

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Cr. Application No 477 of 2015

THE STATE OF MAHARASHTRA	...Applicant.
V/S	
NEERAJ LALCHAND KALRO AND ANR	...Respondents.

WITH

Cr. Appeal No 597 of 2015

PINKY NEERAJ KALRO	...Appellant.
V/S	
NEERAJ LALCHAND KALRO AND ORS	...Respondents.

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Mr. Niteen Pradhan Senior Counsel as *amicus curiae*.

Mr. Niranjana Mundargi i/b. Mr. Vivek Pandey, for the Appellant in Appeal No.597/2015.

Mrs. Anamika Malhotra, APP, for the Applicant-State in Appln/477/2015.

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CORAM : A. R. JOSHI, J.

DATE : 4th SEPTEMBER, 2015

P.C.

1. On 2nd September, 2015 the arguments were heard on legal issue as to whether under proviso to Section 372 of Cr.P.C., the victim can challenge the order of acquittal passed by an Appellate Court. After prolonged hearing in the matter and after hearing the learned *amicus curiae* Senior Advocate Mr. Niteen Pradhan, this Court is of the view that the order of the appellate

Court acquitting the accused, by allowing the appeal of the accused person, can also be challenged under proviso to Section 372 of Cr.P.C. by the victim. In view of this, the present matter is required to be further dealt with. This Court places on record its deep appreciation for the able assistance rendered by Senior Counsel Shri Niteen Pradhan, the learned *amicus curiae*, in the present matter.

2. In the present matter, there is delay condonation application [APPLN No.477/2015] preferred by the State challenging the order of acquittal passed by the Appellate Court. The main application of the State is for leave to file appeal challenging said acquittal. Said application is under the provisions of Section 378(1)(b) of Cr.P.C..

3. Apart from this application by the State as mentioned earlier, the defacto complainant i.e. the victim has also preferred an appeal directly under proviso to Section 372 of Cr.P.C.. It is an admitted position that the defacto complainant is allowed to file appeal under proviso to Section 372 of Cr.P.C. and there is no need for asking the leave of the Court to file such an appeal. This position in law has already amply been clear.

4. In view of the above factual and legal position as to filing of the appeal by the defacto complainant and filing of the application by the State for leave to file appeal, in the opinion of this Court the application for leave to file appeal preferred by the State is also required to be allowed as the defacto complainant has a right to file an appeal under proviso to Section 372 of Cr.P.C.. Consequently, application for condonation of delay of 34 days is allowed. Delay is condoned. The application for leave to file appeal preferred by the State is also allowed. Appeal be numbered accordingly.

5. As such the appeal preferred by the State and also the appeal preferred by the defacto complainant are admitted. Call for R & P.

6. Process under Section 390 of Cr.P.C. be initiated against respondent Nos.1 and 2 with directions to the trial Court to release respondent Nos.1 and 2 in the sum of Rs.5000/- (Rupees Five Thousand Only) with one surety for the like amount.

(A. R. JOSHI, J.)