

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.122 OF 2015

Bhimrao s/o Mahalu Shinde
Age 62 years, Occup. Pensioner,
R/o Khambe, Tq. Sangamner,
At present residing at Vedant Bldg.,
No.III, Behind Aishwarya Petrol Pump,
Nashik – Sangamner Road
Sangamner, Dist. Ahmednagar ... APPELLANT

VERSUS

1. Shaikh Hamid Rafik Ahemad
Age 34 years, Occup. Service,
R/o Taklimiya, Tq. Rahuri,
Dist. Ahmednagar.
2. The State of Maharashtra
(Copy to be served on P.P./ A.P.P.,
High Court of Bombay,
Bench at Aurangabad) ... RESPONDENTS

.....
Shri G.K. Salve, Advocate for appellant
Shri B.V. Virdhe, A.P.P. for respondent No.2/ State
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 25th January, 2016.

ORAL ORDER :

1. Heard Mr. Salve, learned counsel for the appellant -
original complainant and learned A.P.P. for the respondent
No.2/State.

2. The appellant has tendered this appeal under Section 372 of the Criminal Procedure Code claiming to be original complainant. It is noticed that the impugned judgment has been passed in Sessions Case No.39/2012 by the Assistant Sessions Judge, Ahmednagar. With learned counsel for the appellant and learned A.P.P., I have gone through the provisions of Sections 372 and 374 of the Criminal Procedure Code. Section 374, which deals with appeals from conviction, reads as under :

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.

3. Thus, in matters where the conviction is by Assistant Sessions Judge, the appeal lies to the Court of Sessions.

4. Section 372 of the Criminal Procedure Code reads 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.

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.

5. It is clear from the proviso that the victim has a right to prefer an appeal against the order passed by the Court acquitting the accused and the appeal shall lie with Court to which an appeal ordinarily lies against the order of conviction of such Court. As per sub-section (3) of Section 374, appeal against conviction by the Assistant Sessions Judge lies to the Court of Sessions. When this provision is read along with the proviso of Section 372, it is clear that the appeal against present acquittal also should have been filed before the Sessions Judge at

Ahmednagar.

6. At this stage, learned counsel for the appellant (original complainant) makes a request seeking liberty to withdraw the Criminal Appeal with liberty to present the same before the Sessions Court at Ahmednagar and seeks time till 22nd February 2016.

7. For reasons mentioned above, the Criminal Appeal is allowed to be withdrawn with liberty to present proper appeal to the Sessions Court, Ahmednagar on or before 22nd February 2016. If the appeal is tendered before the Sessions Court, Ahmednagar, on or before 22nd February 2016, the same be registered without raising question of limitation.

8. Present Criminal Appeal is accordingly disposed of.

9. Authenticated copy permitted.

(A.I.S. CHEEMA, J.)