

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) Cri. Appeal No.400 of 2017

**14 CRIMINAL APPEAL NO. 400 OF 2017
WITH APPLN/5481/2014 WITH APPLN/6307/2014**

THE STATE OF MAHARASHTRA
VERSUS
BHAUSAHEB PANDHARINATH UNDRE AND OTHERS

...
APP for Appellant : Mr. S.P.Tiwari
Mr. C.R.Thorat, Adv., for respondent nos. 1 to 4.

...
CORAM : P.R. BORA, J.
Dated: September 25, 2017

...

PER COURT :-

1. Apparently, it is revealed that against one order, the State has inadvertently preferred two criminal applications as well as one Criminal Appeal. The said fact apart, when the matters were taken up for hearing, the learned Counsel appearing for the respondents has raised a preliminary objection about the maintainability of the applications as well as Criminal Appeal in view of the provisions under Section 377 of the Code of Criminal Procedure.

2. In the applications as well as in the Criminal Appeal, the prayer of the State Government is to enhance the punishment as awarded by the Court of Judicial Magistrate First Class, Newasa, in R.T.C. No.62 of 2006. Section 377 of the Code of Criminal Procedure provides for appeal by the State Government against sentence. Under the said provision, if such an appeal against the sentence on the ground of its inadequacy is to be preferred against

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the sentence passed by the Magistrate, the appeal is to be preferred to the Court of Sessions.

3. In the instant matter the criminal appeal and the applications filed seeking leave to appeal are against the sentence on the ground of its inadequacy passed by the Court of Magistrate. It is, thus, evident that such appeal or applications must have been filed by the State Government before the Sessions Court. The Criminal Appeal and the applications, therefore, cannot be entertained by this Court under Section 378 of the Code of Criminal Procedure. Hence, the following order:

ORDER

1. The Criminal Appeal as well as the Criminal Applications are disposed of as not maintainable.

(P.R. BORA, J.)