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

+ CRL.L.P. 348/2015

RUPALI VERMA

..... Petitioner
Through: Mr. Medhanshu Tripathi and Mr.
Mahindra Dubey, Adv.

versus

STATE & ORS.

..... Respondent
Through: Ms. Anita Abraham, APP with SI
Rahul Raj, PS Kalkaji
Mr. K.S. Verma, Adv. for
respondents

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
27.10.2016

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The present leave petition has been preferred by the petitioner by invoking section 378(4) Cr PC to assail the judgment dated 15.01.2015 passed by the learned Metropolitan Magistrate, Saket-South in FIR No.298/2007 registered at PS Kalkaji, whereby the accused in the case in respect of offences u/s 498A/406/34 have been acquitted.

I have heard learned counsel for the petitioner as well as the learned APP on the aspect of maintainability of the present leave petition before this court. The submission of learned APP is that under proviso to section 372, the victim has a right to prefer an appeal against any order passed by the

court, inter alia, acquitting the accused. The forum before whom such an appeal would lie has also been disclosed in the said proviso which, inter alia, reads “*such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court*”. Learned APP submits that u/s 374 of the Code, the forum before whom the appeals from conviction could lie, have been set out.

Section 374(3), inter alia, provides that any person convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, may appeal to the court of sessions.

Thus, the submission of learned APP is that the forum to which the victim may appeal against acquittal by virtue of proviso to section 372 is the court of sessions. She has also sought to place reliance on the conclusions drawn by the Full Bench of Punjab & Haryana High Court in ***Tata Steels Ltd. v. Atma Tube Products Ltd. & Ors***, 2013 (3) Crimes 613 (P&H) wherein in para 120 of the said decision, the Full Bench has, inter alia, observed as follows:

“120. In the light of the above discussion, we hold that while in view of proviso to Section 372 an appeal preferred by a ‘victim’ against the order of acquittal passed by a Magistrate in respect of a cognisable offence whether bailable or non bailable shall lie to the Court of Session”

Faced with this situation, learned counsel for the petitioner submits that the petitioner may be permitted to withdraw the present petition and prefer an appeal under the proviso to section 372 Cr PC. He submits that the period spent in this court in pursuing the present leave petition may be excluded for the purpose of computation of limitation. The said aspect would have to be considered by the appellate court and this court has no

reason to doubt that the court shall take into consideration the fact that the petitioner has been prosecuting the present leave petition bonafidely. The leave petition is, accordingly, dismissed as withdrawn with liberty as prayed for.

VIPIN SANGHI, J

OCTOBER 27, 2016

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