

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

913 CRIMINAL APPEAL NO. 214 OF 2016

The State of Maharashtra
Through : Police Inspector, Police Station,
Newasa, Tal. Newasa, Dist. Ahmednagar

.. Applicant
(Ori. Complainant)

VERSUS

1. Madhav Nivrati Barde
Age : 70 years, Occu : Agri,
2. Laxmibai w/o Madhav Barde (Dead)(Abated)
3. Ashok Madhav Barde
Age : 45 years, Occu : Agriculture,
4. Vasant Madhav Barde,
Age : 40 years, Occu : Agriculture,
5. Digamber Madhav Barde,
Age : 38 years, Occu : Agriculture,
6. Chingu @ Ramnath s/o Madhav Barde (Dead) (Abated)

.. Respondents
(Orig. Accused)

...

AGP for Applicant : Shri.S.P Tripathi
Advocate for Respondent Nos.1, 3 & 4 : Shri. V.D. Sapkal

...

CORAM : P.R. BORA, J.
Dated: August 10, 2017

ORAL JUDGMENT :-

1. When the present appeal was taken up for hearing, Office remark was brought to the notice of the Court that respondent no.5

i.e. original accused no.5 has not yet furnished the bail before the trial Court as was directed by this Court.

2. Shri V.D. Sapkal, the learned Counsel appearing for other respondents in the matter submitted that, he has instructions to appear on behalf of the said respondent and that the said respondents will comply the direction of the Court.

3. Learned Counsel Shri. Sapkal further submitted that, the appeal filed by the State itself is not maintainable. The learned Counsel pointed out that, the State has filed the present appeal under Section 377 (1) of the Code of Criminal Procedure, 1973 (hereinafter in short 'Cr.P.C.') for enhancement of the punishment as has been awarded by the Court of Judicial Magistrate, First Class, Newasa. The learned Counsel submitted that, in view of the amendment brought in Cr.P.C., made effective since 2006, any such appeal has to be filed before Sessions Court and not before the High Court.

4. I have carefully read Section 377 (1) of the Cr.P.C. The learned APP is unable to satisfy this Court as to how the present appeal would be maintainable before this Court. Section 377 (1) of the Cr.P.C. reads as under :-

“377. Appeal by the State Government against sentence.- (1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present [an appeal against the sentence on the ground of its inadequacy-

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.]”

5. Plain reading of the aforesaid provision makes it clear that, the State could not have filed the appeal before this Court for enhancement in the sentence as awarded by the Magistrate.

6. The present appeal therefore cannot be entertained by this Court. The same, therefore, stands rejected being not maintainable.

(PR. BORA, J)

ggp