

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.473 of 2016

Arising Out of PS.Case No. -56 Year- 2008 Thana -BIHPUR District- BHAGALPUR

=====

Mahendra Prasad Yadav son of Kritee Prasad Yadav, resident of village-
Narayanpur, P.S.- Bihpur (Bhawanipur), District- Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar
2. Sant Lal Mandal son of Late Makko Mandal
3. Sanjay Mandal son of Sant Lal Mandal
4. Pradip Mandal, son of Late Deo Narain Mandal

All are residents of village- Shahpur, P.S.- Bihpur (Bhawanipur),
District- Bhagalpur.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Amrendra Kumar, Advocate

For the Respondent/s : Smt. Abha Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH
ORAL ORDER

2 05-07-2016 This appeal has been preferred under Section 378(1) of the Code of Criminal Procedure (for short 'the CrPC') by the appellant against the judgment and order dated 22.2.2016 passed in Cr. Appeal No.46 of 2014 by the learned 4th Additional District and Sessions Judge, Naugachia, Bhagalpur, whereby he has acquitted the accused respondents by setting aside the judgment and order of conviction dated 10.4.2014/15.4.2014 passed in Bihpur (Bhagalpur) P.S. Case No.56 of 2008 arising out of G.R. No.202 of 2008 and T.R. No.499 of 2014 by the Sub Divisional Judicial Magistrate, Naugachia, Bhagalpur sentencing the respondents, namely, Santlal Mandal, Sanjay Mandal and Pradip



Mandal to undergo rigorous imprisonment for three years with fine of Rs.3000/- under Section 420 of the Indian Penal Code (for short 'the Code') and in default of payment of fine to undergo rigorous imprisonment for further period of three months and also to undergo rigorous imprisonment for three years under Section 406 of the Code in addition to compensation of Rs.7,19,965/- payable in favour of the appellant, in the manner that accused respondents Santlal Mandal and Sanjay Mandal have been directed to pay Rs.3,00,000/- each and Pradip Mandal has been directed to pay Rs.1,19,965/- in favour of the appellant within three months respectively and in default of making payment of the aforesaid amount of compensation by the accused respondents, they have been directed to further undergo simple imprisonment for three months and two months respectively.

2. Today the matter has been listed before this Court under the heading "For Orders (Defective Cases)" for removal of certain defects. However, while considering the application I find that the instant appeal filed under Section 378(1) of the CrPC is not maintainable as Section 378 of the CrPC deals with an appeal filed by the aggrieved person in a case arising out of a complaint. Apparently, the instant case does not arise out of a complaint. In that view of the matter, the instant appeal is not maintainable at all

under Section 378 of the CrPC.

3. Mr. Amrendra Kumar, learned counsel for the appellant, however, submits that he may be allowed to convert the present appeal under the proviso to Section 372 of the CrPC as the appellant is a victim as defined under Section 2 (wa) of the CrPC. He has submitted that the proviso to Section 372 of the CrPC gives the victim 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. The submissions made by the learned counsel for the appellant is without any force in view of the fact that an appeal under the proviso to Section 372 of the CrPC is not maintainable against an order of acquittal passed by the appellate court. In the matter of *Jainath Prasad vs. The State of Bihar and another* since reported in [2015(2) PLJR 798], a Division Bench of this Court has already held that the victim has no right to file an appeal under the proviso to Section 372 of the CrPC against an order of acquittal passed by the appellate court. Under such circumstance, the only remedy available to the victim would be by way of revision under Sections 397 and 401 of the CrPC and such challenge would lie only within the parameters permissible under the aforesaid provisions.

4. At this stage, learned counsel for the appellant has

submitted that he may be allowed to withdraw the present application in order to file an appropriate revision application under Sections 397 and 401 of the CrPC before this Court.

5. Leave is granted.

6. The appeal is disposed of as withdrawn with liberty aforesaid.

(Ashwani Kumar Singh, J)

Md.S./-

U		T	
---	--	---	--