

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CRIMINAL PETITION NO.16742 OF 2016

Between:

Smt. P. Vijaya Laxmi

.. Petitioner

and

Smt. S.P. Sravana and another

.. Respondents

DATE OF ORDER PRONOUNCED: 27.10.2017

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

DR. SHAMEEM AKTHER, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

+ CRIMINAL PETITION NO.16742 OF 2016

% DATED 27th OCTOBER, 2017

Smt. P. Vijaya Laxmi

.. Petitioner

Vs.

\$ Smt. S.P. Sravana and another

.. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner : Sri Anand Kumar Kapoor

^Counsel for Respondent No.1 : --

^Counsel for Respondent No.2 : Public Prosecutor

? CASES REFERRED:

1. 2011 (1) ALD (CrI.) 201 (AP)
2. 2014 (2) ALD (CrI.) 900
3. 2015 (3) ALT (CrI.) 107 (AP)
4. (2015) CRI.L.J. 2784 (DB)
5. (2015) CRI.L.J. 1627 (DB)
6. 2013 LawSuit (P&H) 1375
7. 2016 (1) ALD (CrI.) 288 (SC) : (2015) 15 SCC 613
8. LAWS(RAJ)-2014-12-22 : 2014 SCC OnLine Raj 5499 : Order dated 02.12.2014 in Criminal Revision Petition Nos.411/2012 and 145/2013
9. (2010) 5 SCC 663
10. (2013) 2 SCC 17
11. 2015 (1) NIJ 166 (Del) : Judgment dated 03.09.2014 in CrI.A.Nos.972 and 1163 of 2012
12. 2013 (1) ALD (CrI.) 366 (AP)
13. 2010 (1) SCALE 17
14. Order dated 24.02.2015 in Criminal Petition No.6072/2014

15. Order dated 16.06.2011 in Criminal Application (APPA) No.708/2010
16. Oral Judgment dated 09.01.2013 in Criminal Revision Application No.158 of 2012
17. Judgment dated 01.09.2016 in CRR No.3793 of 2014
18. 2016 ALL MR (Cri.) Journal 492
19. 2015 (1) MWN (Cr) DCC 26 (Mad.)
20. (2008) 4 SCC 91
21. (1994) 1 SCC 34
22. AIR 1965 SC 703
23. (1986) 4 SCC 436
24. 1994 Supp (1) SCC 257
25. (2014) 5 SCC 219
26. (2002) 2 SCC 318
27. (2014) 5 SCC 377
28. 2017 SCC OnLine SC 924
29. 2015 SCC OnLine GAU 505 : (2017) 1 GAU LR 471
30. (2014) CrLJ 1046
31. AIR 1952 SC 369
32. (1992) 1 SCC 335
33. AIR 1963 SC 90
34. (1985) 2 SCC 279



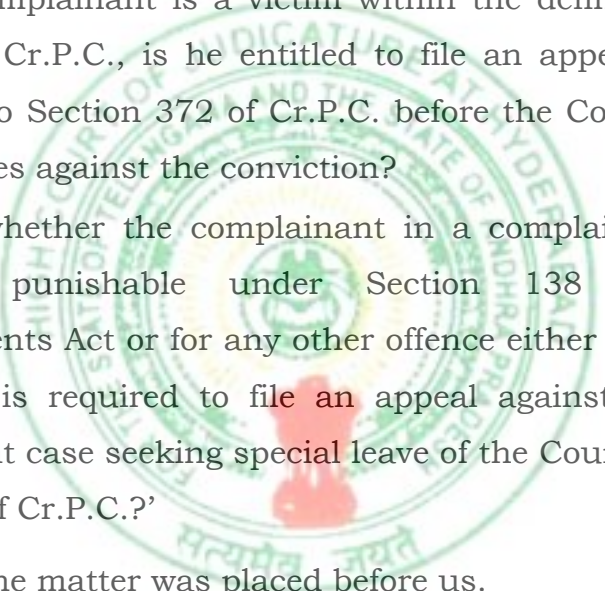
**HON'BLE SRI JUSTICE SANJAY KUMAR
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THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

CRIMINAL PETITION NO.16742 OF 2016

O R D E R

(Per Hon'ble Sri Justice Sanjay Kumar)

A learned Judge referred this case to a Division Bench for an authoritative pronouncement on the following questions of law:

- '(1) Whether the complainant in a complaint case for the offence punishable under Section 138 of Negotiable Instruments Act is a victim as defined under Section 2(wa) of Cr.P.C. as amended by the Act No.5 of 2009 with effect from 31.12.2009?
- (2) If the complainant is a victim within the definition of Section 2(wa) of Cr.P.C., is he entitled to file an appeal invoking the *proviso* to Section 372 of Cr.P.C. before the Court to which an appeal lies against the conviction?
- (3) If not, whether the complainant in a complaint case for the offence punishable under Section 138 of Negotiable Instruments Act or for any other offence either bailable or non-bailable is required to file an appeal against acquittal in a complaint case seeking special leave of the Court under Section 378 (4) of Cr.P.C.?'
 

Hence, the matter was placed before us.

The factual matrix from which the aforestated questions arise is as under: The petitioner herein is the accused in C.C.No.87 of 2015 on the file of the learned XXIII Special Magistrate, Hyderabad, arising out of the private complaint filed by the first respondent herein under Section 200 of the Code of Criminal Procedure, 1973 (for brevity, 'the Code'), in relation to an offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, the Act of 1881). By judgment dated 12.02.2016 passed therein, the learned XXIII Special Magistrate, Hyderabad, acquitted her. Aggrieved thereby, the first respondent/complainant filed an appeal before the learned

Metropolitan Sessions Judge, Hyderabad. The petitioner, being the respondent therein, raised an objection as to the maintainability of the appeal. However, overruling her objection, the learned Metropolitan Sessions Judge, Hyderabad, passed orders on 17.10.2016 in CrI.M.P.No.1233 of 2016 filed in the appeal, condoning the delay of 24 days in its presentation on payment of costs. The appeal was thereupon numbered as Criminal Appeal No.926 of 2016. Aggrieved thereby, the petitioner approached this Court by way of the present petition under Section 482 of the Code. Her contention is that the learned Metropolitan Sessions Judge, Hyderabad, lacks jurisdiction to entertain an appeal arising out of the acquittal in a case instituted upon a complaint and that an appeal therefrom would only lie to the High Court under Section 378(4) of the Code. She accordingly seeks quashing of the appeal on the file of the learned Metropolitan Sessions Judge, Hyderabad. The learned single Judge who heard the case found that there was divergence of opinion on the framed questions of law and opined that an authoritative pronouncement would be desirable to give a quietus to the issue.

Sri Anand Kumar Kapoor, learned counsel representing M/s.Lawyers & Solicitors, counsel for the petitioner, advanced copious arguments on various aspects. The learned Public Prosecutors of the State of Telangana and the State of Andhra Pradesh assisted the Court as a pronouncement on the issues raised would have far-reaching consequences.

Sri M.Veera Prasada Chary, learned counsel, who appeared for the first respondent/complainant before the learned Judge at the time of the reference, did not choose to appear before us or advance arguments, though the matter was heard at length.

As the core controversy revolves around the construction and interpretation of essentially two provisions of the Code, it would be appropriate to extract them hereunder:

‘Section 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.’

‘Section 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 to the High Court 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).’

Chapter XXIX of the Code deals with appeals. Section 372, being the first provision therein, stipulates that no appeal would lie from any judgment or order of a Criminal Court except as provided for by the Code or by any other law for the time being in force. A *proviso* was inserted in Section 372 of the Code, *vide* the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009), with effect from 31.12.2009. By way of the said *proviso*, a ‘victim’ was given the right to prefer an appeal against an order passed by the Criminal Court either acquitting the accused or convicting him of a lesser offence or awarding inadequate compensation; and such an appeal would lie to the Court to which an appeal would ordinarily lie against an order of conviction passed by such Criminal Court.

At this stage, it would be apposite to examine certain definitions in the Code. Section 2(d) thereof defines a complaint thus:

‘ **“Complaint”** means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.— A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant. ’

Section 2(wa) was inserted in the Code by Act 5 of 2009, with effect from 31.12.2009, and defines a ‘victim’ as under:

“Victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir. ’

The broad issue arising for consideration presently is whether an appeal would lie to the Sessions Court under the *proviso* to Section 372 of the Code against an order of acquittal in a case arising out of a private complaint, by treating the complainant therein as a 'victim' within the meaning of Section 2(wa) of the Code.

Reference may now be made to the surfeit of case law on the subject and the diverse views taken by Courts across the country on these issues.

The decisions of this Court in **G.BASAWARAJ V/s. STATE OF ANDHRA PRADESH¹**, **PETTA SATYA GOVINDA RAMACHANDRA RAO @ BABJI V/s. YARLAGADDA VIJAYA KUMAR²** and **TAMILNAD MERCANTILE BANK LTD. V/s. M/S. SUBAIAH GAS AGENCY³** held to the effect that an appeal would lie from such an order of acquittal to the High Court under Section 378(4) of the Code or to the Sessions Court under the *proviso* to Section 372 of the Code. The decisions of the Kerala High Court in **OMANA JOSE V/s. STATE OF KERALA⁴**, the Chhattisgarh High Court in **KAILASH MURARKA V/s. K.GEET SRIJAN⁵** and the Punjab & Haryana High Court in **TATA STEEL LTD. V/s. ATMA TUBE PRODUCTS LTD.⁶** were however to the effect that an appeal would lie only to the High Court against acquittal in a complaint-case under Section 378(4) of the Code.

In **G.BASAWARAJ¹**, a learned Judge of this Court was dealing with two criminal petitions filed by an accused aggrieved by the filing of criminal appeals by the complainant before the Sessions Court against the judgments acquitting him of offences under Section 138

¹ 2011 (1) ALD (Cr.) 201 (AP)

² 2014 (2) ALD (Cr.) 900

³ 2015 (3) ALT (Cr.) 107 (AP)

⁴ (2015) CRI.L.J. 2784 (DB)

⁵ (2015) CRI.L.J. 1627 (DB)

⁶ 2013 LawSuit (P&H) 1375

of the Act of 1881. The issue before the learned Judge was whether an appeal would lie at the behest of the complainant before the High Court under Section 378(4) of the Code or whether such a complainant would have to file an appeal before the Sessions Court under the *proviso* to Section 372 of the Code, treating him as a 'victim' under Section 2(wa) of the Code. The learned Judge observed that prior to amendment of Section 372 of the Code, the only remedy available either to the State in a case registered upon a police report or to a complainant in a case registered upon his private complaint, was to invoke Section 378(4) and to approach the High Court with an appeal and a petition seeking special leave to file such appeal. The learned Judge was however of the opinion that this position was totally changed after insertion of the *proviso* to Section 372 of the Code. Opining that the *proviso* to Section 372 of the Code made inroads into the original general provision contained in Section 372, the learned Judge held that the field became enlarged, clothing a victim also with the right to file an appeal apart from the State or the complainant, as the case may be. The learned Judge further observed that the words 'victim' and 'complainant' were not synonymous though at times, a 'complainant' may include a 'victim' and *vice versa*, but not always. The learned Judge held that a plain, simple and proper reading of the language employed in Section 378(4) of the Code and the *proviso* to Section 372 thereof made it clear that there was no clash or conflict or inconsistency between the two and upon harmonious reading of both the provisions, it is evident that the pre-existing provision in Section 378(4) of the Code provided for filing of an appeal against acquittal, by the State or by the complainant to the High Court with special leave, whereas the amended Section 372 of

the Code provided for an appeal against acquittal by the victim of the offence, to the Court to which an appeal would ordinarily lie, had an order of conviction been passed in the case. The learned Judge therefore held that where the victim is also a complainant in a case instituted by way of a private complaint, then such a person would have two options - to file an appeal against the order of acquittal to the High Court under Section 378(4) of the Code or to the Sessions Court/High Court under the *proviso* to Section 372 of the Code. The learned Judge opined that it would be open to the person who is a victim as well as a complainant to choose one of the two remedies available to him in law and approach the appellate Court of his choice, depending upon the status of the trial Court which recorded the order of acquittal. The learned Judge observed that in case an order of conviction was passed by an Assistant Sessions Court, then the appeal would lie to the Sessions Court or to the High Court depending upon the quantum of sentence of imprisonment and in case a conviction was recorded by a Sessions Court or Additional Sessions Court, then the appeal would straightaway lie to the High Court. The learned Judge was of the opinion that even otherwise, if the appeals were not maintainable, they would not be quashed and the proper course would be to return them for presentation to the proper Court or to transfer them to such Court. As the appeals in that case were both filed before the insertion of the *proviso* to Section 372 of the Code, the learned Judge held them to be not maintainable on that ground and accordingly transferred them to this Court.

A contrary view, to some extent, was taken by another learned Judge of this Court in **PETTA SATYA GOVINDA RAMACHANDRA RAO @ BABJP²**. This was also a case arising out of a judgment

acquitting the accused of an offence under Section 138 of the Act of 1881. The complainant therein preferred an appeal before this Court under Section 378(4) of the Code and special leave was granted on 11.07.2005. By that date, the *proviso* to Section 372 of the Code had not been inserted in the statute book. Referring to the fact that till the amendment of the Code in 2009 came into force, an appeal against an acquittal in a cheque-dishonour case would lie only under Section 378(4) of the Code, the learned Judge opined that the right of appeal was then provided to the victim by virtue of the *proviso* introduced in Section 372 of the Code in the year 2009. The learned Judge opined that a complainant in a cheque-dishonour case would also come within the meaning of 'victim', having suffered loss or injury from such dishonour, so as to maintain an appeal before the Sessions Court thereunder. Pointing out that Section 378(4) of the Code required grant of special leave for invocation of the right to appeal, while the *proviso* to Section 372 did not insist upon such leave, the learned Judge opined that they were not irreconcilable. Significantly, the learned Judge observed that it cannot be readily presumed that these provisions give concurrent jurisdiction for an appellant to select one or the other Court of appeal, as observed in **G.BASAWARAJ¹**. In this regard, the learned Judge stated thus:

‘**15.** It is to say instead of filing appeal under Section 372 Cr.P.C., if allowed to file under Section 378(4) Cr.P.C., with leave, it takes away the prospective likelihood of approaching by accused to avail right of appeal under Section 378(4) Cr.P.C., before High Court. It is because, the absolute statutory right without even leave of Court to file appeal before Court of Session which is available with effect from 31.12.2009, if availed by the complainant under Section 372 Cr.P.C and did so, in the event of that Court deciding the appeal against such

acquittal by reversing and for any reason convicting, there is right of appeal under Section 378(4) Cr.P.C., to such accused to approach the High Court with leave. Without invoking such right before Court of Session by the complainant as appellant against acquittal by trial Court and allowed to proceed before High Court by granting leave, it is nothing but taking away said right of the accused in future of remedy to approach the High Court in such event and one way interfering with such right. It is for the reason that any right of revision or approaching by invoking Section 482 Cr.P.C or writ jurisdiction no way substitute to the right of appeal. Thereby also, it is the duty of the appellant-complainant rather than approaching the High Court for filing appeal with leave under Section 378(4) Cr.P.C; to approach the Court of Session where no leave is required to file such appeal there. Needless to say by virtue of the amended provision without invoking the Court of Session for filing appeal against acquittal, approaching the high Court by saying concurrent right and therefrom, granting leave by the Court by exercise of discretion since amounts to interference with such right of accused and taking away another future right of appeal in such contingency to approach the High Court and as the discretion is to be exercised judiciously within the canons of law, and this is when taken into consideration, this Court under Section 378(4) Cr.P.C., must be slow for grant of such leave but for any special reasons and for any exceptional circumstances to accord by so assigning besides the party approaching for filing appeal to satisfy by giving the reasons and exceptional circumstances in the leave application. As such, no appellant of appeal against acquittal can say that there are two forums with concurrent jurisdiction available and he got right to approach any of the forums and thereby can file appeal before the High Court and grant of leave or not is though the discretion of the High Court on such filing.'

The thrust of the opinion of the learned Judge appears to be that by allowing duality of remedies to a complainant/victim, the right of the accused to a remedy would be prejudicially affected in the

event the acquittal is overturned. The learned Judge was therefore of the view that under Section 378(4) of the Code, this Court should be slow to grant special leave and only for special reasons and in exceptional circumstances, such leave should be granted. The learned Judge opined that an absolute statutory right of appeal without the need of seeking leave was conferred upon the victim against an order of acquittal in 2009, by virtue of the amendment of the Code. The learned Judge therefore held that an appeal would have to be filed before the Court of Session in exercise of the absolute statutory right provided by the *proviso* to Section 372 of the Code and not to the High Court with a petition seeking leave to file an appeal under Section 378(4) of the Code. The learned Judge categorically held that the victim's right of appeal under the *proviso* to Section 372 of the Code was in no way controlled by Section 378(3) of the Code and there was nothing to infer any requirement of leave as in Section 378(4) of the Code so as to ~~present~~ an appeal under Section 372 *proviso* against an order of acquittal or conviction of a lesser offence or for inadequate compensation. The learned Judge further observed that in matters where leave was already granted under Section 378(4) of the Code and appeals were admitted against acquittals in cheque-dishonour cases, this Court can, for sub-serving the ends of justice, direct the Sessions Court to hear and dispose of the said appeals on merits by making them over. Exercising such power under Section 381(2) read with Section 482 of the Code, the learned Judge made over the appeal preferred to this Court under Section 378(4) of the Code to the Sessions Court.

It is pertinent to note that the view expressed by the learned Judge to the effect that no leave under Section 378(3) of the Code is

necessary for filing an appeal under the *proviso* to Section 372 of the Code is not good law in the light of the recent judgment of the Supreme Court in **SATYA PAL SINGH V/s. STATE OF M.P.**⁷, wherein it was held that the *proviso* to Section 372 of the Code must be read along with the main enactment, i.e., Section 372 itself, and with Section 378(3), as reading it otherwise would render the substantive provision of Section 372 of the Code nugatory. The Supreme Court concluded that the right of questioning the correctness of the 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 the Code, under the *proviso* to Section 372 but only after obtaining leave of the High Court as required under Section 378(3) of the Code. In the light of this authoritative edict by the Supreme Court, the judgments of various High Courts holding to the contrary, referred to hereinafter, no longer constitute good law.

In **TAMILNAD MERCANTILE BANK LTD.**³, the learned Judge who decided **PETTA SATYA GOVINDA RAMACHANDRA RAO @ BABJI²** again had an occasion to deal with the issue. This case also involved conviction of an accused under Section 138 of the Act of 1881. Aggrieved by the convictions and sentences, the accused preferred criminal revision petitions before the Sessions Court under Section 397 of the Code. The Sessions Court allowed both the revisions and set aside the convictions by the trial Court. Aggrieved thereby, the complainant preferred appeals before this Court. The accused contended before this Court that the appeals were not maintainable. The learned Judge opined that even against an order of acquittal passed by a revision Court in a case arising out of a private

⁷ 2016 (1) ALD (Cr.) 288 (SC) : (2015) 15 SCC 613

complaint, an appeal would lie to the High Court. The learned Judge further observed that by virtue of the *proviso* to Section 372 of the Code, any order passed by a Court acquitting an accused would be appealable by the victim thereunder. The learned Judge therefore opined that under the *proviso* to Section 372 of the Code, an appeal would lie against the revisional order of acquittal of the Sessions Court reversing the conviction by the trial Court.

In **OMANA JOSE⁴**, a Division Bench of the Kerala High Court was also dealing with the question as to whether an appeal would lie to the Sessions Court under the *proviso* to Section 372 of the Code against the acquittal of the accused in a case under Section 138 of the Act of 1881. Earlier, one learned Judge of the Kerala High Court had held that such an appeal would not lie to the Sessions Court but only to the High Court under Section 378(4) of the Code, while another learned Judge held to the contrary in a subsequent case. The issue was therefore referred to a Division Bench. The Division Bench held that a complainant in a case under Section 138 of the Act of 1881 could not challenge the order of acquittal before the Sessions Court under the *proviso* to Section 372 of the Code and his only remedy is to file an appeal to the High Court with special leave under Section 378(4) of the Code. The Division Bench stated that before amendment of the Code in 2009, the remedy available to a complainant against an order of acquittal in a case instituted on a complaint was to file an appeal under Section 378(4) of the Code before the High Court with special leave. This provision remained intact even after the amendment. Though drastic changes were made to the said provision in the year 2005, Section 378(4) was not amended. The Division Bench therefore opined that it could not be

assumed that the Parliament was not aware of the remedy provided under Section 378(4). Adverting to the fact that before this amendment, in a case instituted on a police report, the victim could only challenge the order of acquittal by way of a revision under Section 397 of the Code and after the amendment and introduction of Section 2(wa) defining a victim, such a victim was conferred with the right of preferring an appeal to the Sessions Court against an order passed by the trial Court acquitting the accused or convicting him of a lesser offence or awarding inadequate compensation, the Division Bench pointed out that if it is to be construed that a complainant could also file an appeal to the Sessions Court under Section 372 *proviso* or to the High Court under Section 378(4) of the Code, it would mean that a complainant in a complaint case would have two remedies and if he chooses the remedy under Section 372 *proviso*, he could file an appeal as of right to the Sessions Court without leave and if he files an appeal under Section 378(4) of the Code, special leave is required. The Bench was of the view that the law makers would not have wanted to provide two remedies to a complainant in a complaint case, who is also a victim, as there is no provision either in Section 372 or in Section 378 of the Code that, when an appeal against an order of acquittal filed before the Sessions Court by the complainant is dismissed, such a complainant is precluded from filing an appeal before the High Court under Section 378(4) of the Code. As the said provision does not state that an appeal lies to the High Court only against an original order of acquittal, the Division Bench opined that if the provisions are to be interpreted to mean that Section 372 *proviso* covers an appeal against acquittal in a complaint case also, nothing would prevent the complainant from filing a

further appeal to the High Court under Section 378(4) of the Code if the Sessions Court also acquits the accused, confirming the order of acquittal passed by the trial Court. Concluding that the amendment of the Code in 2009 was not with the intention of providing multiple remedies to a complainant, the Division Bench observed that the law makers did not confer concurrent jurisdiction on the Sessions Court and the High Court to entertain an appeal by the complainant against acquittal in a complaint case. The Division Bench observed that the expression 'unless the context otherwise requires' occurring in Section 2 is a helpful tool for interpreting the *proviso* to Section 372 to resolve the question as to whether the term 'victim' would take within its purview a 'complainant' in a complaint case and concluded that the expression 'victim' would exclude the 'complainant' in a complaint-case from the purview of Section 2(wa) of the Code.

In ***KAILASH MURARKA***⁵, a Division Bench of the Chhattisgarh High Court held that a complainant is not entitled to prefer an appeal under the *proviso* to Section 372 of the Code before the Sessions Court against an order of acquittal passed by a subordinate Criminal Court arising out of a criminal complaint filed by the complainant and that such a complainant is required to prefer an appeal under Section 378(4) of the Code before the High Court after obtaining special leave. It was observed that in a case instituted upon a complaint, the complainant has much of a role to play in the Court proceedings whereas, as is apparent from the Statement of Objects and Reasons of Act No.5 of 2009, changes were brought in with a view to give certain rights to the victims in cases based on police reports, including the right to compensation, as they did not have much of a role in Court proceedings. The Division Bench therefore

concluded that incorporation of the *proviso* to Section 372 of the Code by Act No.5 of 2009, thereby providing a right of appeal to the victim, would not come to the aid of those victims who qualify as complainants, already having sufficient role in the Court proceedings.

In **TATA STEEL LTD.**⁶, a Full Bench of the Punjab & Haryana High Court summed up its conclusions on this issue as under:

‘Question – (B)(iii) The ‘complainant’ in a complaint-case who is also a ‘victim’ and the ‘victim’ other than a ‘complainant’ in such case, shall have remedy of appeal against acquittal under Section 378(4) only, except where he/she succeeds in establishing the guilt of an accused but is aggrieved at the conviction for a lesser offence or imposition of an inadequate compensation, for which he/she shall be entitled to avail the remedy of appeal under *proviso* to Section 372 of the Code.

(iv) The ‘victim’ who is not the complainant in a private complaint-case, is not entitled to prefer appeal against acquittal under *proviso* to Section 372 and his/her right to appeal, if any, continues to be governed by the unamended provisions read with Section 378(4) of the Code.

(v) those ‘victims’ of complaint-cases whose right to appeal have been recognized under *proviso* to Section 372, are not required to seek ‘leave’ or ‘special leave’ to appeal from the High Court in the manner contemplated under Section 378(3) & (4) of the Code.

Question – (E) (vii) In view of the *proviso* to Section 372 an appeal preferred by a ‘victim’ against an order of acquittal passed by a Magistrate in respect of a cognizable offence whether bailable or nonbailable shall lie to the Court of Session, the State’s appeal under Section 378(1)(a) of the Code against the very order shall be entertained and/or transferred to the same Sessions Court.’

In **DHANNE SINGH V/s. STATE OF RAJASTHAN**⁸, a Division Bench of the Rajasthan High Court took the same view as was

⁸ LAWS(RAJ)-2014-12-22 : 2014 SCC OnLine Raj 5499 : Order dated 02.12.2014 in Criminal Revision Petition Nos.411/2012 and 145/2013

expressed by the Full Bench of the Punjab & Haryana High Court in **TATA STEEL LTD.**⁶ and answered the reference to the effect that the complainant in a complaint case who is also a victim and a victim, other than a complainant in such a case, would have the remedy of an appeal against acquittal only under Section 378(4) of the Code, except where the complainant succeeds in establishing the guilt of the accused but is aggrieved by his conviction of a lesser offence or award of inadequate compensation and in such cases, the complainant shall be entitled to avail the remedy of appeal under Section 372 *proviso*. The Division Bench further held that a victim who is not the complainant in a private complaint case is not entitled to prefer an appeal against acquittal under Section 372 *proviso* and his right, if any, continues to be governed by Section 378(4) of the Code. The Division Bench also observed that no leave or special leave was required to file an appeal under Section 372 *proviso* and that the right conferred thereunder is a substantive and independent right.

Pertinent to note, the Supreme Court, in **DAMODAR S. PRABHU V/s. SYED BABALAL H.**⁹, opined as under:

‘20. It may be noted here that Section 143 of the Act makes an offence under Section 138 triable by a Judicial Magistrate, First Class (JMFC). After trial, the progression of further legal proceedings would depend on whether there has been a conviction or an acquittal.

- In the case of conviction, an appeal would lie to the Court of Sessions under Section 374(3)(a) CrPC; thereafter a revision to the High Court under Sections 397/401 CrPC and finally a petition before the Supreme Court, seeking special leave to appeal under Section 136 of the Constitution of India. Thus, in case of conviction there will be four levels of litigation.

⁹ (2010) 5 SCC 663

- In the case of acquittal by JMFC, the complainant could appeal to the High Court under Section 378(4) CrPC, and thereafter for special leave to appeal to the Supreme Court under Article 136. In such an instance, therefore, there will be three levels of proceedings.’

In **SUBHASH CHAND V/s. STATE (DELHI ADMINISTRATION)**¹⁰, the Supreme Court was dealing with the validity of an order passed by the High Court of Delhi holding to the effect that an appeal filed by the State against the order of acquittal therein would lie to the Sessions Court under Section 378(1) of the Code and not to the High Court under Section 378(4) thereof. The Supreme Court encapsulated the point for consideration thus: whether in a complaint case, an appeal from an order of acquittal of the Magistrate would lie to the Sessions Court under Section 378(1)(a) of the Code or to the High Court under Section 378(4) thereof. Referring to the Law Commission’s 154th and 221st reports opining that there was no provision in the Code under which an appeal in a complaint case could be filed in the Sessions Court, the Supreme Court expressed agreement with the said opinion. The Supreme Court, upon analysis of Section 378 of the Code, observed that it is clear therefrom that the State Government cannot direct the Public Prosecutor under Sections 378(1)(a) and (b) to file an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence because of the categorical bar created by Section 378(1)(b) of the Code. Pointing out that such appeals can only be filed in the Sessions Court at the instance of the Public Prosecutor or as directed by the District Magistrate, the

¹⁰ (2013) 2 SCC 17

Supreme Court observed that in all other cases where orders of acquittal are passed, appeals would be filed by the Public Prosecutor as directed by the State Government only before the High Court. Referring to Section 378(4) of the Code, the Supreme Court stated that it made provision for appeals against orders of acquittal in cases instituted upon complaints and in such cases, after the complainant makes an application to the High Court and the High Court grants special leave to appeal, the complainant may present his appeal to the High Court. The Supreme Court observed that as the said sub-section speaks of 'special leave', as opposed to 'leave' in sub-section (3) of Section 378 of the Code, the complainant's appeal against an order of acquittal is a category by itself. The Supreme Court further observed that a complainant could be a private person or a public servant, as is evident from Section 378(5) which speaks of six months time to file the application for special leave where the complainant is a public servant and sixty days in every other case. The Supreme Court pointed out that Section 378(6) of the Code was important and that it stated to the effect that if in any case, the complainant's application for special leave is refused, no appeal from the order of acquittal would lie at the behest of the State Government thereafter, under sub-sections (1) or (2) of Section 378 of the Code. In effect, if special leave is not granted to the complainant to appeal against an order of acquittal, the matter must end there. Neither the District Magistrate nor the State Government can appeal against such order of acquittal. The Supreme Court opined that the idea appeared to be to accord quietus to the case in such a situation. The Supreme Court further concluded that a complainant can file an application for special leave to appeal against an order of acquittal of any kind only

to the High Court and he cannot file such an appeal in the Sessions Court. This judgment was delivered on 08.01.2013, long after insertion of Section 2(wa) and the *proviso* to Section 372 in the Code.

In **THE BHAJANPURA COOPERATIVE URBAN THRIFT & CREDIT SOCIETY LTD. V/s. SUSHIL KUMAR¹¹**, a learned Judge of the Delhi High Court took the view to the effect that the remedy available to a complainant in a case under Section 138 of the Act of 1881 against an order of acquittal is only to seek special leave to file an appeal under Section 378(4) to the High Court and not under Section 372 *proviso* of the Code.

In **D.SUDHAKAR V/s. PANAPU SREENIVASULU @ EVONE WATER SREENIVASULU¹²**, a Division Bench of this Court, drawing support from **NATIONAL COMMISSION FOR WOMEN V/s. STATE OF DELHI¹³**, held that as the amendment to Section 372 of the Code came into the effect only on 31.12.2009 creating a right in the victim to prefer an appeal, such an amendment would have no application to cases where the incident took place prior thereto.

In **M/S. HILL RANGE POWER PROJECT DEVELOPERS V/s. M/S. ACCIONA WIND ENERGY PRIVATE LTD.¹⁴**, a learned Judge of the Karnataka High Court opined that the word ‘complainant’ in the *proviso* to Section 142 of the Act of 1881 and a ‘victim’ as per Section 2(wa) of the Code are not one and the same and therefore, such a complainant cannot maintain an appeal under Section 372 *proviso*.

In **M/S. TOP NOTCH INFOTRONIX (I) PVT. LTD. V/s. M/S. INFOSOFT SYSTEMS¹⁵**, a learned Judge of the Bombay High Court

¹¹ 2015 (1) NIJ 166 (Del) : Judgment dated 03.09.2014 in CrI.A.Nos.972 and 1163 of 2012

¹² 2013 (1) ALD (CrI.) 366 (AP)

¹³ 2010 (1) SCALE 17

¹⁴ Order dated 24.02.2015 in Criminal Petition No.6072/2014

¹⁵ Order dated 16.06.2011 in Criminal Application (APPA) No.708/2010

at Nagpur opined that Section 372 *proviso* does not, in any manner, affect the provisions of Section 378(4) of the Code which deals with an appeal against the order of acquittal in a case instituted upon a complaint. It was therefore held that against acquittal in a case instituted by a complainant under Section 138 of the Act of 1881, an appeal would only lie to the High Court under Section 378(4).

Similar was the view taken by another learned Judge of the Bombay High Court at Aurangabad in **SOW. KALPANA V/s. THE STATE OF MAHARASHTRA**¹⁶. The learned Judge categorically held that such an appeal would not come within the purview and ambit of the amended provisions of Section 372 of the Code and the remedy provided to the person aggrieved by an acquittal in a cheque-bounce case under Section 138 of the Act of 1881 was only before the High Court in terms of Section 378(4) of the Code, upon seeking leave.

In **M.K.PRODUCTS V/s. M/S. BLUE OCEAN EXPORTS (P) LTD.**¹⁷, a learned Judge of the Calcutta High Court agreed with the view taken in **OMANA JOSE**⁴ and held that that a complainant in a case under Section 138 of the Act of 1881 could not challenge the order of acquittal before the Sessions Court under the *proviso* to Section 372 of the Code and that his remedy is to file an appeal to the High Court with special leave under Section 378 of the Code.

In **S.GANAPATHY V/s. N.SENTHILVEL**¹⁸, a Full Bench of the Madurai Bench of the Madras High Court dealt with the issue as to whether an appeal would be maintainable under Section 378 of the Code, beyond the period of sixty days prescribed under Section 378(5) thereof, at the behest of the complainant in a case arising

¹⁶ Oral Judgment dated 09.01.2013 in Criminal Revision Application No.158 of 2012

¹⁷ Judgment dated 01.09.2016 in CRR No.3793 of 2014

¹⁸ 2016 ALL MR (Cri.) Journal 492

under Section 138 of the Act of 1881 The questions framed for consideration by the Full Bench were as under:

‘1. Whether a victim of a crime, who has prosecuted an accused by way of a private complaint, does not have statutory right of appeal against acquittal under *proviso* to Section 372 of the Code of Criminal Procedure?

2. Whether a complainant, in a private complaint case, who is not a victim, has got the remedy to seek only leave to file appeal under Section 378(4) of the Code of Criminal Procedure in the event of acquittal of the accused?

3. In a private complaint case, if a victim does not happen to be a complainant and in the event of acquittal, whether he has got right of appeal under *proviso* to Section 372 of the Code of Criminal Procedure or he has to seek leave to file appeal under Section 378(4) of the Code of Criminal Procedure?

4. Whether a victim in a case instituted on a police report, has a better place in the criminal justice delivery system than a victim in a private complaint case?

5. Whether the term ‘victim’ as defined in Section 2(wa) of the Code of Criminal Procedure excludes a complainant in a private complaint case, though he has suffered loss or injury on account of the offence committed against him? and

6. Whether the view held in the judgment of this Court in *Selvaraj Vs. Venkatachalapathy*, reported in 2015 (1) MWN (Cr) DCC 26 (Mad.), reflects correct exposition of law or the same requires to be overruled?’

Earlier, in ***SELVARAJ V/s. VENKATACHALAPATHY***¹⁹, a learned Judge of the Madras High Court opined that ‘victim’ in Section 372 *proviso* would not include a complainant in a complaint case and the term ‘victim’ used in the said *proviso* should be confined only to victims in cases instituted otherwise than on a complaint.

The Full Bench recorded its conclusions on the questions posed to it as under:

¹⁹ 2015 (1) MWN (Cr) DCC 26 (Mad.)

(1) A victim of the crime, who has prosecuted an accused by way of a private complaint, has a statutory right of appeal within the limits prescribed under Section 372 of Cr.P.C.

(2) A complainant (in a private complaint), who is not a victim, has a remedy and can file an appeal in the event of acquittal of the accused after obtaining leave to appeal under Section 378(4) of Cr.P.C.

(3) In a private complaint, even if the victim is not a complainant, he has a right to appeal under the *proviso* to Section 372 of Cr.P.C., but he has to seek leave as held by the Supreme Court in *Satyapal Singh*.

(4) The term “victim” has been correctly interpreted by the Full Bench of the Delhi High Court in *Ramphal* and we are in agreement with the same.

(5) A victim (as defined under Section 2(wa) of the Cr.P.C. does not cease to be a victim merely because he also happens to be a complainant and he can avail all the rights and privileges of a victim also and

(6) The decision of the Single Judge in *Selvaraj* holding that the term “victim” found in Section 372 excludes a complainant, is not legally correct and in a given case, a complainant, who is also a victim, can avail right granted under Section 372 of Cr.P.C.’

On a more general note, in **SUMITOMO CORPORATION V/s. CDC FINANCIAL SERVICES (MAURITIUS) LTD.**²⁰, the Supreme Court observed that an appeal is a statutory remedy and can only lie to the specified forum. The appellate forum cannot be decided on the basis of cause of action as applicable to original proceedings such as a suit, which could be filed in any Court where part of the cause of action arises. Earlier, in **STRIDEWELL LEATHERS (P) LTD. V/s. BHANKERPUR SIMBHAOLI BEVERAGES (P) LTD.**²¹, the Supreme Court observed that ordinarily, substitution of a new forum for the existing forum of appeal should not be readily inferred in the absence

²⁰ (2008) 4 SCC 91

²¹ (1994) 1 SCC 34

of a clear provision to that effect or at least any incongruity resulting from that view. It was further observed that express provision would be made in the statutory amendment to indicate a different or substituted appellate forum than the existing appellate forum if that was the intention of the amendment of jurisdiction of the Court for the purpose of an appeal had been altered in any manner and the absence of any indication in the amendment to suggest any change or substitution in the appellate forum is a pointer in the direction that the same continued unaltered.

As regards the sanctity of the remedy provided, reference may be made to ***MUKUND DEO (DEAD) REPRESENTED BY HIS LEGAL REPRESENTATIVES KASIBAI AND OTHERS V/s. MAHADU AND OTHERS***²², wherein the Supreme Court found on facts that under Section 602 of the Hyderabad Civil Procedure Code, 1328 Fasli, a second appeal lay to the High Court on questions of fact as well as of law and this was the position in law on the date the suit was instituted. However, the said Code was repealed and when the Code of Civil Procedure, 1908, was extended to Hyderabad State, after it became part of the Indian Union, second appeals before the High Court were maintainable under Section 100 thereof. It was therefore argued that the High Court could not set aside the findings of fact. The Supreme Court however disagreed and observed that as a general rule, alterations in law of procedure would be retrospective, but a right of appeal to a particular forum is a substantive right and is not lost by alteration in the law, unless provision is made expressly in that behalf or by necessary implication.

²² AIR 1965 SC 703

Again, in **PANDURANG V/s. STATE OF MAHARASHTRA**²³, the Supreme Court observed that when a matter required to be heard by a Division Bench of the High Court but is decided by a learned single Judge, such a judgment would be a nullity as the accused was entitled to have his case heard and claim a verdict as regards his guilt or innocence at the hands of two learned Judges and such right could not be taken away except by amending the rules and so long as the rules remained in operation, it would be arbitrary and discriminatory to deny him this right.

On similar lines, in **COMMISSIONER OF INCOME TAX, ORISSA V/s. DHADI SAHU**²⁴, the Supreme Court observed that no litigant had a vested right in a matter of procedural law but where the question is of change of forum, it ceases to be procedure only as the forum of appeal is a vested right as opposed to pure procedure to be followed before a particular forum. It was further observed that the right becomes vested when the proceedings are initiated in the tribunal or the Court of first instance and unless the legislature has, by express words or by necessary implication, clearly so indicated, that vested right would continue in spite of the change of jurisdiction of the different tribunals or fora.

In **HIMACHAL PRADESH STATE ELECTRICITY REGULATORY COMMISSION V/s. HIMACHAL PRADESH STATE ELECTRICITY BOARD**²⁵, the Supreme Court culled out three basic principles from earlier case law:

‘22.1. The forum of appeal available to a suitor in a pending action of an appeal to a superior tribunal which

²³ (1986) 4 SCC 436

²⁴ 1994 Supp (1) SCC 257

²⁵ (2014) 5 SCC 219

belongs to him as of right is a very different thing from regulating procedure;

22.2. That it is an integral part of the right when the action was initiated at the time of the institution of action; and

22.3. That if the court to which an appeal lies is altogether abolished without any forum constituted in its place for the disposal of pending matters or for lodgment of the appeals, vested right perishes.’

The Supreme Court concluded that that what is unaffected by repeal of a statute is a right acquired under it and not a mere hope or expectation of, or liberty to apply for, acquiring the right.

On the aspect of interpretation of statutes, the following case law is of guidance: In **STATE OF MAHARASHTRA V/s. MARWANJEE F. DESAI**²⁶, the Supreme Court observed that the statute has to be considered in its entirety and picking up one word from one particular provision and thereby analyzing it in a manner contrary to the Statement of Objects and Reasons is neither permissible nor warranted. Adverting to the fixed canons of construction and interpretation of statutes, the Supreme Court held that a statute cannot be read in the manner as was done by the High Court and the true intent of the legislature has to be gathered and deciphered in its true spirit, having due regard to the language used therein. The Statement of Objects and Reasons was held to be undoubtedly an aid to construction and a useful guide but the interpretation and the intent should be gathered from the entirety of the statute and when language of the Section providing an appeal to a forum is clear and categorical, no external aid is permissible while interpreting the same. The Supreme Court was of the view that once the legislature had deliberately used ‘every order’, if a restrictive meaning is

²⁶ (2002) 2 SCC 318

attributed, as was done by the High Court, the word 'every' becomes totally redundant, but as the legislature avoids redundancy, all the words used in the provision have to be attributed meaning and attribution of any meaning to the word 'every' by itself would negate the interpretation that found favour with the High Court. As the word 'every' was totally ignored, the Supreme Court held that it was neither permissible nor warranted.

Again, in **PERUMAL V/s. JANAKI**²⁷, the Supreme Court observed that the language of Section 195(4) of the Code creates a legal fiction whereby it is declared that the original Court is subordinate to that Court to which appeals ordinarily lie from the judgments or orders of the original Court and such a fiction must be understood in the context of Article 227 of the Constitution and Sections 10(1) and 15(1) of the Code. The Supreme Court further observed that each one of the streams of the Courts under Sections 10(1) and 15(1) of the Code have their administrative hierarchy depending upon the law by which they were brought into existence and certain Courts have appellate jurisdiction while certain Courts have original jurisdiction. As appellate jurisdiction is a creature of the statute and dependent upon the scheme of a particular statute, the Supreme Court held that the forum of appeal would vary and generally, such appellate fora are created on the basis of either subject-matter of the dispute or economic implications or nature of crime, etc.

In **RAKESH KUMAR PAUL V/s. STATE OF ASSAM**²⁸, the Supreme Court observed as under:

²⁷ (2014) 5 SCC 377

²⁸ 2017 SCC OnLine SC 924

‘While interpreting any statutory provision, it has always been accepted as a golden rule of interpretation that the words used by the legislature should be given their natural meaning. Normally, the courts should be hesitant to add words or subtract words from the statutory provision. An effort should always be made to read the legislative provision in such a way that there is no wastage of words and any construction which makes some words of the statute redundant should be avoided. No doubt, if the natural meaning of the words leads to an interpretation which is contrary to the objects of the Act or makes the provision unworkable or highly unreasonable and arbitrary, then the Courts either add words or subtract words or read down the statute, but this should only be done when there is an ambiguity in the language used. In my view, there is no ambiguity in the wording of Section 167(2) of the Code and, therefore, the wise course would be to follow the principle laid down by Patanjali Shastri, CJI in *Aswini Kumar Ghose v. Arabinda Bose*, AIR 1952 SC 369, where he very eloquently held as follows:

“It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute”.

Sri Anand Kumar Kapoor, learned counsel, would point out that a complaint case under Section 138 of the Act of 1881 is tried as a summons case, within the meaning of Section 2(w) of the Code, and the procedure for trial of such a case is as per Chapter XX of the Code. He would submit that no ‘charge’ is framed in such a case and specific provision for an appeal remedy is made under Section 378(4) of the Code for an aggrieved complainant in the event of acquittal of the accused. He would point out that a ‘victim’ as defined in Section 2(wa) of the Code has to be construed strictly in terms of the language used therein and that a ‘complainant’ in a cheque-bounce

complaint case under Section 138 of the Act of 1881 cannot be brought within the ambit of 'victim' as defined thereunder. He would point out that in **SUBHASH CHAND**¹⁰, the Supreme Court, despite being aware of the changes in the Code, did not advert to the *proviso* to Section 372 of the Code and merely held that an appeal would lie from an acquittal to the High Court under Section 378(4) of the Code and not to the Sessions Court under Section 378(1)(a) of the Code.

The learned Public Prosecutor for the State of Andhra Pradesh supported Sri Anand Kumar Kapoor, learned counsel. He would submit that Section 372 *proviso* of the Code provides a victim the right of preferring an appeal only in cases arising out of a police report as earlier, the limited remedy available to such a victim when the trial Court acquitted the accused was to prefer a revision under Section 397 of the Code which, at best, could only result in the setting aside of the acquittal and a consequential remand but not a conviction. The legislature, in its wisdom, therefore wished to provide a separate recourse to such an aggrieved victim by allowing an appeal at his behest. Therefore, a complainant in a case arising out of a private complaint, who was already provided the right of appeal under Section 378(4) of the Code, cannot be permitted to take recourse to Section 372 *proviso* of the Code. Learned Public Prosecutor would point out that a Division Bench of the Gauhati High Court in **PAYE MOSING V/s. NABA BORA @ JALIA**²⁹ dealt with the question of limitation in relation to an appeal filed by a victim under the *proviso* to Section 372 and, disagreeing with the view taken by the Patna High Court in **PARMESHWAR MANDAL V/s. STATE OF**

²⁹ 2015 SCC OnLine GAU 505 : (2017) 1 GAU LR 471

BIHAR³⁰, held that on extension of an existing right (for enforcement of which the period of limitation has already been prescribed under the law) to a new class/classes of persons, such existing law of limitation, applicable to the old class/classes of persons, shall automatically be applicable to the new class/classes of persons in whose favour such right has subsequently been extended. The Division Bench accordingly applied the law of limitation to such appeals also. He would point out that the limitation adopted was on par with the limitation applicable to appeals arising out of cases based on police reports and therefore, a complainant in a Section 138 complaint case under the Act of 1881 could not be put on par with a victim under Section 2(wa) of the Code.

The learned Public Prosecutor for the State of Telangana would refer to the judgment of the Chhattisgarh High Court in **KAILASH MURARKA**⁵ and point out that para 2 of the 'Statement of Objects and Reasons of Act No.5 of 2009', referred to therein, reflects the concern for victims by summing up that 'at present the victims are worst sufferers in a crime and they do not have much role in Court proceedings. They need to be given certain rights and compensation so that there is no distortion of the criminal justice system.' He would assert that this observation would manifest that a complainant in a case arising out of a private complaint, who already plays a major role in the Court proceedings, cannot be brought within the ambit of 'victim' under Section 2(wa) introduced under Act No.5 of 2009. He would also rely on **OMANA JOSE**⁴, wherein the Kerala High Court observed that before amendment of the Code under Act No.5 of 2009, a victim in a case instituted on a police report could only challenge

³⁰ (2014) CrLJ 1046

the order of acquittal by filing a revision under Section 397 of the Code and it was only the State which could direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than the High Court or an order of acquittal passed by a Court of Session in revision. He would point out that the legislature cannot be assumed to be ignorant of Section 378(4) of the Code, whereunder the specific remedy of appeal was already provided to a complainant against the acquittal of an accused in a case arising out of a private complaint.

At the outset, it would be necessary to understand and delineate the contours of a 'complainant' in the scheme of the Code. Though the term 'complainant' has not been defined thereunder, sufficient guidance is available to understand its content and import from the definition of a 'complaint' under Section 2(d) of the Code. This definition makes it clear that a police report is not included in the ambit of a 'complaint', as defined, but the explanation appended thereto indicates that such a police report shall be deemed to be a complaint and the police officer making such police report shall be deemed to be the complainant therein. The distinction between a private complainant and the police officer submitting a police report, who is deemed to be a complainant in that case, is therefore clear. The victim or his near relation, in the case of homicide, who gives information to the police as to the commission of a non-cognizable offence, though they are the actual affected parties, do not assume the status of a 'complainant' in that case and it is only the police officer who finally submits the police report under Section 173 of the Code, who is conferred the deemed status of being the 'complainant' in that case. In consequence, in a criminal case arising out of a police

report under Section 173 of the Code, the actual victim or his near relation, in the case of homicide, has a very limited participatory role. The law, as it existed prior to amendment of Section 372 of the Code, only provided for appeals being preferred against acquittal in such cases by the State. The victim or his near relation in a case of this nature only had the right of preferring a revision under Section 397 of the Code, if an order of acquittal was passed therein. As it was felt that this limited remedy of revision was not adequate, as the scope of interference in a revision would be far less than in an appeal, the law makers thought it fit to provide the right of appeal to such a victim or his near relation by inserting the *proviso* to Section 372 of the Code. This being one aspect, Section 142 of the Act of 1881 demonstrates that cognizance of an offence under Section 138 thereof would not be taken by the Court except upon the written complaint of the payee of the cheque or its holder in due course. Therefore, law is set in motion in such a case upon the private complaint itself and the police have little role to play. It is the complainant who practically prosecutes the accused in the case. However, the scheme of the Act of 1881 does not visualize the complainant in such a case being compensated and no provision is made for awarding him 'compensation'. Section 138 of the Act of 1881 merely speaks of levy of a fine upon the accused which may extend to twice the amount of the cheque. The use of the word 'fine' in the provision clearly indicates that the levy is punitive in nature and not compensatory. The complainant would therefore have no say in the quantum of the fine levied and it would be entirely within the judicious discretion of the Court to fix the same.

From the scheme of the Code, it is clear that after amendment of Section 378 in the year 2005, which came into effect on

23.06.2006, appeals against acquittals had to be in conformity therewith. Under 378(1)(a) thereof, the District Magistrate was empowered to direct the Public Prosecutor to present an appeal to the Sessions Court from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence in any case. Under Section 378(1)(b) thereof, the State Government was empowered in any case to direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than the High Court not being an order falling within the ambit of Clause (a) of that sub-section or an order of acquittal passed by a Court of Session in revision. Section 378(2) provided for filing of appeals to the Court of Session or to the High Court in cases investigated by the Delhi Special Police Establishment or by any other agency under a Central Act other than the Code. Section 378(3) made it clear that no appeal would lie to the High Court under Sections 378(1) or (2) except with the leave of the High Court. Section 378(4) provided for an appeal by the complainant against an order of acquittal passed in any case instituted upon a complaint and the forum created for such an appeal was the High Court which had to grant special leave to appeal to the complainant for presenting such an appeal. Section 378(5) made it clear that grant of special leave to appeal under sub-section (4) had to be within six months where the complainant was a public servant and within sixty days in every other case, computed from the date of the order of acquittal. Finality was given under Section 378(6) to the order of acquittal if the High Court refused grant of special leave to appeal therefrom under Section 378(4) and no appeal could lie thereafter against such acquittal either under Section 378(1) or (2).

Therefore, even as on the date of amendment of the Code *vide* the Act No.5 of 2009, a complainant in a case arising out of a private complaint had the right to prefer an appeal to the High Court against acquittal therein, with special leave. As rightly pointed out, it cannot be presumed that the legislature was unaware of the existing appellate remedy while creating a right of appeal in favour of a 'victim', by inserting Section 2(wa) in the Code along with a *proviso* to Section 372 thereof. Had it been the intention of the legislature to provide dual remedies to such a complainant by allowing him to come within the ambit of a 'victim' under Section 2(wa) and avail the right of appeal under the *proviso* to Section 372, express mention would have been made of the same. Be it noted, Section 397 of the Code specifically confers upon an aggrieved party the right of revision either before the Sessions Court or before the High Court and once the remedy of revision is invoked before either of the aforesaid fora, a further revision would not lie thereunder to the other forum.

Significantly, apart from the aforesaid aspects, there is a more decisive factor to be taken into account to decide the controversy. Section 2(wa) of the Code speaks of a 'victim' being a person who has suffered any loss or injury by reason of the act or omission for which an accused has been 'charged'. It may be noted that none of the judgments on the issue considered the plain and unambiguous language used by the legislature in Section 2(wa) while defining a 'victim'. As pointed out in **ASWINI KUMAR GHOSE V/s. ARABINDA BOSE**³¹ and **RAKESH KUMAR PAUL**²⁸, no word or phrase utilized by the legislature can be rendered redundant or given no meaning and the provision has to be interpreted and given effect

³¹ AIR 1952 SC 369

to in its entirety. When the legislature, in its wisdom, defined 'victim' to mean a person who suffered any loss or injury caused by an act or omission for which an accused person has been 'charged', use of the word 'charged' has to be given full effect. 'Charge' is defined rather vaguely under Section 2(b) of the Code to include any head of charge when the charge contains more heads than one. However, framing of a 'charge' in the context of the statutory scheme of the Code cannot be belittled, as an entire chapter, viz., Chapter XVII of the Code, is devoted to 'the charge'. Section 211 thereunder defines contents of a charge. Every 'charge' under the Code shall state the offence with which the accused is charged and the law and the section of law against which the offence is said to have been committed is also to be mentioned therein.

Section 321 of the Code makes it clear that framing of a charge is crucial in matters where such a procedure is prescribed, as an accused is liable to be discharged in respect of an offence where the prosecution is withdrawn before a charge has been framed against him whereas, if the withdrawal from the prosecution takes place after the charge is framed or when, under the Code no charge is required, he is acquitted in respect of such offence or offences.

The use of the word 'charged' in Section 2(wa) of the Code therefore assumes great significance and it is only in cases where an accused is 'charged' of an offence and he is acquitted of such 'charge', the person, who suffered any loss or injury caused by such alleged act or omission of the accused which formed part of the 'charge', would be a 'victim' for the purpose of Section 2(wa) of the Code and for preferring an appeal under the *proviso* to Section 372 of the Code. Notably, cases under Section 138 of the Act of 1881 are tried as

summons cases. A 'summons case' is defined under Section 2(w) of the Code to mean a case relating to an offence not being a warrant case, while Section 2(x) defines a 'warrant case' to mean a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. As an offence under Section 138 of the Act of 1881 attracts imprisonment for a term which may extend upto two years only, such a complaint case would be only a 'summons case', wherein no charge requires to be framed. Under Chapter XIX of the Code relating to trial of 'warrant cases', framing of a charge is required under Section 240, while no such procedure is contemplated under Chapter XX of the Code, dealing with trial of 'summons cases'. As the accused in a cheque-dishonour case under Section 138 of the Act of 1881 is not 'charged', the complainant in such a case, though he may suffer loss and injury by the omission of the accused to pay his dues, cannot be brought within the ambit of a 'victim' as defined in Section 2(wa) of the Code.

Ergo, a complainant in a cheque-dishonour complaint case under Section 138 of the Act of 1881 cannot be categorized a 'victim' in terms of the definition under Section 2(wa) of the Code. Excluded from the ambit of Section 2(wa) of the Code, such a complainant would not be entitled to avail the remedy of appeal under the *proviso* to Section 372 of the Code and must continue to avail the special remedy of appeal provided under Section 378(4) of the Code after obtaining special leave.

As regards the remedy of appeal available to complainants against orders of acquittal in cases pertaining to any other offence, it may be noted that the right of appeal given to 'victims' under the *proviso* to Section 372 of the Code is a general remedy provided to all

such 'victims'. This general remedy cannot be extended to complainants in cases arising out of private complaints, who already have the special remedy of appeal provided under Section 378(4) of the Code. Trite to state, the general provision cannot override the special provision unless specifically provided so or by necessary implication (See **R.S.RAGHUNATH V/s. STATE OF KARNATAKA**³², **WAVERLY JUTE MILLS CO. LTD V/s. RAYMON & CO. (INDIA) (P) LTD**³³ and **MOTIRAM GHELABHAI V/s. JAGAN NAGAR**³⁴). Further, by virtue of such extension, consequent to the interpretation sought to be given to Section 2(wa) of the Code so as to include within its ambit complainants who are already provided the remedy of appeal under Section 378(4) of the Code, the three levels of remedies provided to such complainant are being converted into four levels, though the law makers never expressed any intention to do so. Once the statute provided the general and special remedies of appeal and prescribed the fora therefor, it is not open to the Courts to interpret the statute otherwise and blur the lines between the two strata, so as to multiply the appeal remedies and the fora therefor. The judgments of the Supreme Court in **DAMODAR S. PRABHU**⁹ and **SUBHASH CHAND**¹⁰, decisions rendered after insertion of Section 2(wa) and the *proviso* to Section 372 in the Code, also support this view.

Therefore, even though there may be complainants in cases arising out of private complaint cases where the accused are 'charged', unlike a complaint case arising under Section 138 of the Act of 1881, they still cannot aspire to maintain an appeal against an order of acquittal in such a case under the *proviso* to Section 372 of

³² (1992) 1 SCC 335

³³ AIR 1963 SC 90

³⁴ (1985) 2 SCC 279

the Code. Given the special remedy already provided to them under Section 378(4) of the Code in the status of being a 'complainant', the general remedy provided to 'victims' under the *proviso* to Section 372 of the Code cannot be extended to them. They would therefore have to continue to avail the remedy of appeal under Section 378(4) of the Code by following the due procedure.

To sum up, we answer the first question as to whether the complainant in a complaint case for an offence punishable under Section 138 of the Act of 1881 is a 'victim' as defined under Section 2(wa) of the Code, as amended by Act No.5 of 2009, in the negative. Such a complainant is not a 'victim' within the meaning of Section 2(wa) of the Code and would stand excluded therefrom, by virtue of the fact that the accused in such a case is not subjected to a 'charge'.

In consequence, we also answer the second question as to whether such a complainant would be entitled to file an appeal under the *proviso* to Section 372 of the Code before the Court to which an appeal lies against conviction, in the negative. As such a complainant does not come within the ambit of a 'victim' under Section 2(wa) of the Code, his only remedy is to prefer an appeal under Section 378(4) of the Code, with special leave.

The third question is answered holding that a complainant in a complaint case relating to an offence under Section 138 of the Act of 1881 would be required to file an appeal against acquittal in such case only under Section 378(4) of the Code, after seeking special leave. In all other complaint cases relating to offences, either bailable or non-bailable, even if the accused therein is 'charged', the complainant therein would not have the right of preferring an appeal under the *proviso* to Section 372 of the Code and he would have to

continue to avail the special remedy of appeal provided to him under Section 378(4) of the Code, duly seeking special leave.

The reference is answered accordingly. In the light of our findings on the referred questions of law, the appeal filed under the *proviso* to Section 372 of the Code by the first respondent herein, the complainant in a complaint case under Section 138 of the Act of 1881, is not maintainable. In consequence, the criminal petition is allowed quashing Criminal Appeal No.926 of 2016 on the file of the learned Metropolitan Sessions Judge, Hyderabad.



SANJAY KUMAR, J

DR. SHAMEEM AKTHER, J

27th OCTOBER, 2017

L/R copy to be marked -Yes
B/o Svv