

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4923 OF 2015

IN & WITH

CRIMINAL APPLICATION NO.4922 OF 2015

Prayagabai w/o Parasram Dhanwade,
Age-60 years, Occu:Household,
R/o-Devilimgaon, Tq-Ashti, Dist-Beed.

**...APPLICANT
(Victim)**

VERSUS

- 1) State of Maharashtra
Through- Police Inspector,
Police Station, Ambhora,
Tq-Ashti, Dist-Beed,
- 2) Babasaheb Bhagwan Kardile,
Age-28 years, Occu:Labour,
R/o-Dongagan, Tq-Ashti,
Dist-Beed,
- 3) Hausabai Bhagwan Kardile,
Age-78 years, Occu:Household,
R/o-Dongagan, Tq-Ashti,
Dist-Beed.

...RESPONDENTS

...

Mr.Mahesh S. Bhosale Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent No.1.
Mr.K.N. Farooqui Advocate h/f. Mr. N.L.
Jadhav Advocate for Respondent No.2.

...

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

DATE : 2ND MAY, 2016

ORDER :

1. The learned counsel for the Applicant claims that the Applicant is mother of deceased Sarika who committed suicide. The counsel states that thus the Applicant is victim of the offence.

2. This Criminal Application No.4923 is for condonation of delay filed in Criminal Application No.4922 of 2015, which has been tendered against the Judgment of acquittal passed by Assistant Sessions Judge, Beed on 12th June 2014 in Sessions Case No.134 of 2013. The Sections involved are 498-A, 306, 323 read with 34 of the Indian Penal Code, 1860. The question is whether in a State case before the trial Court if the Judgment of acquittal has been passed by the Assistant Sessions Judge, would the Appeal at the instance of private complainant or victim lie to the High Court?

3. Section 372 of the Code of Criminal Procedure, 1973 (Cr.P.C.) 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."

. Thus, the victim can file appeal against Judgment or order of acquittal and the appeal shall lie in the Court in which the appeal ordinarily lies against the order of conviction of such Court.

4. Sub-section (3) of Section 374 of Cr.P.C., which is relevant for the present matter,

reads as under:

"374. Appeals from convictions.-

(1)..... (2).....

(3) Save as otherwise provided in subsection (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."

. It is clear that if the Assistant Sessions Judge had convicted the appeal would lie to the Court of Sessions. Under Section 10 of Cr.P.C., all Assistant Sessions Judges are subordinate to the Sessions Judge in whose Court they exercise jurisdiction. The Scheme of Cr.P.C.

on this count appears to be quite clear.

5. Learned counsel for the Applicant-Appellant tried to suggest that under Section 378(4) of Cr.P.C. this Appeal could have been entertained. However, that Sub-section relates to case instituted upon complaint. In the present matter, the impugned Judgment shows that it was not a private complaint which was decided, but it was a State case.

6. For the above reasons I find that this Application for condonation of delay in Application against Judgment of acquittal by Assistant Sessions Judge, cannot be entertained in the High Court and the parties must be relegated to the Sessions Court. The learned A.P.P. and learned counsel for Respondent Nos.2 and 3 agree that the matter would lie before the Sessions Court.

7. Counsel for the Applicant states that he may be permitted to withdraw from these Applications and tender application with Appeal before the Court of Sessions. The liberty sought is granted.

8. Criminal Application No.4923 of 2015 and Criminal Application No.4922 of 2015 are disposed of as withdrawn, with liberty to the Applicant - original complainant to move the Court of Sessions against the impugned Judgment and order of acquittal passed by Assistant Sessions Judge. The Court of Sessions, is requested to take into consideration the time spent by the Applicant in prosecuting this matter in the High Court, while considering the question of condonation of delay.

[A.I.S.CHEEMA, J.]