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

CRIMINAL REVISION APPLICATION NO. 37 OF 2016

Abhimanyu s/o Maruti Kharsade,
Age: 45 years, Occu: Agriculturist,
R/o Wasanwadi, Tq. & Dist. Beed

..APPLICANT

VERSUS

1. The State of Maharashtra
2. Mohan s/o Motiram Khod,
Age: 43 years, Occu: Agriculturist,
R/o Wasanwadi, Tq. & Dist. Beed
3. Ankush s/o Saheb Khod,
Age: 43 years, Occu: Agriculturist,
R/o Wasanwadi, Tq. & Dist. Beed
4. Sakharam s/o Saheb Khod,
Age: 58 years, Occu: Agriculturist,
R/o Wasanwadi, Tq. & Dist. Beed
5. Janardhan s/o Saheb Khod,
Age: 48 years, Occu: Agriculturist,
R/o Wasanwadi, Tq. & Dist. Beed
6. Ashruba s/o Motiram Khod,
Since died -Abated
7. Bappa s/o Sitaram Khod,
Age: 23 years, Occu: Agriculturist,
R/o Wasanwadi, Tq. & Dist. Beed
8. Bharat s/o Ashruba Khod,
Age: 28 years, Occu: Agriculturist,
R/o Wasanwadi, Tq. & Dist. Beed
9. Gorakh s/o Sakharam Khod,
Age: 30 years, Occu: Agriculturist,
R/o Wasanwadi, Tq. & Dist. Beed

..RESPONDENTS

Mr H. V. Tungar, Advocate for applicant;
Mr R. V. Dasalkar, Addl. Public Prosecutor for respondent No. 1

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CORAM : N.W. SAMBRE, J.

DATE : 2nd May, 2016

ORAL ORDER :

None appears on behalf of respondents no.2 to 5 and 7 to 9 though served.

2. Heard Mr Tungar, learned Counsel appearing on behalf of the applicant – original complainant and learned Addl. Public Prosecutor on behalf of respondent no.1.

3. At the behest of the applicant – complainant, respondents no.2 to 9 were charge-sheeted for offences punishable under sections 147, 148, 324, 504, 506 read with section 149 of the Indian Penal Code and after trial were acquitted on 28th March, 2011 by the learned Magistrate. In State appeal, the learned Sessions Judge rejected the same on the ground that offence though is cognizable but is bailable, the appeal against acquittal, at the behest of the State, is not maintainable. As such, present revision by the applicant – complainant.

4. Mr Tungar, learned Counsel appearing on behalf of the applicant while inviting attention of this Court to the provisions of section 378 of the Code of Criminal Procedure would submit that an appeal against acquittal, at the behest of the State, even in a case of cognizable and bailable offence is maintainable before Sessions Judge.

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5. Learned Counsel tied to explain the very scheme of section 378 of the Code of Criminal Procedure. Apart from above, he relied upon the Full Bench judgment of the High Court of Punjab & Haryana, in the matter of **Tata Steel Ltd; Kesar Singh vs. Atma Tube Products Ltd. & ors; Dheeraj Kumar**, reported in **2013 CJ (P & H) 354**. He would rely upon the observations made in paragraph 106 and the reference answered *qua* question clause (B), which read thus :-

"The only effective modicum to meet with the situation as we perceive can be to interpret and construe [Section 378\(1\)\(a\)](#) in such a manner that the State's appeal(s) in respect of all the cognizable offences (whether bailable or non-bailable) are presented to the Court of Session, for such a recourse is the least harmful, non-prejudicial and substantively conforms to the legislative vision underlying the amendments carried out in [the Code](#) in the years 2005 and 2009. This can be feasible if the word "and" contained in Clause (a) of [Section 378\(1\)](#) of the Code is read as "or" so that the appeal preferred by the State against an order of acquittal passed by the Magistrate in respect of every cognizable offence, whether bailable or not, lies to the Court of Session only. We hasten to add that the action in respect of a non-cognizable offence can be initiated only by filing a private complaint before the Magistrate and against acquittal in such a case the appellate recourse lies under [Section 378\(4\)](#) of the Code."

6. As respondents no.2 to 5 and 7 to 9 though are served, none appears on behalf of them, it is required to be noted that in view of the observations made by the Full Bench of the High Court of Punjab & Haryana, in the matter of Tata Steel Ltd; Kesar Singh (quoted supra), the

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order of rejection of the appeal in bailable and cognizable cases by the learned Magistrate is not sustainable.

7. In view thereof, the order dated 25th January, 2016, passed by learned Additional Sessions Judge, Beed, in Criminal Appeal No.27 of 2012, is hereby set aside.

Criminal Appeal No.27 of 2012 stands restored to the file of learned Additional Sessions Judge, Beed, with a direction to decide the same afresh, in the light of the observations made by High Court of Punjab & Haryana, in the matter of Tata Steel Ltd; Kesar Singh (supra).

Criminal Revision Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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