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HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1121 of 2016**

- Smt. Simmi Verma w/o Shri Dinesh Verma, aged 27 years, R/o New Shanti Nagar Gorkha Colony, Near Gourav Provision Store, Raipur (C.G.)

----Applicant**Versus**

1. Dinesh Verma S/o Shri Ram Kumar verma, aged 28 year.
2. Ram Kumar Verma S/o Shri Sureram Verma, aged 66 year.
3. Suraj Bai W/o Shri Ram Kumar Verma, aged 59 year.
4. Tameswar Verma S/o Shri Ramkumar Verma, aged 36 year.
5. Hement Verma S/o Shri Ramkumar Verma, aged 35 year.
6. Manisha Verma W/o Shri Hement Verma, aged 33 year.

---- Respondents

For Applicant	:	Shri Shailendra Sharma, Advocate.
For Respondents	:	None

Hon'ble Shri Pritinker Diwaker, Acting Chief Justice &
Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board**Sanjay K. Agrawal, J.****16/03/2017**

The applicant herein is the complainant at whose instance a criminal case No.367/2013 was registered by the jurisdictional police station and the respondents herein (1 to 6) were put to trial before the Judicial Magistrate First Class, Raipur and they were acquitted by the judgment and order of that Court on 02.07.2015.

02. The applicant herein preferred criminal appeal No.118/15 under proviso to Section 372 of the Code of Criminal Procedure (for short 'the Cr.P.C.') before the Special Judge, C.B.I., Raipur calling in question the

judgment of acquittal passed by the Judicial Magistrate First Class, Raipur. By the impugned judgment, the learned Special Judge, C.B.I. dismissed the appeal of the complainant/applicant herein holding that no case for interference with the order of acquittal is made out. Feeling aggrieved by the said order, the instant criminal revision has been preferred by complainant Simmi Verma.

03. On being asked, whether criminal appeal before the Special Judge (C.B.I.) was maintainable against the order of acquittal, learned counsel for the applicant would submit that for filing an appeal under proviso to Section 372 of Cr.P.C. no leave is required to be obtained, therefore, her appeal before the Special Judge (C.B.I.) against the order of acquittal was maintainable under proviso to Section 372 Cr.P.C. and since the appeal has been dismissed, the criminal revision would also be maintainable under Section 397 read with Section 401 of Cr.P.C.

04. We have heard learned counsel for the applicant and perused the material on record.

05. The question as to whether leave is required to be obtained from the Court under Section 378 (3) Cr.P.C. to prefer an appeal against the order of acquittal is no longer *res integra*. The Supreme Court in the matter of **Satya Pal Singh V. State of Madhya Pradesh and Ors.**¹ clearly held that in order to prefer an appeal under proviso to Section 372 of Cr.P.C., leave is required to be obtain under sub-section (3) to Section 378 of Cr.P.C. and held as under:-

“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

1 2015 AIR SCW 6251

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.

06. Thus, in the light of aforesaid pronouncement, the appeal against the order of acquittal would be maintainable before this Court (High Court) only after obtaining leave under sub-section (3) to Section 378 of Cr.P.C.

07. Unfortunately, appeal against the order of acquittal was maintained before the Special Judge, C.B.I. which was not the Court competent to hear the appeal that too without the leave of this Court. Since, the appeal itself was not maintainable before the learned Special Judge (C.B.I.) and that too in absence of leave of this Court (High Court), the instant revision is also held to be not maintainable.

08. Learned counsel for the applicant submits that he be granted liberty to seek liberty by filing an application under Section 378(3) of the Cr.P.C. Since the applicant has already exercised the remedy of appeal before the Court, we are not inclined to grant any further liberty to the applicant to move application for grant of leave under sub-section (3) to Section 378 Cr.P.C.

09. Accordingly, the revision preferred by the applicant/complainant is

bereft of any substance, the same is liable to be and is hereby dismissed at the admission stage itself without notice to the other side.

Sd/-

(Pritinker Diwaker)
Ag. Chief Justice

Sd/-

(Sanjay K. Agrawal)
JUDGE

Vijay