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

+ CRL.REV.P. 812/2015

STATE GOVT OF NCT OF DELHI

..... Petitioner

Through: Ms.Kusum Dhalla, APP for the State
with Insp. Amardeep Sehgal, PS Civil
Lines.

versus

KRISHAN MOHAN AGRAHARI

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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14.09.2016

The matter was listed for September 13, 2016 which was declared a holiday and therefore is being taken up today.

Crl.M.A. Nos.18241/2015 & 18272/2015

Allowed subject to all just exceptions.

Crl.M.A. No.18240/2015

1. For the reasons stated in the application, 1900 days' delay in filing the revision petition is condoned.
2. Application is disposed of.

CRL.REV.P. 812/2015

1. The instant revision petition has been filed by the State assailing the order dated 12.03.2010 whereby the appeal bearing Crl.A. No.2/2010 preferred by the State challenging the order dated 22.10.2009 passed by the

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learned MM acquitting the respondent of the charges under Sections 409/420/201 IPC in case FIR No.274/2001 PS Civil Lines, has been dismissed by learned ASJ.

2. Learned APP for the State has been requested to address arguments as to how an appeal against an order of acquittal lies before the Court of Session.

3. Learned APP for the State has submitted that after the accused/respondent was acquitted by the learned MM vide judgment dated 22.10.2009, State preferred an appeal before the Court of Sessions. After dismissal of the said appeal, now the State is in revision before this Court with a prayer to set aside the order of acquittal passed by the two Courts below.

4. Chapter XXIX of the Code of Criminal Procedure deals with ‘Appeals’.

5. Section 372 of the Code of Criminal Procedure provides :

‘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.]’

6. Section 378 of the Code of Criminal Procedure prescribed procedure for appeal in case of acquittal and 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 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).'

7. Sub-Section (3) to Section 378 of the Code of Criminal Procedure was inserted by way of amendment by Act 25 of 2005 (w.e.f. 23.06.2006).

8. In the decision reported as 2015 (10) SCALE 444 Satya Pal Singh vs. State of M.P. & Ors. while dealing with the statutory right of the victim including the legal heirs as defined under Section 2 (wa) of the Code of Criminal Procedure and proviso to Section 372 of Code of Criminal Procedure, the Apex Court also examined the correctness of the view taken by the full Bench of High Court of Delhi in the decision reported as 221 (2015) DLT 1 Ram Phal vs. State & Ors. In para 11 of the report, the Apex Court has held 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.....'

9. In view of the above legal position, the State was required to file leave to appeal before the High Court against an order of acquittal by the Court below.
10. This revision petition being not maintainable is hereby dismissed.

PRATIBHA RANI, J.

SEPTEMBER 14, 2016

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