

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE M.S.K. JAISWAL

Crl.A.M.P.Nos. 307, 308 and 338 of 2015 & Crl.A. No.1502 of 2010

COMMON ORDER: (Per Hon'ble Sri Justice G. Chandraiah)

Inasmuch as these miscellaneous applications are inter-related and the petitioners therein, who are Accused Nos.1 to 4, are involved in the same crime and the Criminal Appeal preferred by the *de facto* complainant is against the same accused, these matters are taken up together for disposal by this Common Order.

While A1 has filed Crl.A.M.P.No.307 of 2015 under Section 482 Cr.P.C., A2 has filed Crl.A.M.P.No.338 of 2015 and A3 and A4 have filed Crl.A.M.P.No. 308 of 2015 seeking to dismiss Crl.A.No. 1502 of 2010.

The *de facto* complainant has preferred the present appeal against the judgment dated 06.10.2010 delivered in S.C.No. 7 of 2008 on the file of the Court of the Special Sessions Judge for Trial of Offences under S.Cs. & S.Ts. (POA) Act, Karimnagar whereby A1 to A4 were acquitted of the offences punishable under Sections 449 read with 34 IPC, 302 read with 34 IPC and 120-B read with 34 IPC and Sections 25 (1)(a) and 27 of the Indian Arms Act.

The case of the prosecution in brief is that there were some quarrels between PW1 - complainant's husband and A3 over the lands situated in Sy.No.276 situated at Theegalaguttapalli on the outskirts of Railway Station, and in this connection, Panchayat was also held wherein the elders decided that the complainant's husband shall give Ac.0.20 guntas land to A3, but her husband did not agree to that.

Thereupon, A3 developed grudge against her husband and hatched a plan with other accused to put an end to his life. At first, A1 to A4 decided to kill the complainant's husband by hitting him with a Bullero vehicle bearing No. AP5 / AA 5949 purchased by A4 but they could not succeed in their efforts. Then, A4 brought a country made short fire arm, and in accordance with their conspiracy, on 14.11.2006, at 09:15 p.m., when the complainant – M.Vijayalaxmi, her husband, children and nephew were in their house, A1 knocked at the gate and called her husband. When her husband went up to him followed by his wife and her brother's son, Raghunadha Reddy, A1, while talking to him about the land issue, suddenly opened fire on the left side of the chest of her husband, who immediately collapsed. Then, A1 quickly rushed to A2 who was waiting on his motorcycle bearing No.AP15R 9337 nearby and both of them went away on the vehicle. Immediately, the complainant shifted her husband to Shivaramakrishna Hospital and subsequently to Government Hospital, Karimnagar where the doctor declared her husband dead. Based on the complaint lodged by PW1, the wife of the deceased, the Sub-Inspector of Police, Karimnagar Rural Police Station registered a case in Cr.No.355 of 2006 against all the accused for the offences punishable under Sections 449, 302 and 120-B IPC and Sections 25(1)(a) and 27 of Arms Act. After completion of investigation, the Circle Inspector of Police filed charge sheet.

To substantiate the case of the prosecution, PWs. 1 to 19 were examined and Exs.P1 to P27 apart from M.Os. 1 to 10 were marked. Nobody was examined on behalf of the defence, but Exs.D1 and D2 and Ex.X1 were marked.

After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses. They denied the same. After hearing the arguments on both sides and appreciating the entire evidence on record, the learned Session Judge delivered the impugned judgment as stated above.

On 09.03.2015, when the matter was taken up for hearing, it was represented that a connected case in Crl.A.No. 993 of 2011 was filed by the State against the impugned judgment and the same was admitted on 27.01.2011 and this Court directed the matter to be tagged on to this appeal for hearing.

Now, the common issue that arises for determination in these applications is with regard to maintainability of the appeal preferred by the *de facto* complainant.

For the sake of convenience, the parties are referred to as they are arrayed in Crl.A.No. 1502 of 2010.

The learned counsel for the appellant-PW1, who is the wife of the deceased-husband, contends that in terms of the proviso inserted in Section 372 Cr.P.C. by virtue of Cr.P.C. (Amndt.) Act, 2008 (Act No.5 of 2009) which came into force with effect from 31.12.2009, the present appeal is maintainable. In support of his contention, he has relied upon the judgment of a Division Bench of the High Court of Patna reported in **Parmeshwar Mandal & Others v. State of Bihar and Others** wherein it was held to the following extent:

“Next question arises as to from which date and at which stage this right to prefer appeal accrues to the victim. This arises for consideration within the judicial parameters because of absence of any indication laid down by the Legislature in the Code by amendment while inserting the said proviso in Section 372. The Proviso has been inserted in Section 372 by Amendment Act 5 of 2009 and it has come into effect from 31.12.2009. Hence, there may be three situations in which question of applicability of this proviso may arise. The first situation may be where occurrence may have happened much prior to the insertion of this Amendment and judgment and order of the Court may have also been pronounced earlier to it. Second situation may be where, though occurrence may have happened prior to the Amendment, but judgment and order may have been passed by the Court subsequent to the Amendment. Third situation may be where occurrence may have happened subsequent to the Amendment and the judgment and order was obviously pronounced later on. In the first situation, obviously, the Amendment does not come into play and the right which the victim did not had on the date of judgment and order cannot be claimed subsequently on the basis of this Amendment. In the third situation obviously Amendment stands incorporated in Section 372 much earlier and therefore the victim gets all the right to prefer appeal in terms of the said proviso. Question is whether in the second

situation, when the victim did not had a right to prefer appeal when occurrence had happened or the case was instituted or cognizance was taken, does he/she get a right to prefer an appeal, or not, on the basis of this insertion of the proviso in Section 372 before the judgment and order of acquittal.

At this stage, it would be appropriate for us to first consider the judgment of the Apex Court in the case of National Commission for Women Vs. State of Delhi and another [2010 (12) SCC 599]. The genesis of the case before the Apex Court was a judgment and order of conviction dated 21st of April, 2008, passed by a learned Additional Sessions Judge, Kakarduma Court, Delhi, convicting the accused under Sections 306 and 376 of the Indian Penal Code with award of sentence of for the same. Accused preferred an appeal before the High Court. The High Court, after entertaining the appeal on merits, modified the judgment and order of the trial Court by its order dated 9th of February, 2009, acquitting the accused under Section 306 IPC and reducing his sentence under Section 376 IPC to the period already undergone. Against the said judgment of the High Court, no appeal was preferred by the State. However, appellant Commission moved the Apex Court, which by order dated 2nd of April, 2009 granted permission to file Special Leave Petition and ordered notices to be issued to the accused. But when the matter was taken up for hearing, the Apex Court went into the question of maintainability of the Special Leave Petition also, in reference to Section 372 of the Code as amended with effect from 31st of December, 2009. Opening observations of the Apex Court, in this connection, made in paragraph 5 of the judgment, are thus:

“5. Chapter XXIX of the Code of Criminal Procedure deals with “Appeal(s)”. Section 372 specifically provided that no appeal shall lie from a judgment or order of a criminal court except as provided by the Code or by any other law which authorizes an appeal. The proviso inserted by Section 372 (Act 5 of 2009) w.e.f. 31st December, 2009, gives a limited right to the victim to file an appeal in the High Court against any order of a criminal court acquitting the accused or convicting him for a lesser offence or the imposition of inadequate compensation. The proviso may not thus be applicable as it came in the year 2009 (long after the present incident), and in any case, would confer a right only on a victim and also does not envisage an appeal against an inadequate sentence. An appeal would thus be maintainable only under Section 377 to the High Court as it is effectively challenging the quantum of sentence.”

From a reading of the judgment, it would be clear that the entire discussion by the Apex Court revolved around propriety of granting permission to the appellant Commission to file Special Leave Petition and it held that as an appeal is a creature of statute, it could not lie under inherent power and to allow anybody or organization “pro-bono publico” to file appeal, was a

dangerous proposition. The observations of the Court in paragraph 5, as reproduced above, were only for the purpose of noticing the limitation imposed by Section 372 for filing appeal against judgment of a criminal Court and the proviso was noticed only for the purpose of change having been introduced in Section 372 of the Code. It was in that context the observations were made that in the case proviso was not applicable as it came in the year 2009 and in any case it conferred a right only on a victim and did not envisage an appeal in the case of inadequate sentence. Thereafter, the Court noticed the only provision available in Chapter XXIX of the Code for preferring an appeal against inadequate sentence, i.e. Section 377 of the Code. Entire discussion in the judgment thereafter proceeded on the provisions of Section 377 of the Code and scope and limitation of Article 136 of the Constitution of India. However, in paragraph 5, after observing that “the proviso may not itself be applicable as it came in 2009” a casual comment in brackets – (long after the present incident) – was made by the Apex Court. Question is whether by using the words in brackets “long after the present incident” did the Apex Court lay down any law” It has to be noticed that the judgments of the trial Court, and of the High Court in appeal, were all of a date much prior to the insertion of the said proviso in Section 372. Even the petition by the appellant-Commission has been filed in the Apex Court much earlier and the permission to file Special Leave Petition was also granted much earlier. From the arguments advanced by learned counsel on behalf of the appellant before the Apex Court, as noticed in the judgment, it is clear that no claim was made on behalf of the appellant Commission before the Apex Court to treat the Special Leave Petition as one under the said proviso to Section 372. Entire argument of learned counsel revolved around maintainability of Special Leave Petition, and for it to be considered on merits on the ground that permission had already been granted. The Apex Court found that the permission was wrongly granted as Special Leave Petition on behalf of the Commission, filed under Article 136 of the Constitution of India, was not maintainable. Thus, it is clear that by inserting the words “long after the present incident” in brackets in paragraph 5, the Apex Court did not give any finding on any issue, to be treated as law in terms of Article 141 of the Constitution of India. The scope and import of the said proviso to Section 372 was not at all under consideration before the Apex Court in the case nor was considered, examined and decided. In the circumstances, in our opinion, use of expression “long after the present incident” in brackets in paragraph 5 of the judgment, can, at best, be treated as only an obiter dictum of the Apex Court and not a law laid down under Article 141 of the Constitution of India. The following observations by a Full Bench of this Court in the case of Rita Mishra Vs. Director, Primary Education, Bihar, 1987 PLJR 1090 is an authoritative enunciation of law in the matter:-

“One has to remind himself of the hallowed rule enunciated by Halsbury in Quin v. Leathem, 1901 AC 495 that what is of essence in a

decision is the logic, reasoning and ratio and not every observation found therein nor all that may logically flow from the observations made therein. This has been expressly approved in State of Orissa v. Sudhansu Sekhar Misra, 1968 AIR(SC) 647 with the added warning that it is not a profitable task to extract a sentence here and therefrom a judgment and to build upon it”

A Judgment of a Division Bench of Chattisgarh High Court in the case of Bhisam Prasad Bareth Vs. Dinesh Mahant & Ors. 2012 CrLJ 2157 has also been brought to the notice of this Court. The case arose from a judgment of conviction passed by a learned Magistrate under Sections 147, 323 / 149, but acquittal under Section 307/149 IPC. The applicant initially filed Criminal Revision before the High Court against acquittal of the accused under Section 307/149 IPC, which, however, was dismissed as withdrawn, with liberty to him to prefer an appeal in terms of the said proviso to Section 372 of the Code. Accordingly, appeal was filed which came for consideration before the Division Bench. The question which directly fell for consideration before the Division Bench was noticed in paragraph 7 of the judgment which was as to “whether the victim shall have a right to prefer appeal against order/judgment passed by a Court prior to enforcement of amendment or not”. The Division Bench noticed the above quoted observations of the Apex Court in paragraph 5 of National Commission For Women and observed as follows:-

“12. In the present case also, the impugned judgment has been passed on 18.03.2009, whereas the proviso to Section 372 of the Cr.P.C. was inserted on 31.12.2009, that is to say, long after date of incident i.e. 05.03.2008 and therefore, the proviso to Section 372 of the Cr.P.C. may not thus be applicable in the present case. This is so also, because the right of appeal is a substantive right and not a procedural right and such right vests from the day of the commencement of the proceedings and an appeal is nothing but a continuation of the proceedings. The forum to file an appeal is also determined as soon as the action is instituted.”

Another judgment of a Division Bench of Andhra Pradesh High Court in the case of Dr.Sudhakar vs. Panapu Sreenivasulu, 2013 CrLJ 2764 was also brought to the notice of this Court. In that case, the appeal before the Division Bench was preferred by the brother of the deceased against judgment and order of acquittal dated 30.11.2011 passed in Sessions Case No. 24 of 2009, acquitting respondent Nos.1 to 5 for offences punishable under Section 148 IPC and respondent Nos.3 to 5 for offences punishable under Section 302 read with 149 of IPC. The appellant before the Court was the *de facto* complainant of the case and a witness on behalf of the prosecution. Hence, it was asserted that he fell in the category of victim in view of definition contained in the said clause (wa) of Section 2 and hence the appeal at his instance in terms of the said proviso to Section 372 was maintainable. This stand of the appellant was challenged by the respondents- accused. The

Division Bench took pains to examine the U.N. declaration in its Resolution No.40/34, dated 29.11.1985 containing definition of the victim. It also noticed that the definition of the victim contained in 154th Report of Law Commission of India and the provisions of Section 372 as amended. It also noticed the judgment of Apex Court in the case of National Commission for Women and a judgment of Kerala High Court for the purposes of deciding the maintainability of appeal preferred by the appellant before it. The Division Bench observed that the word 'heir' has been interpreted by the Supreme Court in several cases to mean all persons, who were entitled to the property of another under law of inheritance. Applying this test, the Division Bench came to the conclusion that under expression "legal heir" contained in the definition of victim under clause (wa) of Section 2, in case of a Hindu, only Class I heir, as per Hindu Succession Act, would be covered. Hence, the appellant before it being Class II heir would not come in the category of "legal heir" so as to be covered by the definition of victim and therefore entitled to prefer appeal in terms of the said proviso to Section 372 of the Code. However, the Division Bench also noticed the observations of the Apex Court in the case of National Commission For Women and came to the conclusion that it has already been held by the Apex Court that amendment will not be applicable in cases where incident had taken place prior to the amendment and therefore it dismissed the appeal. Findings of the Bench on this issue are contained in paragraph 10 of the judgment and reads thus:

"10. In view of the provisions of Sections 8 and 9 of the Hindu Succession Act, the appellant being a Class-II heir would not inherit anything from his deceased brother, as he is survived by his wife. Thus, the appellant is not entitled to the property of the victim under the applicable law of inheritance. Though the appellant falls in one of the category of heirs as per the Hindu Succession Act, but the Legislature deliberately used the word "legal heir", which strictly means a person who is entitled to the property of the victim under the applicable law of inheritance i.e. Hindu Succession Act. Hence, we are of the considered opinion that when it is the intention of the Legislature to give right of appeal to the legal heir, the appellant will not fall within the definition of "legal heir" and he is not entitled to prefer an appeal to this Court under Section 372 Cr.P.C. against acquittal of the accused. The second issue that falls for our consideration is that the incident has taken place on 07.12.2007 and the amendment to Section 372 Cr.P.C. has come into force w.e.f. 31.12.2009, where the victim can prefer an appeal against acquittal. This issue will not hold us for long, in view of the fact that the Apex Court in National Commission for Women v. State of Delhi, has already held that the amendment is not applicable to cases where the incident has taken place prior to amendment. Therefore, even on this count, the appellant fails, and as such, the appeal is liable to be dismissed as not maintainable."

It is clear from the said judgments of Chattisgarh High Court as well as of the

Andhra Pradesh High that the observations of the two Division Benches to the effect that the said proviso to Section 372 of the Code shall not be applicable in cases in which date of occurrence was prior to the amendment, are based on the said expression used in the brackets in the said paragraph 5 of the Apex Court judgment in the case of National Commission for Women. As this Court has dealt with and explained above, the expression in paragraph 5 of the said judgment of the Apex Court – long after the present incident – used within bracket, is not a finding of the Apex Court and is only an obiter dictum. This Court has already noticed above that the scope and ambit of the said proviso to Section 372 of the Code and its applicability was not at all an issue before the Apex Court. In fact, it is clear that the notice of said proviso to Section 372 of the Code and it vested a right in the victim also now to prefer appeal under the three contingencies. Hence, in the opinion of this Court, reliance placed on these words, used in the judgment of the Apex Court, by the Division Benches of Chhattisgarh High Court and Andhra Pradesh High Court, for coming to the conclusion that an appeal by a victim, in a case in which occurrence had happened prior to the amendment, was not maintainable, is totally misconceived and misplaced. It may also be pointed out that there is no other expression or observation of the Apex Court in the entire judgment of the said case which could be the basis for such a finding by the Division Benches of the said two High Courts.

Proviso to Section 372 of the Code is in two parts. First clause of the said proviso begins with “provided that” and ends with “Inadequate compensation” and creates a right in the victim to prefer appeal against any order passed by a Court either (i) acquitting the accused or (ii) convicting for a lesser offence or (iii) imposing inadequate compensation. Thereafter, by inserting conjunction “and”, another clause has been added in the same sentence by which forum for preferring such appeal has been identified, which relates to procedural part of law. Thus, the said proviso contains both substantive part, creating right in the victim to prefer an appeal, and procedural part, by identifying the forum for filing such an appeal. It is not in dispute that the substantive part of law operates prospectively, unless made retrospective, and the procedural part is presumed to be retrospective within its defined limits. In this context, the observations of the Apex Court in paragraph 12 of its judgment in the case of Sudhir G. Angurs Vs. M. Sanjeevs, 2006 1 SCC 141 is reproduced here below for easy reference:-

“12. In our view, Mr. G. L. Sanghi is also right in submitting that it is a law on the date of trial of the suit which is to be applied. In support of this submission, Mr. Sanghi relied upon the judgment in the case of Shiv Bhagwan vs. Onkarmal, 1952 AIR (Bom) 365, wherein it has been held that no party has a vested right to a particular proceeding or to a particular forum. It has been held that it is well settled that all procedural laws are retrospective unless the Legislature expressly states to the contrary. It has been held that the procedural laws in force must be applied at the date when the suit or proceeding comes on for

trial or disposal. It has been held that a Court is bound to take notice of the change in the law and is bound to administer the law as it was when the suit came up for hearing. It has been held that if a Court has jurisdiction to try the suit, when it comes on for disposal, it then cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date when it was instituted. We are in complete agreement with these observations. As stated above, the Mysore Act now stands repelled. It could not be denied that now the Court has jurisdiction to entertain this suit.”.

At this stage, it is also useful for this Court to refer to a recent judgment of the Apex Court in the case of Ramesh Kumar Soni Vs. State of Madhya Pradesh 2013 AIR (SC) 1896. Related issue, which fell for consideration before the Court was in respect of operation of a 2007 State Amendment in the First Schedule of the Code of Criminal Procedure, 1973, changing the forum for trial of all cases related to offences punishable under Sections 467, 468 and 471 by the Court of Sessions only, instead of by a First Class Magistrate, which a Full Bench of the High Court, on reference, had held as not applicable to pending cases in the courts of First Class Judicial Magistrate, on the ground that the Amendment Act did not contain a clear indication that such cases also had to be made over to the court of Sessions. The Apex Court examined the issue of retrospective operation of a procedural law prescribing a forum, in context of many earlier judgments of the Court and held the Amendment as affecting pending proceedings also before the Magistrates. Hence, it applied the principles of prospective overruling and overruled the said Full Bench judgment of the High Court, but saved the cases which might have been transferred back to the courts of First Class Magistrates by virtue of the said Full Bench judgment. The Court noticed, with approval, its view in an earlier judgment in the case of New India Insurance Company Ltd. Vs. Smt. Shanty Mishra, Adult, 1976 AIR (SC) 237 that unless by express words the new forum is available only to causes of action arising after the creation of the forum, the general rule is to make it retrospective.

Here, we must also consider a Full Bench judgment of Punjab and Haryana High Court delivered on 18th March, 2013 in M/s.Tata Steel Ltd. Vs. M/s.Atma Tube Products Ltd. & Ors., 2013 1 ILR(P&H 719. On reference, the Full Bench formulated the following questions for consideration: (A) What is the true import and meaning of the expression “victim” as defined under Section 2(wa) read with proviso to Section 372 Cr.P.C. (B) Whether “complainant” in a private complaint-case, who is also the “victim” and the “victim” other than the “complainant” in such cases are entitled to present appeal against the order of acquittal under proviso to Section 372 or have to seek “special leave” to appeal from the High Court under Section 378(4) Cr.P.C. (C) Whether the “rights” of a victim under the amended Cr.P.C. are accessory and auxiliary to those perceived to be the exclusive domain of the “State”. (D) Whether

presentation of appeal against acquittal is a “right or an “obligation” of the “State” stemming from the Constitution. (E) Where would the appeal of a “victim” preferred under proviso to Section 372 lie when the State also prefers appeal against that order of acquittal under Clause (a) of Section 378(1) Cr.P.C. (F) Whether proviso to Section 372 Cr.P.C inserted w.e.f. December 31, 2009 is prospective or retrospective in nature and whether a revision petition pending against an order of acquittal before the insertion of the said proviso, can be converted into an appeal and transferred to the Court of competent jurisdiction. (G) What would be the period of limitation for a “victim” to prefer an appeal under proviso to Section 372 Cr.P.C.

The discussion and findings on Question (F) finds place in the judgment of the Full Bench in paragraphs 121 to 126 and its answer finds place in paragraph 139 which is as follows:- Question (F) (viii) The proviso to Section 372 inserted w.e.f. December 31, 2009 is prospective in application and only those orders which have been passed on or after December 31, 2009, irrespective of the date of occurrence or registration of FIR or filing of complaint, shall be appealable at the instance of a “victim” under the afore-stated proviso. Consequently, a revision petition preferred against an order of acquittal passed prior to December 31, 2009 cannot be converted into an appeal and shall be decided accordingly.

Answer to question (F) has been reproduced above in the judgment. This Court finds the same as correct interpretation of law. As already discussed above, this Court endorses the view that remedy of appeal, under proviso to Section 372, has to be held available to a victim against all orders, which have been passed on or after 31st December, 2009 by a criminal court, irrespective of the date of occurrence or registration of F.I.R. or filing of a complaint or date of cognizance of offence. Interpretation of Madhya Pradesh High Court, otherwise opinions of Chattisgarh High Court and Andhra Pradesh High Court, discussed above, which are based on an obiter dictum of the Apex Court, in the opinion of this Court, are not correct and the view expressed by the Full Bench of Punjab and Haryana High Court in this respect does reflect the correct legal position.

In the circumstances, after consideration of the entire matter, conclusions of this Court are as follows:-

(1) - By virtue of the Proviso, as inserted in Section 372 of the Code of Criminal Procedure, 1973 by the Criminal Procedure Code (Amendment) Act, 2008 (Act 5 of 2009), a “victim” has been put at a higher pedestal, than a prosecuting agency or a complainant, in the matter of preferring an appeal against any order of a criminal court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. This Proviso gives an unqualified “right” to a “victim” to prefer an appeal in its terms, as against the enabling sections 377 and 378, which only give liberty to a District Magistrate, the State Government, the Central Government and the complainant,

as the case may be, to prefer an appeal against an order of sentence on the ground of its inadequacy or against an order of acquittal.

(5) - The expression long after the present incident used under brackets by the Apex Court in paragraph 5 of its judgment in case of National Commission for Women vs. State of Delhi and another, 2010 (12) SCC 599 is only an obiter dictum of the Court and it does not lay down a law in terms of Article 141 of the Constitution of India.”

The learned counsel has strenuously contended that Patna High Court, while extensively dealing with Section 372 Cr.P.C. and the proviso inserted therein, as extracted herein above, followed the Full Bench judgment of Punjab and Haryana High Court in **M/s.Tata Steel Ltd. Vs. M/s.Atma Tube Products Ltd. & Ors.** wherein, on reference, it formulated certain questions for consideration, of which, Question (F) speaks out whether proviso to Section 372 Cr.P.C. inserted with effect from December, 31, 2009 is prospective or retrospective in nature and whether a revision petition pending against an order of acquittal before the insertion of the said provision, can be converted into an appeal and transferred to the Court of competent jurisdiction. He has further contended that while answering the Question, the Full Bench of Punjab and Haryana High Court held in paragraph No.139 to the effect that *the proviso to Section 372 inserted with effect from December 31, 2009 is prospective in application and only those orders which have been passed on or after December 31, 2009, irrespective of the date of occurrence or registration of FIR or filing of complaint, shall be appealable at the instance of a “victim” under the afore-stated proviso. Consequently, a revision petition preferred against an order of acquittal passed prior to December 31, 2009 cannot be converted into an appeal and shall be decided accordingly.* The learned counsel has further submitted that in view of the above proposition of law laid down by the Full Bench, the present appeal is maintainable on the ground that he preferred the present appeal in the year 2010 which is subsequent to 31.12.2009, the date when the amendment came into effect, and the proviso to Section 372 Cr.P.C. has

prospective nature, as such, the appeal may be considered and decided as the same is maintainable.

On the other hand, the learned counsel for the respondents-accused has contended that the cause of action arose when the alleged offence took place on 14.11.2006 much prior to the Criminal Procedure Code Amendment Act, 2008. In support of his contention, he has relied upon the judgment of the Supreme Court reported in **National Commission for Women v. State of Delhi** wherein it is held as follows:

“Chapter XXIX of the Code of Criminal Procedure deals with “Appeal(s)”. Section 372 specifically provided that no appeal shall lie from a judgment or order of a criminal court except as provided by the Code or by any other law which authorizes an appeal. The proviso inserted by Section 372 (Act 5 of 2009) w.e.f.

31st December, 2009, gives a limited right to the victim to file an appeal in the High Court against any order of a criminal court acquitting the accused or convicting him for a lesser offence or the imposition of inadequate compensation. The proviso may not thus be applicable as it came in the year 2009 (long after the present incident), and in any case, would confer a right only on a victim and also does not envisage an appeal against an inadequate sentence. An appeal would thus be maintainable only under Section 377 to the High Court as it is effectively challenging the quantum of sentence.”

It is further contended that the above extracted judgment was discussed by a Division Bench of this Court in the case of **D. Sudhakar v. Panapu Sreenivasulu** by making the following observations and submits that in the light of these two judgment (3rd and 4th cited supra), the appeal is not maintainable and the same is liable to be dismissed:

“The second issue that falls for our consideration is that the incident has taken place on 07.12.2007 and the amendment to Section 372 Cr.P.C. has come into force w.e.f. 31.12.2009, where the victim can prefer an appeal against acquittal. This issue will not hold us for long, in view of the fact that the Apex Court in **National Commission for Women v. State of Delhi** (2nd cited supra), has already held that the amendment is not applicable to cases where the incident has taken place prior to amendment. Therefore, even on this count, the appellant fails, and as such, the appeal is liable to be dismissed as

not maintainable.”

Heard the learned counsel for both the parties and perused the material placed on record.

Section 372 Cr.P.C. and the proviso inserted therein by virtue of the Act 5 of 2009 read as under:

“Section 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.

[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 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]”

We have carefully considered the submissions of the learned counsel for both the parties with reference to the material on record.

Admittedly, in this case, the alleged offence took place on 14.11.2006 and the insertion of proviso to Section 372 Cr.P.C. by virtue of the Act 5 of 2009 came into force with effect from 31.12.2009. So far as the aspect of maintainability of the appeal preferred by PW1 against judgment of acquittal, is concerned, even though the Punjab and Haryana High Court has rendered its opinion interpreting that the insertion of proviso to Section 372 Cr.P.C. is prospective in application and only those orders which have been passed on or after December 31, 2009, irrespective of the date of occurrence or registration of F.I.R. or filing of complaint, shall be appealable at the instance of a “victim”, the same has no binding force inasmuch as the Apex Court in the case of **National Commission** (3rd cited supra) discussed the applicability of the inserted proviso purporting that the proviso gives a limited right to the victim to file an appeal in the High Court against any order of a

criminal court acquitting the accused as it came in the year 2009 (long after the present incident). From this, it is evident that in the facts of the referred case, the offence took place much prior to the amendment, as such, the inserted proviso has retrospective effect i.e. from the date of commission of the offence. Similar is the fact situation in the present case also. Admittedly, in the case on hand, the alleged offence took place on 14.11.2006 and the proviso to Section 372 Cr.P.C. came into force with effect from 31.12.2009 i.e. long after the date of commission of offence, and it is settled law that the precedent rendered by the Apex Court is binding and effective on all the subordinate Courts. Based on the above referred judgment of the Apex Court, a Division Bench of this Court in **D. Sudhakar** case (4th cited supra) held that the amendment is not applicable to cases where the incident has taken place prior to amendment and the appeal is liable to be dismissed as not maintainable. Following the judgment of the Apex Court in **National Commission** case (3rd cited supra), this Court, in similar circumstances, by judgment dated 24.02.2015, already dismissed Crl.A.No. 1269 of 2014 preferred by the victim.

On the above analysis, insofar as the present appeal is concerned, having regard to the fact that the alleged offence took place on 14.11.2006, much prior to the Act 5 of 2009 which came into force with effect from 31.12.2009 and in the light of the binding decision rendered by the Apex Court in **National Commission** case (3rd cited supra), we do not see any force in the contention put forth by the learned counsel for the appellant-*de facto* complainant, as such, the criminal appeal is liable to be dismissed as the same is not maintainable.

Hence, Crl.A.M.P.Nos. 307, 308 and 338 of 2015 are allowed, and consequently, the Criminal Appeal is dismissed as not maintainable. However, it is made clear that the observations made in this appeal do not in any manner come in the way of the State to pursue the Criminal Appeal No.993 of 2011 filed by it against the judgment of

acquittal and for its adjudication on merits.

G. CHANDRAIH, J

06.04.2015

M.S.K. JAISWAL, J

bcj