

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

CRIMINAL WRIT PETITION NO. 968 OF 2013

Parbhani District Central Bank Ltd.,
through its Assistant Manager,
Digambar s/o Madanrao Parve,
Age : 56 years, Occu : Service,
Assistant Manager.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through Police Station,
Akhada Balapur, Tq.Kalamnuri,
District Hingoli.
- 2 Nandkishor s/o Govindrao Joshi,
Age : 64 years, Occ : Nil,
R/o Hudco, Nanded,
Tq. & Dist.Nanded.

...RESPONDENTS

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Amicus Curiae : Shri Shirish Gupte, Senior Advocate.

Advocate for Petitioner : Shri Deshmukh Sachin S.

APP for Respondent No.1/State : Shri S.N.Kendre.

Advocate for Respondent No.2 : Shri Y.V.Kakade.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 23rd June, 2016

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner is aggrieved by the order dated 01.04.2013 by which Miscellaneous Application No.1/2013, filed by the Petitioner seeking condonation of delay in preferring an appeal, has been rejected by the learned Additional Sessions Judge, Hingoli.

3 The Petitioner contends that pursuant to the complaint filed by the Petitioner against Respondent No.2 alleging commission of offences punishable under Sections 409, 468 and 420 of the Indian Penal Code, Regular Criminal Case No.68/1999 was adjudicated upon by the learned Judicial Magistrate First Class, Kalamnuri. By the judgment and order dated 23.02.2011, Respondent No.2/ Accused was acquitted of the offences.

4 The grievance is that pursuant to the said judgment, the State did not prefer an appeal before the learned Additional Sessions Judge at Hingoli. After the Petitioner got the knowledge of the judgment, it had approached the Public Prosecutor with regard to the filing of an appeal. After obtaining the certified copy of the judgment on 11.06.2012, legal

opinion was sought and upon confirming that no appeal was filed by the Public Prosecutor, the Petitioner preferred Miscellaneous Application No.1/2013 seeking condonation of delay of 18 months and 12 days in preferring an appeal. By the impugned order, the said application has been rejected.

5 Shri Deshmukh, learned Advocate for the Petitioner, submits that the Petitioner is a victim and hence, a legal injury has been caused to the Petitioner by the non filing of the appeal by the Public Prosecutor. It was under the complaint of the Petitioner that the prosecution was launched. Under the proviso to Section 372 of the Code of Criminal Procedure, which has been inserted by Amendment Act No.5 of 2009 w.e.f. 31.12.2009, the victim was bestowed with a right to prefer an appeal against the order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. According to Shri Deshmukh, limitation has not been specifically prescribed under Section 372.

6 He further submits that an application for obtaining a certified copy of the judgment was filed on 07.06.2012 and the same was obtained on 11.06.2012. Thereafter, the Petitioner Bank sought a legal opinion and consequent to the legal opinion, the appeal was preferred

along with an application for condonation of delay on 04.01.2013.

7 He, therefore, submits that if the limitation period of 90 days is to be computed from the date of receipt of the certified copy, the delay would be of a minor period. Notwithstanding the same, even if it is held that the limitation period would start from the date of the judgment, the delay of 18 months and 12 days can neither be termed as being inordinate nor having been deliberately caused by the Petitioner. He submits that neither any laches can be attributed to the conduct of the Petitioner nor can it be said that the Petitioner would gain an undue advantage by causing delay in the matter. He, therefore, prays for quashing of the impugned order and seeks condonation of delay.

8 Shri Kakade, learned Advocate appearing on behalf of Respondent No.2, strenuously opposes this petition. By relying on the pleadings in the application for condonation of delay, Shri Kakade submits that an untrue story has been narrated by the Petitioner in the said application.

9 He submits that Respondent No.2 had entered an application dated 10.02.2012 in the inward department of the Petitioner Bank indicating that he has been acquitted of the offences and considering the

fact that the charge of misappropriation of money has not been proved against him, he should be paid his retiral benefits taking into account that he had attained the age of superannuation. Shri Kakade, therefore, submits that by virtue of the application dated 10.02.2012, the Petitioner was made aware of the judgment and despite the same, the Petitioner has not preferred an appeal.

10 Shri Kakade further submits that though the Petitioner had lodged the complaint levelling allegations against Respondent No.2, it was the State which, under the scheme of law, has to prosecute Respondent No.2. Having so done and in the light of the proceedings resulting in the acquittal of Respondent No.2, the Petitioner is not competent to file an appeal since the State has to prefer an appeal under Section 378 of the Code of Criminal Procedure. He submits that Section 372 would have no applicability in this backdrop. He, therefore, prays for the dismissal of this petition.

11 The learned APP has supported the impugned order and has prayed for the dismissal of the petition with costs.

12 Considering the conspectus of the matter, I called upon Shri Shirish Gupte, the learned Senior Advocate, to assist the Court.

Coincidentally, Shri Gupte has been the counsel for one of the Appellants in the reported judgment of the learned Division Bench of this Court in the matter of *Balasaheb Rangnath Khade vs. The State of Maharashtra and others*, **2013 ALL MR (Cri) 1153**. Shri Gupte graciously agreed to assist the Court on the point of law in this matter.

13 Shri Gupte contended that Chapter-IX of the Code of Criminal Procedure, 1973, pertains to appeals and the scope and jurisdiction of the Appeal Court. He stated that in the light of the facts of this case, a criminal revision application would not be maintainable considering the fact that the learned Magistrate has delivered its judgment thereby, acquitting the accused.

14 He submits that Section 372 along with the proviso, which has been introduced by way of an amendment, cannot be read in isolation. The appeal to be preferred is provided only in Section 378. Section 372 is a prohibition on filing of any appeal except in accordance with the provisions under the Code of Criminal Procedure. He, therefore, submits that Section 372 will have to be read along with Section 378 and the golden rule of interpretation as well as the test would be that the proviso below Section 372 read with Section 378 leads to a harmonious interpretation. He hastens to clarify that the proviso to Section 372 cannot

be interpreted in a manner which would do violence to the scheme under Section 378.

15 In support of his contentions, he has relied upon the judgment in the matter of *CASIO India Company Private Limited vs. State of Haryana*, **2016 (3) Scale 441** : (Civil Appeal Nos.1410 and 1411/2007 and 5450/2013, decided on 29.03.2016). He specifically relies upon paragraphs 19 and 20 of the said judgment, which read as under:-

“19. We have reproduced the exemption notification above and referred to the language employed. At this juncture, it is absolutely necessary to understand the language employed in the proviso to the notification. If there was no proviso to the notification there would have been no difficulty whatsoever in holding that the exemption is qua the goods manufactured and was not curtailed or restricted to the sales made by the manufacturer dealer and would not apply to the second or subsequent sales made by a trader, who buys the goods from the manufacturer-dealer and sells the same in the course of inter-state trade or commerce. It is pertinent to note that, clause (ii) of sub-rule (n) refers to sale of finished products in the course of inter-state trade or commerce where the finished products are manufactured by eligible industrial unit. There is no stipulation that only the first sale or the sale by the eligible industrial unit in Inter State or Trade would be exempt. The confusion arises, as it seems to us, in the proviso to the notification which states that the manufacturer-dealer should not have charged tax. It needs no special emphasis to mention that provisos can serve various purposes. The normal function is to qualify something enacted therein but for the said proviso

would fall within the purview of the enactment. It is in the nature of exception. [See : *Kedarnath Jute Manufacturing Co. Ltd v. Commercial Tax Officer*, AIR 1966 SC 12]. Hidayatullah, J. (as his Lordship then was) in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha*, AIR 1961 SC 1596, had observed that a proviso is generally added to an enactment to qualify or create an exception to what is in the enactment, and the proviso is not interpreted as stating a general rule. Further, except for instances dealt with in the proviso, the same should not be used for interpreting the main provision/enactment, so as to exclude something by implication. It is by nature of an addendum or dealing with a subject matter which is foreign to the main enactment. (See : *CIT, Mysore etc. v Indo Mercantile Bank Ltd*, AIR 1959 SC 713). Proviso should not be normally construed as nullifying the enactment or as taking away completely a right conferred.

20. Read in this manner, we do not think the proviso should be given a greater or more significant role in interpretation of the main part of the notification, except as carving out an exception. It means and implies that the requirement of the proviso should be satisfied i.e. manufacturing dealer should not have charged the tax. The proviso would not scuttle or negate the main provision by holding that the first transaction by the eligible manufacturing dealer in the course by way of inter-state sale would be exempt but if the inter-state sale is made by trader/purchaser, the same would not be exempt. That will not be the correct understanding of the proviso. Giving over due and extended implied interpretation to the proviso in the notification will nullify and unreasonably restrict the general and plain words of the main notification. Such construction is not warranted.”

section. The proviso is aimed at either clarifying the position in law in consonance with the specific section or would in itself be a substantive provision without running counter to the meaning flowing from the section. He, therefore, relied upon the judgment of the Honourable Supreme Court (four Judges' Bench) in the matter of *Dwarka Prasad vs. Dwarka Das Saraf*, **(1976) 1 SCC 128** and especially on paragraphs 17 and 18, which read as under:-

- “17. While rulings and text books bearing on statutory construction have assigned many functions for provisos, we have to be selective, having regard to the text and context of a statute. Nothing is gained by extensive references to luminous classics or supportive case law. Having explained the approach we make to the specific 'proviso' situation in s. 2(a) of the Act, what strikes us as meaningful here is that the legislature by the amending Act clarified what was implicit earlier and expressly carved out what otherwise might be mistakenly covered by the main definition. The proviso does not, in this case, expand, by implication, the protected area of building tenancies to embrace 'business' leases.
18. We may mention fairness to counsel that the following, among other decisions, were cited at the bar bearing on the uses of provisos in statutes: *Commissioner of Income-tax v. Indo-Mercantile Bank Ltd.*; *M/s. Ram Narain Sons Ltd. v. Asst. Commissioner of Sales Tax*; *Thompson v. Dibdin*; *Rex v. Dibdin* and *Tahsildar Singh v. State of U.P.* The law is trite. A proviso must be limited to the subject matter of the enacting clause. It is a settled rule of construction that a proviso must *prima facie* be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the

principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context' (1912 A.C. 544). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

"The proper course is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail.

(Maxwell on Interpretation of Statutes, 10th Edn. P. 162)"

17 In support of his submission that Section 372 cannot be applied in isolation and that it should be read along with Section 378, he has placed reliance upon the observations of the Honourable Supreme Court in paragraphs 15 and 16 of its judgment in the matter of *Satya Pal Singh vs. State of M.P.*, **2016(1) Supreme Court Journal 691**, which read as under:-

“15. *Thus, from a reading of the abovesaid legal position laid down by this Court in the cases referred to supra, it is abundantly clear that the proviso to Section 372 of Cr.P.C. must be read along with its main enactment*

i.e. Section 372 itself and together with sub-Section (3) to Section 378 of Cr.P.C. otherwise the substantive provision of Section 372 of Cr.P.C. will be rendered nugatory, as it clearly states that no appeal shall lie from any judgment or order of a Criminal Court except as provided by Cr.P.C..

16. *Thus, to conclude on the legal issue: “Whether the appellant herein, being the father of the deceased, has statutory right to prefer an appeal to the High Court against the order of acquittal under proviso to Section 372 of Cr.P.C. without obtaining the leave of the High Court as required under sub-Section (3) to Section 378 of Cr.P.C.”, this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2(wa) of Cr.P.C., under proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-Section (3) to Section 378 of Cr.P.C. The High Court of M.P. has failed to deal with this important legal aspect of the matter while passing the impugned judgment and order.”*

18 He has placed reliance upon the judgment of the Honourable Supreme Court (a three judges' Bench) in the matter of *S.Sundaram Pillai vs. V.R.Pattabiraman*, **(1985) 1 SCC 591**. Paragraph 43 of the said judgment reads as under:-

- “43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:-
 - (1) qualifying or excepting certain provisions from the main enactment;
 - (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain

- mandatory conditions to be fulfilled in order to make the enactment workable;*
- (3) *it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and*
- (4) *it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.”*

19 He, therefore, submitted that in the peculiar facts of this case, that as the State has not preferred an appeal against the judgment of acquittal, the victim could not have filed the criminal revision application, which was rightly not considered as the application for condonation of delay was rejected. The Petitioner has no option, but to prefer an appeal in this Court along with an application for condonation of delay and an application for seeking leave of this Court for filing an appeal.

20 He has then placed reliance upon the judgment of the Honourable Supreme Court in the matter of *Subhash Chand vs. State (Delhi Administration)*, **(2013) 2 SCC 17**. Paragraphs 17, 18, 19 and 23 of *Subhash Chand judgment (supra)* read as under:-

“17. At the outset, it must be noted that as per Section 378(3) appeals against orders of acquittal which have to be filed in the High Court under Section 378(1)(b) and 378(2)(b) of the Code cannot be entertained except with the leave of the High Court. Section 378(1)(a) provides that, in any case, if an order of acquittal is passed by a Magistrate in respect of a

cognizable and non-bailable offence the District Magistrate may direct the Public Prosecutor to present an appeal to the court of Sessions. Sub-Section (1)(b) of Section 378 provides that, in any case, the State Government may direct the Public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision. Sub-Section (2) of Section 378 refers to orders of acquittal passed in any case investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 or by any other agency empowered to make investigation into an offence under any Central Act other than the Code. This provision is similar to sub-section(1) except that here the words 'State Government' are substituted by the words 'Central Government'.

18. *If we analyse Section 378(1)(a) & (b), it is clear that the State Government cannot direct the Public Prosecutor to file an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence because of the categorical bar created by Section 378(1)(b). Such appeals, that is appeals against orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence can only be filed in the Sessions Court at the instance of the Public Prosecutor as directed by the District Magistrate. Section 378(1)(b) uses the words "in any case" but leaves out orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence from the control of the State Government. Therefore, in all other cases where orders of acquittal are passed appeals can be filed by the Public Prosecutor as directed by the State Government to the High Court.*
19. *Sub-Section (4) of Section 378 makes provision for appeal against an order of acquittal passed in case instituted upon complaint. It states that in such case if*

the complainant makes an application to the High Court and the High Court grants special leave to appeal, the complainant may present such an appeal to the High Court. This sub-section speaks of 'special leave' as against sub-section (3) relating to other appeals which speaks of 'leave'. Thus, complainant's appeal against an order of acquittal is a category by itself. The complainant could be a private person or a public servant. This is evident from sub-section (5) which refers to application filed for 'special leave' by the complainant. It grants six months period of limitation to a complainant who is a public servant and sixty days in every other case for filing application. Sub-Section (6) is important. It states that if in any case complainant's application for 'special leave' under sub-Section (4) is refused no appeal from order of acquittal shall lie under sub-section (1) or under sub-section (2). Thus, if 'special leave' is not granted to the complainant to appeal against an order of acquittal the matter must end there. Neither the District Magistrate nor the State Government can appeal against that order of acquittal. The idea appears to be to accord quietus to the case in such a situation.

23. *In view of the above, we conclude that a complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court. He cannot file such appeal in the Sessions Court. In the instant case the complaint alleging offences punishable under Section 16(1)(1A) read with Section 7 of the PFA Act and the Rules is filed by complainant Shri Jaiswal, Local Health Authority through Delhi Administration. The appellant was acquitted by the Metropolitan Magistrate, Patiala House Courts, New Delhi. The complainant can challenge the order of acquittal by filing an application for special leave to appeal in the Delhi High Court and not in the Sessions Court. Therefore, the impugned order holding that this case is not governed by Section 378(4) of the Code is quashed and set aside. In the circumstances the appeal is*

allowed.”

21 He, therefore, submits that the last word of the Honourable Supreme Court on the right of the complainant, complainant-victim or the victim, is found in its judgments delivered in *Subhash Chand and Satya Pal Singh (supra)*.

22 He further adds that though the Criminal Writ Petition before this Court is not maintainable, the Petitioner can request this Court for converting this Criminal Writ Petition into a criminal appeal and can file applications for condonation of delay and for seeking leave of this Court to entertain such an appeal.

23 I have considered the submissions of the learned Advocates.

24 Section 372 of the Code of Criminal Procedure 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.”

25 Section 378 of the Code of Criminal Procedure reads as
under:-

- “378. Appeal in case of acquittal.*
- (1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),*
 - (a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;*
 - (b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.]*
 - (2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, [the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal –*
 - (a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;*
 - (b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.]*
 - (3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the*

- leave of the High Court.*
- (4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.*
 - (5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.*
 - (6) If in any case, the application under sub-section (4) for the grant of special leave, to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2)."*

26 It is apparent from the impugned order that the Petitioner has invoked Section 372 in support of its contention that the victim can prefer an appeal. The learned Additional Sessions Judge, Hingoli has come to the conclusion that the State or Authority concerned can alone direct the Public Prosecutor to present an appeal under sub-sections (1) and (2) of Section 378. Unless such direction is issued, the Petitioner claiming to be the victim, cannot prefer an appeal.

27 I find that if the State or the District Magistrate does not direct the Public Prosecutor to prefer an appeal, a victim could be said to have been aggrieved by the failure to lodge an appeal and as such, would

be in a position to invoke the proviso to Section 372 and file an appeal with the Court before which such an appeal would ordinarily lie against the order of acquittal. However, whether, this could be done de-hors Section 378(4), is the issue.

28 The proviso to Section 372 has been introduced by Amendment Act No.5 of 2009 w.e.f. 31.12.2009 with the sole purpose of enabling the victim to have a right to prefer an appeal against any order passed by the Court, either acquitting the accused or convicting him for a lesser offence or imposing inadequate compensation. The phraseology of the proviso by which the right to prefer an appeal has been given to the victim, cannot be ignored in view of the fact that the words "*shall have a right to prefer an appeal*" find place in the proviso. I am, therefore, of the view that since the State did not prefer an appeal, the Petitioner can invoke the proviso to Section 372 in it's capacity of being a complainant/victim.

29 The Honourable Supreme Court in the matter of *Satya Pal Singh vs. State of M.P.*, **2016(1) Supreme Court Journal 691**, has extensively dealt with the scope, purpose and ambit of the proviso to Section 372 in the light of sub-section (3) of Section 378 of the Code of Criminal Procedure. It has been held that where an appeal to the High

Court against an order of acquittal can be preferred under Section 378(3), it was necessary to obtain leave of the High Court. Section 372 clearly indicates that no appeal shall lie against the judgment or order of the Criminal Court except as is provided for by the Code of Criminal Procedure. The Apex Court, therefore, concluded that the proviso to Section 372, if involves a right to file an appeal before the High Court, leave of the High Court as envisaged under Section 378(3) will have to be obtained.

30 It would be apposite to refer to paragraphs 9, 10, 11, 12 and 13 of *Satya Pal Singh judgment (supra)* as under:-

- “9. We have carefully examined the above mentioned provisions of Cr.P.C. and the Full Bench decision of Delhi High Court referred to *supra* upon which strong reliance is placed by the learned counsel for the appellant. There is no doubt that the appellant, being the father of the deceased, has locus standi to prefer an appeal before the High Court under proviso to Section 372 of Cr.P.C. as he falls within the definition of victim as defined under Section 2(wa) of Cr.P.C. to question the correctness of the judgment and order of acquittal passed by the trial court in favour of respondent nos. 2 to 6 in Sessions Case No. 293/2010.
10. The proviso to Section 372 of Cr.P.C. was amended by Act No.5 of 2009. The said proviso confers a statutory right upon the victim, as defined under Section 2(wa) of Cr.P.C. to prefer an appeal against an order passed by the trial court either acquitting the accused or convicting him/her for a lesser offence or imposing inadequate compensation. In

this regard, the Full Bench of Delhi High Court in the case referred to supra has elaborately dealt with the legislative history of insertion of the proviso to Section 372 of Cr.P.C. by Act No. 5 of 2009 with effect from 31.12.2009. The relevant provision of Section 372 of Cr.P.C. reads thus:-

“372. 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.”

The said amendment to the provision of Section 372 of Cr.P.C. was prompted by 154th Law Commission Report. The said Law Commission Report has undertaken a comprehensive review of Cr.P.C. and its recommendations were found to be very appropriate in amending the Cr.P.C. particularly in relation to provisions concerning arrest, custody and remand, procedure to be followed in summons and warrant-cases, compounding of offences and special protection in respect of women and inquiry and trial of persons of unsound mind. Further, the Law Commission in its report has noted the relevant aspect of the matter namely that the victims are the worst sufferers in a crime and they do not have much role in the Court proceedings. They need to be given certain rights and compensation so that there is no distortion of the criminal justice system. The said report of the Law Commission has also taken note of the views of the criminologist, penologist and reformers of criminal justice system at length and has focused on victimology, control of victimization and protection of the victims of crimes and the issues of compensation to be awarded in favour of

them. Therefore, the Parliament on the basis of the aforesaid Report of the Law Commission, which is victim oriented in approach, has amended certain provisions of the Cr.P.C. and in that amendment the proviso to Section 372 of Cr.P.C. was added to confer the statutory right upon the victim to prefer an appeal before the High Court against acquittal order, or an order convicting the accused for the lesser offence or against the order imposing inadequate compensation.

11. The Full Bench of the High Court of Delhi after examining the relevant provisions under Section 2(wa) and proviso to Section 372 of Cr.P.C., in the light of their legislative history has held that the right to prefer an appeal conferred upon the victim or relatives of the victim by virtue of proviso to Section 372 is an independent statutory right. Therefore, it has held that there is no need for the victim in terms of definition under Section 2(wa) of Cr.P.C. to seek the leave of the High Court as required under sub-Section (3) of Section 378 of Cr.P.C. to prefer an appeal under proviso to Section 372 of Cr.P.C. The said view of the High Court is not legally correct for the reason that the substantive provision of Section 372 of Cr.P.C. clearly provides that no appeal shall lie from any judgment and order of a Criminal Court except as provided for by Cr.P.C. Further, sub-Section (3) to Section 378 of Cr.P.C. provides that for preferring an appeal to the High Court against an order of acquittal it is necessary to obtain its leave. We have to refer to the rules of interpretation of statutes to find out what is the effect of the proviso to Section 372 of Cr.P.C., it is well established that the proviso of a statute must be given an interpretation limited to the subject-matter of the enacting provision. Reliance is placed on the decision of this Court rendered by four Judge Bench in *Dwarka Prasad v. Dwarka Das Saraf*, (1976) 1 SCC 128, the relevant para 18 of which reads thus:

“18. ... A proviso must be limited to the

subject-matter of the enacting clause. It is a settled rule of construction that a proviso must *prima facie* be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. “Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context” (*Thompson v. Dibdin*, 1912 AC 533). If the rule of construction is that *prima facie* a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.”

12. Further, a three Judge Bench of this Court by majority of 2:1 in the case of *S. Sundaram Pillai v. V.R. Pattabiraman*, (1985) 1 SCC 591, has elaborately examined the scope of proviso to the substantive provision of the Section and rules of its interpretation. The relevant paras are reproduced hereunder:

“30. Sarathi in *Interpretation of Statutes* at pages 294-295 has collected the following principles in regard to a proviso:

(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter

intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision.

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32. In Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai it was held that the main object of a proviso is merely to qualify the main enactment. In Madras and Southern Mahrata Railway Co. Ltd. v. Bezwada Municipality Lord Macmillan observed thus:

“The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.”

33. The above case was approved by this Court in CIT v. Indo Mercantile Bank Ltd. where Kapur, J. held that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha Hidayatullah, J., as he then was, very aptly and succinctly indicated the parameters of a proviso thus:

“As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule.”

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36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.”

Thus, from a reading of the abovesaid legal position laid down by this Court in the cases referred to supra, it is abundantly clear that the proviso to Section 372 of Cr.P.C. must be read along with its main enactment i.e., Section 372 itself and together with sub-Section (3) to Section 378 of Cr.P.C. otherwise the substantive provision of Section 372 of Cr.P.C. will be rendered nugatory, as it clearly states that no appeal shall lie from any judgment or order of a Criminal Court except as provided by Cr.P.C.

13. Thus, to conclude on the legal issue: “whether the appellant herein, being the father of the deceased, has statutory right to prefer an appeal to the High Court against the order of acquittal under proviso to Section 372 of Cr.P.C. without obtaining the leave of the High Court as required under sub-Section (3) to Section 378 of Cr.P.C.”, this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2(wa) of Cr.P.C., under proviso to Section 372, but only after obtaining the leave of the High

Court as required under sub-Section (3) to Section 378 of Cr.P.C. The High Court of M.P. has failed to deal with this important legal aspect of the matter while passing the impugned judgment and order.”

31 In the instant case, the Petitioner claims to be a victim of the offences allegedly committed by Respondent No.2 and, therefore, have the right to prefer an appeal and more so in the backdrop of the State having failed in filing such an appeal against the order of acquittal.

32 The learned Advocates for the respective sides were not in a position to submit as to whether, any limitation in filing an appeal under the proviso to Section 372 is prescribed or not, on the lines of the limitation period in filing such an appeal as is prescribed under sub-section (5) of Section 378. It is, however, submitted that Article 114(1) of the Limitation Act, 1963 can be read into the proviso to Section 372.

33 Notwithstanding the same, the learned Advocates submitted that there are no judicial pronouncements on the issue of limitation in relation to the filing of an appeal under the proviso to Section 372. It is further submitted that the Petitioner has proceeded on the premise that the limitation of 90 days is applicable to the Petitioner while filing an appeal.

34 In the fact situation as above, I am inclined to accept the submissions of Shri Gupte considering the ratio laid down by the Honourable Supreme Court in the cases of *Casio India Company Private Limited, Dwarka Prasad, Subhash Chand and Satya Pal Singh (supra)*, that it is the only District Magistrate who can direct the filing of an appeal under Section 378(1) and the proviso to Section 372 will have to be read along with Section 378(4) and (5).

35 The Petitioner herein was the Complainant on behalf of the Bank. He was Auditor and in his capacity as being the Auditor, he had lodged the First Information Report against Respondent No.2. Therefore, though he is the author of the complaint as is understood under Section 2(d) of the Code of Criminal Procedure, he, as an individual, would not fall within the definition of victim under Section 2(wa). Therefore, though the right of the Petitioner to file a complaint or lodge an FIR can be recognized, yet, insofar as preferring an appeal against the order of acquittal is concerned, the right of the Petitioner as a Bank under the proviso to Section 372 will have to be read within the scope of Section 378(3), (4) and (5) of the Code of Criminal Procedure.

36 In view of the above conclusion, the Petitioner could not have preferred an appeal before the learned Additional Sessions Judge, Hingoli.

The Petitioner could have filed an appeal before this Court in its capacity of being the Complainant/ victim by relying upon the proviso to Section 372 of the Code of Criminal Procedure.

37 At this juncture, the learned Advocate for the Petitioner submits that the Petitioner be granted leave to convert this Criminal Writ Petition into a Criminal Appeal and the Petitioner would prefer an application for seeking leave of this Court to entertain the said appeal. The Petitioner would also file an application making out a case for condonation of delay in the light of the fact that the Petitioner has lost precious time in it's Criminal Appeal dated 04.01.2013 erroneously filed before the learned Additional Sessions Judge as well as time spent by the Petitioner in this Court till the date of this order.

38 The learned Advocate for Respondent No.2 has opposed the request put forth by the Petitioner as above.

39 However, considering the peculiar facts of this case and after having concluded that the Petitioner was required to prefer an appeal before this Court under the proviso to Section 372 r/w Section 378 of the Code of Criminal Procedure, I am inclined to accept the request of the Petitioner.

40 As such, after having concluded that the Petitioner has erroneously filed Miscellaneous Criminal Application No.1/2013 before the learned Additional Sessions Judge, Hingoli, I hereby permit the Petitioner to convert this Criminal Writ Petition into a criminal appeal. While doing so, the Petitioner shall have to file an application for seeking leave of this Court to entertain the appeal and file another application for seeking condonation of delay.

41 Needless to state, this Court has not dealt with the merits of the appeal.

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(RAVINDRA V. GHUGE, J.)