

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2872 of 2018

Arising Out of PS. Case No. -6 Year- 2015 Thana -Mahila P.S. District- Sasaram (Rohtas)

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Rasida Khatoon, Wife of Sameer Khan, Daughter of Towfeeq Khan,
Resident of Village- Kerpa, Police Station- Amjhor, District- Rohtas.

.... Appellant/s

Versus

1. The State of Bihar.
2. Sameer Khan @ Kudus Khan, Son of Late Mehrab Khan, Resident of
Village- Jaishree, Police Station- Karakat, District- Rohtas.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Pritish Kumar Lal, Adv.
Mr. S.K. Lal, Adv.

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

4 28-08-2018

The learned counsel for the appellant has raised objection over propriety of Defect No.14(2) so pointed out by the office concerning maintainability of instant appeal and on account thereof, has been heard in length.

2. The submission having made on behalf of learned counsel for the appellant is to the effect that trial court had convicted the respondent no.2 vide judgment of conviction dated 20.12.2017 against which respondent no.2 has filed Criminal Appeal No.11 of 2018 which was heard by the Appellate Court of Third Addl. Sessions Judge and vide judgment dated 12.06.2018, appeal has been allowed setting aside the judgment of conviction and sentence recorded by the trial court. Against which informant has preferred instant appeal.

3. In this regard, it has been submitted that as per amendment introduced in Section 372 of the Cr.P.C. the victim



has been empowered to challenge the order of acquittal in an appeal. The appeal was filed before the Appellate Court by the respondent no.2 against conviction and not by the appellant on account thereof, the right so prescribed under Section 372 Cr.P.C. remained immune from any sort of influence whereupon, this appeal is maintainable being the first appeal at the end of the appellant/informant. As such, the objection raised on behalf of office is not at all maintainable and is accordingly fit to be overruled.

4. The learned Additional Public Prosecutor has submitted that there happens to be no provision prescribed under the Cr.P.C. for filing Second Appeal irrespective of status and on account thereof, office has rightly pointed out that instant memo of appeal is not at all found maintainable.

5. For better appreciation of the submissions raised on behalf of rival side relating to the Defect No.14(2) so pointed out by the office first of all Section 372 Cr.P.C. is to be seen which reads as follows:-

“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.]

Amendment Act, 2008.-Clause 29 amends section 372 of the Code relating to appeals from judgment or order of a Criminal Court. It gives to the victim the



right to prefer an appeal against any adverse order passed by the trial Court. (Notes on Clauses).

6. Section 372 prescribes a barrier by way of forbidding entertainment of an appeal against any order/judgment unless and until so identified to be appealable. By way of introduction of Criminal Procedure Amendment Act, 2008 effective from 31.12.2009 the right of the victim duly been acknowledged providing legal right to challenge an order of acquittal, conviction for lesser offence or imposing inadequate compensation to the court where ordinarily the appeal would lie against the order of conviction. The plain reading of the Section itself, it is apparent that Appellate Court has properly been identified as the Court where ordinarily appeal against the judgment of conviction would lie. No provision is there identifying the court to Appellate Court against the judgment of Appellate Court with Cr.P.C. in case judgment of conviction passed by the trial court is confirmed under appeal, like Cr.P.C. there happens to be no provision for filing of Second Appeal in similar way. Let it be seen through another angle. Under Chapter-XXIX of the Cr.P.C. dealing with the appeal, no Second Appeal has been allowed to be entertained save and except in terms of Section 378(1)(b) of the Cr.P.C. whereunder the status of the victim has not been recognized. At the present moment, reference of Section 393 of the Cr.P.C. is also found relevant one which suggest finality of Appellate Court's order subject to the provisions as enumerated therein that means to say under Section 377, 378,



384(4) of the Cr.P.C. coupled with steps taken under Chapter-XXX dealing with reference and revision. Had there been it should have properly been amended inconsonance with introduction of amendment under Section 372 of Cr.P.C.

7. Because of the fact that the liberty so given to the appellant is by way of statute and so, it has to be construed in the same manner without deviating, deflecting or interpreting contrary to the same. That being so, acknowledging the status of the appellate to be of informant whose right is not at all found duly acknowledged in terms of Section 378 of the Cr.P.C. whereunder some sort of liberty has been given to the State with regard to challenging of judgment of acquittal, passed in an appeal as such the defect so pointed out by the office is found legally entertainable whereupon, appellant is directed to proceed in terms thereof, within fortnight, failing which instant appeal will be deemed to be dismissed without reference to the bench.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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