

**HIGH COURT OF TRIPURA
AGARTALA
Crl.L.P.13 of 2022 in Crl.A.No.23 of 2022**

For Petitioner(s)	:	Mr. S. Lodh, Adv.
For Respondent(s)	:	Mr. R. Datta, P.P. Ms. R. Guha, Adv. Mr. S. Debnath, Addl. P.P. Ms. S. Nath, Adv.

HON'BLE THE CHIEF JUSTICE (ACTING)

Order

06.02.2023

This present leave application has been filed under Section 378(4) of the Cr.P.C. against the impugned judgment dated 19.09.2022 passed by the learned Judicial Magistrate, First Class, Belonia, South Tripura in N.I.15 of 2019 whereby the learned Judicial Magistrate First Class, Belonia, South Tripura acquitted the respondent OP No.1 for committing offence punishable under Section 138 of Negotiable Instrument Act, 1881.

Mr. S. Lodh, learned counsel appearing for the petitioner has relied on a judgment of the apex court in **Dahisar Saraswati Cooperative Housing Society Limited versus State of Maharashtra and Others** reported in **(2019) 11 SCC 443** which reads as follows :

"4. By order dated 01.11.2007, the Metropolitan Magistrate dismissed the complaint and acquitted all the Respondent 2 to 6. The appellant felt aggrieved and filed leave to appeal before the High Court under Section 378 (4) of the Criminal Procedure Code (for short 'the Cr.P.C.'). By the impugned order Dahisar Saraswati Coop. Housing Society Ltd. v. State of Maharashtra reported in 2009 SCC On Line Bom 2407, the High Court declined to grant leave to file appeal to the complainant (appellant

herein) which has given rise to filing of this appeal by the complainant Housing Cooperative Society by way of special leave to appeal in this Court."

But the respondent represented by Ms. R. Guha, learned counsel has vehemently opposed the prayer and contended that the present application is not maintainable under Section 378(4) of the Cr.P.C. It should be maintained under Section 378(3) of the Cr.P.C. Accordingly, the counsel appearing for the respondent prayed to dismiss the case or in alternate, the petitioner may be directed to amend the legal provisions. During the course of her argument, Ms. R. Guha, learned counsel has relied on a judgment of the apex court in **Mallikarjun Kodagali (Dead) represented through legal representatives versus State of Karnataka and Others** reported in **(2019) 2 SCC 752** which reads as under :

54. In **Parmeshwar Mandal : 2013 SCC OnLine Pat 602** an appeal was filed by a victim in the High Court against a judgment and order of acquittal dated 28 th August, 2012. The Division Bench of the High Court sought assistance on the maintainability of the appeal. After hearing arguments, the Court noted the distinction in the language of Section 372 of the Cr.P.C. and the language of Sections 377 and 378 of the Cr.P.C. The High Court noted that Section 372 of the Cr.P.C. was framed in affirmative terms. Moreover, the use of the word 'shall' in the proviso to Section 372 of the Cr.P.C., in contradistinction to the use of the word 'may' in Sections 377 and 378 of the Cr.P.C. gives a clear indication that the right of a victim to file an appeal was placed on a higher pedestal than the rights of the State, or even the accused. This is what the High Court had to say in this regard:

"What is significant to notice is that this right to appeal, which is clearly in affirmative terms, has been given to the victim by inserting the said proviso in Section 372 itself, which is the opening section of the Chapter, and not by any insertion in Sections 377 or 378, which deal with appeals against inadequate sentence and acquittal. In contradistinction to wordings of Sections 377 and 378, which are apparently enabling provisions, and only give a liberty to the District Magistrate, State Government, the

Central Government, and the complainant, to prefer an appeal by use of the word 'may', a victim, under the said proviso to Section 372 has been given a right to prefer appeal by use of the expression 'shall have a right to appeal'. It is also significant to notice that, whereas in Section 378, grant of leave has been made a condition precedent for entertaining any appeal against acquittal preferred under sub-sections (1) and (2), and grant of special leave for entertaining an appeal by a complainant preferred under sub-section (4), there is no such qualification prescribed in the said proviso to section 372 for a victim to maintain his appeal against an order of acquittal, or against a conviction for a lesser offence or against imposition of inadequate compensation..... Hence, in the opinion of this Court, the Legislature, by a conscious act, has put the right of a victim to prefer an appeal under the Code, in terms of the said proviso to Section 372, at a much higher pedestal than the right of a prosecuting agency or a complainant to present an appeal. Any otherwise intention of the Legislature is ruled out from the fact that, had it been so, it would have inserted a new sub-section in Sections 377 or 378, putting his right, with limitations and qualifications, at par with that of the prosecuting agency or the complainant, instead of inserting this right of victim in the opening section of the chapter itself."

74. Putting the Declaration to practice, it is quite obvious that the victim of an offence is entitled to a variety of rights. Access to mechanisms of justice and redress through formal procedures as provided for in national legislation, must include the right to file an appeal against an order of acquittal in a case such as the one that we are presently concerned with. Considered in this light, there is no doubt that the proviso to Section 372 of the Cr.P.C. must be given life, to benefit the victim of an offence.

75. Under the circumstances, on the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, it is quite clear to us that a victim as defined in Section 2(wa) of the Cr.P.C. would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction. It must follow from this that the appeal filed by Kodagali before the High Court was maintainable and ought to have been considered on its own merits.

76. As far as the question of the grant of special leave is concerned, once again, we need not be overwhelmed by submissions made at the Bar. The language of the proviso

to Section 372 of the Cr.P.C. is quite clear, particularly when it is contrasted with the language of Section 378(4) of the Cr.P.C. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word 'complaint' has been defined in Section 2(d) of the Cr.P.C. and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR, and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 of the Cr.P.C. is concerned."

Heard both sides.

From a fair reading of Section 378(3) of the Cr.P.C. it is evident that the said Section cannot be read independently since Section 378(3) of the Cr.P.C. is the leave which is granted in connection with Section 378(1) and Section 378(2) of the Cr.P.C. whereas Section 378(4) of the Cr.P.C. is independent in its nature and the case of the petitioner since do not fall under Section 378(1) of the Cr.P.C., it needs to be considered under Section 378(4) of the Cr.P.C. Accordingly, the leave is granted.

In terms of the above, the present leave application stands allowed and disposed of.

CHIEF JUSTICE (ACTING)



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