

\$~3

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 75/2015**

BHAWANA SHARMA

..... Petitioner

Represented by: **Mr.M.Gautam, Advocate.**

versus

STATE & ANR

..... Respondents

Represented by: **Mr.Kusum Dhalla, APP for the
State/R-1 with SI Sandeep
Tushir, PS Prashant Vihar.
Mr.Pawan Kumar, Advocate
for R-2.**

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

09.09.2016

1. FIR No.230/2001 under Section 498-A/406/34 IPC, PS Prashant Vihar was registered on the basis of statement made by complainant Bhawna Sharma – revisionist herein, against her husband Shyam Sunder Sharma – respondent No.2 herein.
2. On conclusion of the trial in the above noted case, vide judgment dated August 06, 2013 the accused Shaym Sunder Sharma was acquitted by learned Trial Court.
3. Aggrieved by the order of acquittal, the complainant Bhawna Sharma preferred an appeal before learned Addl. Session Judge, North District, Rohini Court, Delhi which has been dismissed vide order dated October 10, 2014.

4. Now the complainant Bhawna Sharma has preferred this revision petition assailing the order passed by learned ASJ in CrI.A. No.32/2014.
5. Learned counsel for the revisionist has been requested to address on the issue of maintainability of this revision petition against an order of acquittal.
6. Learned counsel for the revisionist has contended that in view of Full Bench decision of Delhi High Court, the revision petition is maintainable.
7. The submissions made by learned counsel for the revisionist are contrary to the legal position as laid down by the Supreme Court in ***Satya Pal Singh vs. State of M.P. & Ors.*** in CrI.A. No.1315/2015 (arising out of SLP (CrI.) No.7954/2014) decided on 6th October, 2015. After considering the Full Bench decision of Delhi High Court in 221 (2015) DLT 1 *Ram Phal vs. State & Ors.*, provisions of Section 2(wa) and proviso to Section 372 Cr.P.C. conferring right to the victim to prefer an appeal, the legal position was summarised as under:

'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 Code of Criminal Procedure, 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 Code of Criminal Procedure to seek the leave of the High Court as required Under Sub-section (3) of Section 378 of Code of Criminal Procedure to prefer an appeal under proviso to Section 372 of Code of Criminal Procedure. The said view of the High Court is not legally correct for the reason that the substantive provision of Section 372 of Code of Criminal Procedure clearly provides that no appeal shall lie from any judgment and order of a Criminal Court except as provided for by Code of Criminal

*Procedure. Further, Sub-section (3) to Section 378 of Code of Criminal Procedure 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 Code of Criminal Procedure, 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** MANU/SC/0505/1975 : (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.

(Emphasis laid by this Court)

*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***

MANU/SC/0387/1985 : (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.

XXX

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.

XXX

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.

(Emphasis supplied)

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 Code of Criminal Procedure must be read along with its main enactment i.e., Section 372 itself and together with Sub-section (3) to Section 378 of Code of Criminal Procedure otherwise the substantive provision of Section 372 of Code of Criminal Procedure 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 Code of Criminal Procedure.

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 Code of Criminal Procedure without obtaining the leave of the High Court as required Under Sub-section (3) to Section 378 of Code of Criminal Procedure”, 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 Code of Criminal Procedure, 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 Code of Criminal Procedure. 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.'

8. The grievance of the revisionist is against an order of acquittal. In view of the above legal position, the revision petition being not maintainable is dismissed.

9. No costs.

PRATIBHA RANI, J.

SEPTEMBER 09, 2016

'st'