

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CrI.A.M.P.No1553 of 2017 in CRIMINAL APPEAL No.756 of 2017 &
CRIMINAL APPEAL No.756 of 2017

ORDER:

This Criminal Appeal is preferred under Section 378 (4) of Cr.P.C. by the complainant aggrieved by the judgment dated 29-5-2017 in C.C.No.70 of 2015 passed by the 1st Special Magistrate, Hyderabad, whereunder the learned Magistrate, while convicting A.1 acquitted A.2. Aggrieved by the said acquittal of A.2, the instant appeal is filed and leave of this court is sought for.

The question that arises for consideration is whether the appeal is directly maintainable before this court in stead of before Sessions Court.

Section 372 Cr.P.C. reads as follows:

"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."

Thus, proviso under Section 372 narrates that the victim can prefer an appeal against the acquittal passed by the court and such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.

In the instant case, if A.2 were convicted, the appeal necessarily ought to have been filed before the Sessions Court concerned, as such, following the modification to Section 372 of Cr.P.C, the appeal against acquittal also lie before the concerned Sessions Court and not necessarily before High Court under Section 378 (4) of Cr.P.C. This aspect has been well discussed in

1). S.B.Crl.Leave to Appeal No.193 of 2011 (Laxmilal Menariya vs. Rajendra Kumar) 2). S.B.Crl.Leave to Appeal No.230 of 2011 (Ramavtar Gupta Vs. Ravindra Kumar) and 3). S.B.Crl.Leave to Appeal No.6 of 2012 (Ashok Kumar Vs. State of Raj. & Anr.) dated 01.05.2012 of High Court of Judicature for Rajasthan at Jodhpur whereunder it was held that in view of the judgments passed by the learned Magistrate subsequent to the amendment to Section 372 Cr.P.C. which came into effect on 31-12-2009, the appeal against acquittal could be filed before the concerned Sessions Court.

Thus, it is clear that the appeal is not maintainable before the High Court.

In the result, the leave application is dismissed and the Registry is directed to return the necessary papers to the appellant for filing the appeal before the concerned Sessions Court.

It is clear that the appellant would be entitled to seek condonation of delay on account of the time spent in pursuance of the remedy before this court in accordance with law.

Consequently, this Criminal Appeal is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO,J

Dt: 25-7-2017.

Dvs

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Dated 25-7-2017

Dvs