

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No.77 of 2015

1. Sunil Jangde S/o Kailash Jangde, aged about 26 years, R/o Shiv Mandir Chowk, Raja Talab, Raipur, PS Civil Line, District Raipur, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh through: the Station House Officer, PS Civil Line, District Raipur, Chhattisgarh
2. Prakash Joseph S/o Late John Joseph, aged about 46 years, R/o Shiv Chowk Raja Talab Raipur, Civil and Revenue District- Raipur, Chhattisgarh
3. Prashant Joseph S/o Prakash Joseph, aged about 19 years, R/o Shiv Chowk Raja Talab Raipur, Civil and Revenue District- Raipur, Chhattisgarh
4. Prafulla Joseph S/o Prakash Joseph, aged about 18 years, R/o Shiv Chowk Raja Talab Raipur, Civil and Revenue District- Raipur, Chhattisgarh

---- Respondents

For Appellant — Shri Ashish Surana, Advocate.

For Respondent No.1 — Shri Roshan Dubey, Panel Lawyer.

Judgment on Board

06/07/2015

1. Heard both the parties regarding maintainability of this acquittal appeal.
2. Learned counsel for the appellant for the purposes of submitting argument on maintainability of this appeal referred the chapter 29, Sections 372, 373, 374, 375, 376, 377, 378 of the Code of Criminal Procedure, 1973 (in short 'the Code').

All the above mentioned Sections are read as under:

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.

¹[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

1 Ins. by Act 5 of 2009, sec. 29 (w.e.f. 31-12-2009)

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.]

373. Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour — Any person,—

(i) who has been ordered under section 117 to give security for keeping the peace or for good behaviour, or

(ii) who is aggrieved by any order refusing to accept or rejecting a surety under section 121,

may appeal against such order to the Court of Session:

Provided that nothing in this section, shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (4) of section 122.

374. Appeals from convictions.— (1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial; may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate,

may appeal to the Court of Session.

375. No appeal in certain cases when accused pleads guilty.— Notwithstanding anything contained in section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal.—

(a) if the conviction is by a High Court; or

(b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

376. No appeal in petty cases. — Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely:—

(a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

(d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees:

Provided that an appeal may be brought against any such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground—

(i) that the person convicted is ordered to furnish security to keep the peace; or

(ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or

(iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

377. Appeal by the State Government against sentence. — (1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public prosecutor to present an appeal against the sentence on the ground of its inadequacy —

(a) to the Court of session, if the sentence is passed by the Magistrate;
and

(b) to the High Court, if the sentence is passed by any other Court.

(2) If such conviction is in a 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 against the sentence on the ground of its inadequacy—

(a) to the Court of session, if the sentence is passed by the Magistrate;
and

(b) to the High Court, if the sentence is passed by any other Court.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or, as the case may be, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

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, 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).

3. Learned counsel for the appellant placed reliance in the matters passed by Full Bench of this Court in Acquittal Appeal No.96 of 2012 (Mithilesh Yadav vs. State of Chhattisgarh and others) and Acquittal Appeal No. 121 of 2012 (Smt. Ahilya Bai Satnami vs. State of Chhattisgarh and another) whereby the Full Bench of this Court after hearing answered the question referred by Single Judge. The question referred in Acquittal Appeal No.96 of 2012 and the answer given by Hon'ble the Full Bench of this Court also the question referred by the Single Judge in Acquittal Appeal No.121 of 2012 and the answer given by Hon'ble the Full Bench of this Court is as under :-

Acquittal Appeal No.96 of 2012

(Mithilesh Yadav vs. State of Chhattisgarh and others)

Question:-

“ Whether provision of sub-section(3) of Section 378 of the Code of Criminal Procedure for seeking leave to appeal would be applicable to an appeal to be preferred by victim under Proviso to Section 372 of the Code of Criminal Procedure against the order passed by the Court acquitting the accused or convicting for lesser offence or imposing inadequate compensation in absence of provision to that effect in proviso to Section 372 of the Code of Criminal Procedure?”

Answer:- The provision of sub section (3) of Section 378 of the Code of Criminal Procedure for seeking leave to appeal is not applicable to appeal that may be preferred by the victim under proviso to Section 372 of the Cr.P.C. against an order of acquittal or order of conviction of lesser offence or imposing inadequate compensation.

Acquittal Appeal No.121 of 2012

(Smt. Ahilya Bai Satnami vs. State of Chhattisgarh and others)

Question:-

“Whether the period of limitation prescribed for filing an appeal under Section 377 or 378 of the Code of Criminal Procedure would also apply to an appeal preferred by the victim under proviso to Section 372 of the Code of Criminal Procedure?”

Answer:-

(A) The period of limitation prescribed for filing an appeal against order of acquittal as provided under Article 114 and Article 115 of the Schedule to the Limitation Act, 1963, is not applicable in the matter of appeal that may be preferred by a victim under proviso to Section 372 of the Cr.P.C. against an order of acquittal. Nevertheless, appeal is required to be filed by the victim within a reasonable period to be reckoned from the date the victim acquires knowledge of the order of acquittal. What would be the reasonable period, should depend upon the facts and circumstances of every case.

(B) The period of limitation prescribed in Article 115(b) of the Limitation Act, 1963, would be applicable in the matter of appeal that may be preferred by a victim under proviso to Section 372 of the Cr.P.C. against an order convicting for lesser offence or imposing inadequate compensation.

4. Learned counsel for the appellant submits that prior to the amendment 2009 whereby and whereunder the proviso incorporated under Section 372 of the Code, there was no right to appeal by the victim. There was right to appeal

by State, accused or complainant under various provisions of Section 378 of the Code. After incorporation of the amendment, right to appeal provided to victim. Definition of victim is already mentioned in Section 2(wa) of the Code. In the present case, respondent No.2 to 4 were convicted by the Judicial Magistrate First Class, Raipur in Criminal Case No. 319/13 whereby and whereunder all the respondents 2 to 4 were convicted for the offence under Sections 294, 323, 506 Part II read with Section 34 of the IPC and Section 452 of the IPC and the learned trial Court sentenced all the respondents 2 to 4 fine sentences, Rs.100/-, Rs.100/-, and R.I. for 1 year along with fine Rs.100/- , in default of fine in addition respondents are sentenced S.I. for 5 days for each default of fine. Against the said judgment of conviction, the respondents preferred appeal before the Sessions Court, IVth Additional Sessions Judge, Raipur C.G., who vide judgment dated 12-3-2015 in Cr.Appeal No. 69/14 acquitted all the respondents for the charges held proved by the trial Court and allowed the appeal and set aside the trial Court's order of conviction and sentence. Victim Sunil Jangde before this Court has preferred an acquittal appeal under the proviso of Section 372 of the Code. The learned counsel further submitted that as the trial Court convicted the respondents, against the conviction and sentence the respondents preferred an criminal appeal, the victim is not required to file any appeal before the Sessions Court; as the respondents are convicted and sentenced, the respondents under the authority of law filed appeal before the Sessions Judge. After reversal of the judgment of conviction and sentence passed by the trial Court, proviso of Section 372 of the Code comes into operation for the appellant as "he has right to prefer appeal against any order passed by the Court acquitting the accused" is applicable for the present case. The proviso is silent on the point whether against the order of acquitting the accused before the Sessions Court any appeal will lie or revision will lie. Hence, by interpretation of the entire proviso, appeal is maintainable. There is no other victim's right. This is application of first right by

the victim by filing this acquittal Appeal after allowing the appeal filed by the respondents by the Court of Sessions and order of acquittal by the Sessions Court, victim has preferred this appeal. There is no defined otherwise meaning of “such court” goes to show that since this is the first appeal by the appellant, it cannot be said that this is second appeal. Consequently, looking to the reference and the answer made by the Hon’ble Full Bench of this Court, the present appeal is maintainable.

5. Per contra, learned counsel appearing for respondent No.1/State submitted that against the judgment of acquittal passed in Criminal Appeal No.69/14 only revision will lie, not this acquittal appeal.

6. For the purposes of deciding the issue of maintainability, arguments advanced on behalf of either parties are heard and the material available on record are perused.

7. The proviso of Section 372 of the Code has two parts; first part is about victim’s right to prefer an appeal against the order passed by the court acquitting the accused, or convicting for lesser offence or imposing inadequate compensation; thereafter, after putting coma, the second part starts; this part is for the forum where appeal shall lie ordinarily against the order passed by the court mentioned in the first part of the proviso. The reliance placed on behalf of the appellant wherein the reference and the answer is not applicable to the facts before this Court at the time of hearing of maintainability of the appeal. Before this Court, a question arose that as per second part of the proviso, such appeal as mentioned in the first part of the proviso shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court. Assuming for the moment, if the Sessions Court has affirmed the judgment passed by the trial Court, then the forum available to the respondent to challenge the order passed by the Sessions Court is only under the provision of Section 397 read with

Section 401 of the Code by filing a revision. Against the order of such court, clearly speaks about the court who has passed the order, it may not be read as the court who had passed the order as a trial Court. This Court is of considered view that for the present facts such court may only be marked as the appellate court who had decided the criminal appeal, against the order the appeal is here and against the order of the Sessions Court passed in criminal appeal no any further appeal lies as per the entire Code. No any other reliance placed by the appellant regarding the definition of such court. Looking to the meaning along with reading of second part of the proviso, in the considered view of this Court, as the case law placed reliance is not for the question presently before this Court and otherwise second part of the proviso is not of any help to the appellant, the instant acquittal appeal preferred on behalf of the appellant is not maintainable looking to the second part of the proviso of Section 372 of the Code.

8. Learned counsel for the appellant, at this stage, seeks liberty to file a criminal revision available under the law. The prayer for such liberty is disposed of stating that the appellant may seek other forum if available to him by law.

9. Consequently, the acquittal appeal is not maintainable by law and the same is hereby dismissed. Registry is directed to return the certified copy of the judgment filed along with this acquittal appeal by the appellant after retaining its authenticated photocopy on record.

Sd/-
(C.B.Bajpai)
JUDGE