals, which were preferred along with the leave application by Mr. Sanjeev Bhandari, who is claimed to be a Special Public Prosecutor appointed by the CBI. All that the respondents produced was a notification to show that Mr. Sanjeev Bhandari was appointed as a Special Public Prosecutor by the CBI in the year 2014. Since the Impugned Judgment acquitting the accused/writ petitioners was rendered in the year 2020, the mere appointment of Mr. Sanjeev Bhandari as a Special Public Prosecutor, way back in 2014, could not be considered as a direction by the Central Government to him to present the appeals.

4. We have considered the submissions made by Mr. Lekhi and also perused the original record produced by Mr. Jain, the learned Additional Solicitor General.

5. Section 378 of the Code of Criminal Procedure, 1973 (herein after referred to as CrPC), reads 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),-

(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 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.

(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), 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)."

6. A reading of the above provision would show that for maintaining an appeal against an order of acquittal, sub-section (1) and (2) of Section 378 of the CrPC, firstly require a decision of the District Magistrate, or the State Government, or the Central Government, as the case may be, to file an appeal against such order of acquittal. Therefore, sub-section (1) and (2) of Section 378 of the CrPC merely specify the authority who shall decide whether the order of acquittal has to be challenged.

7. In the present case, the record reveals that the Central Government, which is the competent authority under sub-section (2) of Section 378 of the CrPC, decided, on 19.01.2018, to prefer the appeals against the order of acquittal of the appellants herein. It is thereafter that the matter was entrusted to counsel for the preparation of the appeals. The record further shows that the decision to prefer the appeals was taken by the Central Government.

8. Insofar as the direction under Section 378(2) of the CrPC is concerned, in our view, the fact that the appeal was entrusted to Mr. Sanjeev Bhandari, the Special Public Prosecutor, to file the same in the High Court, itself tantamount to a direction to him to present the appeals to the High Court. There is nothing in law to suggest that such a direction has necessarily to be a specific written direction, or in a particular form. What is important and required for compliance with Section 378(2) of the CrPC, is the decision of the Central Government to file such an appeal. Pertinently, the Central Government has not disowned the action of Mr. Sanjeev Bhandari acting as a Special Public

Prosecutor in presenting the appeals.

9. In our view, there is absolutely no merit in the present appeals. They are accordingly dismissed.

VIPIN SANGHI, ACJ NAVIN CHAWLA, J APRIL 22, 2022/rv