

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION Nos.10815 & 10497 of 2016

COMMON ORDER:

These two criminal petitions are filed against the common order dated 14.06.2016 in CF Nos.1641 & 1642 of 2016 on the file of the Court of Sessions, Metropolitan Division, Vijayawada, by and under which, the learned Sessions Judge returned the two appeals filed by the *de facto* complainant against the order of acquittal passed by the trial court, on the ground that the appeals cannot be entertained without obtaining the leave of the High Court.

Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor, representing the State.

The petitioner-Gurram Lakshmi Sowjanya is the *de facto* complainant in both the cases tried before the trial Court, viz. C.C.No.648/2015 and CC.No.860/2015 on the file of IV ACMM, Vijayawada. C.C.No.648/2015 is registered based on the charge sheet filed by the concerned police against the husband of the petitioner. CC.No.860/2015 is registered based on the private complaint lodged by the petitioner against her in-laws. Both the cases were tried together and the trial Court, by a common judgment, acquitted the accused therein. Aggrieved thereby, the petitioner filed two appeals before the Court below under the proviso to Section 372 Cr.P.C, which 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.) {Proviso added by Act No.5 of 2009 (w.e.f.31.12.2009)}”

The Court below after hearing both sides, relying on the judgment of the Apex Court in ***Satya Pal Singh v. State of Madhya Pradesh and others***^[1] returned the appeals observing that in view of the mandatory requirement of seeking the leave of the High Court under Section 378(3) Cr.P.C., unless the leave is obtained from the High Court, the appeals cannot be entertained. It is relevant to reproduce the provision of Section 378 (3) Cr.P.C hereunder:

“**Sec.378(3) Cr.P.C:** {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. (Sub-section (3) is a new provision)”

On perusal of the impugned order, it is noticed that the Court below erred in interpreting and understanding the proviso provided under Section 372 Cr.P.C. The proviso to Section 372 Cr.P.C clearly states that the victim shall have a right to appeal against any order of acquittal to the court to which an appeal ordinarily lies. Section 378(3) says that no appeal to the High Court shall be entertained without leave of the High Court. The provision to Section 372 Cr.P.C does not say that the victim has to obtain leave from the High Court to prefer an appeal before the Court to which an appeal ordinarily lies, other than High Court. The Court below further erred in observing that since one of the case is private complaint, the victim has to obtain leave from the High Court. The proviso to Section 372 Cr.P.C does not say that the victim in police case or private complaint only has a right to prefer appeal against the order of acquittal.

The learned Sessions Judge has altogether misdirected himself in the entire approach. A plain reading of the proviso which is appended to Section 372 Cr.P.C., by way of amendment, confers a right upon the victim to prefer an appeal questioning the acquittal or

deficiency in the quantum of sentence. It doesn't provide that before preferring an appeal, there is any need for obtaining leave of the Court. On the other hand, the sub-sections to Section 378 Cr.P.C., provide for appeal against acquittal as either to the Court of Sessions or to the High Court. In the case if an appeal lies against an order of Magistrate, either acquitting the accused or the sentence is felt to be inadequate, the victim has to prefer an appeal to the Court of Sessions. However, if the impugned Judgment is passed by a Sessions Court, the appeal lies to the High Court and in that event, leave of the High Court is required to be obtained before the victim prefers an appeal to the High Court. There is no room for any ambiguity in the provision which clearly says that for preferring an appeal against acquittal to the Court of Sessions, no leave is required, but whereas, if an appeal lies against acquittal to the High Court, leave of the High Court is required to be obtained before preferring an appeal.

The Judgment that is relied upon by the learned Sessions Judge is in the context of an appeal to the High Court but not to the Court of Sessions. Therefore, the learned Sessions Judge has mis-read and mis-interpreted the Judgment of the Supreme Court, referred to above. If the analogy of the learned Sessions Judge is to be accepted, it gives rise to a situation where for preferring an appeal to a Sessions Court, the High Court has to grant leave which is neither provided for in any of the provisions of the Code of Criminal Procedure or stands to any logic. Therefore, the direction of the learned Sessions Judge to the *de-facto* complainant to first seek leave of the High Court and thereafter prefer an appeal before the Court of Sessions against acquittal or questioning the inadequacy of sentence cannot be countenanced. The return made by the learned Sessions Judge is therefore improper and is liable to be set aside.

These two Criminal Petitions are accordingly allowed setting

aisde the common order of the Court below dated 14.06.2016 passed in C.F.Nos.1641 and 1642 of 2016 and the petitioner/*de facto* complainant is directed to re-submit the appeals before the Court of Sessions which shall be registered if they are otherwise in order.

Miscellaneous petitions, if any, pending in these Criminal Petitions shall stand closed.

M.S.K.Jaiswal, J

August, 2016

Dsr/smr

[\[1\]](#) 2016(1) ALD (CrL.) 288 (SC)