

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 401/2020.

Smt. Manisha Sunil Patil

-VERSUS-

State of Maharashtra and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Ms. R.P. Jog, Advocate for the Appellant.
Ms. G.R. Tiwari, A.P.P. for Respondent No.1.

CORAM : VINAY JOSHI, J.

DATE : OCTOBER 27, 2020.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. This is Victim's appeal challenging the order of acquittal dated 07.12.2017, passed in R.C.C.No.32/2015 by the Judicial Magistrate First Class, Mangrulpir, District Washim. It was a State case against 8 accused for commission of offence punishable under Sections 498-A, 494 read with Section 34 of the Indian Penal Code.

3. After full fledged trial, the learned

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Magistrate held that the prosecution has failed to establish the alleged offences hence, acquitted all the accused in terms of Section 248[1] of the Code of Criminal Procedure.

4. Being aggrieved by the order of acquittal, initially the informant lady has filed Criminal Appeal along with Criminal Application No.73/2018 before this Court seeking leave to file appeal in terms of Section 378[4] of the Code of Criminal Procedure. This Court vide order dated 17.04.2018, issued notice to respondents / non-applicants on the question of grant of leave. However, as certain office objections were not complied with, as well as the appeal was not prosecuted, the same came to be dismissed for want of prosecution by this Court vide order dated 26.04.2019. In such a background this appeal has been again filed by the victim lady only against original accused no.2 [her husband].

5. The appellant has stated that this being an appeal of victim in terms of proviso added to Section 372 of the Code of Criminal Procedure, leave of Court is not required. However, since it is an appeal of victim, directly filed before this Court, a query was

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made to the learned Counsel appearing for the appellant about maintainability of this appeal before this Court. In response, it is submitted that since earlier this Court has entertained victims' appeal against acquittal, therefore, the Sessions Court may not entertain the appeal, if filed.

6. There is no dispute that at the instance of a report lodged by the appellant/victim, the police investigated the matter and filed charge sheet before the competent Court, which was numbered as R.C.C.No. 32/2015 i.e. it was a State case. Precisely, it was not a case instituted upon complaint, and therefore, the appeal as contemplated under Section 378[4] of the Code of Criminal Procedure would not lie before this Court. Section 372 of the Code of Criminal Procedure which deals with "appeals" provides that no appeal to lie unless otherwise provided. This section was amended by Act No.V of 2009 w.e.f. 31.12.2009, whereby a proviso was added conferring right to the victim to prefer an appeal against the order of acquittal. The appellant is a victim within the meaning of Section 2[wa] of the Code, which is not in dispute. By way of inserting the

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proviso, a remedy of appeal has been independently provided to the victim to challenge acquittal or conviction for a lesser offence or against inadequacy of compensation.

7. Bare perusal of the proviso indicates that such an appeal by the victim would lie to the Court to which an appeal ordinarily lies against the order of conviction. The impugned order has been passed by the Judicial Magistrate First Class, and therefore, the appeal against order of conviction passed by the Magistrate would lie before the Court of Sessions in terms of Section 374[3] of the Code of Criminal Procedure. For the purpose of ready reference Section 372 of the Code is reproduced below :

“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.”

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Thus, there is no manner of doubt that while creating a right of appeal in favour of the victim, a forum has been created, therefore, the appeal would lie to the Court of Sessions.

8. The learned Counsel appearing for the appellant expressed fear that the Sessions Court may not entertain the appeal, since earlier this Court has entertained the appeal by issuing notice on the application seeking leave.

9. Be that as it may, the legal position stands that the appeal of victim against order of acquittal would lie before the Court of Sessions, and therefore, even if earlier this Court has issued notices on the point of grant of leave, it will not come in the way of the Sessions Court in entertaining the appeal. The question of limitation has cropped up for which the appellant would submit that in view of the ratio laid down by this Court in **Criminal Appeal Stamp No. 978/2010 (Roma Sukhajitsingh Saini .vrs. Nirmalsingh Harbhansingh Saini and others)**, no limitation is prescribed for filing appeal by the victim.

10. Since this Court is not entertaining the appeal for want of jurisdiction, the aspect of limitation

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is kept open for the Sessions Court to decide in accordance with law.

11. In view of above, the appeal is disposed of as not maintainable.

12. This order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

Rgd.

JUDGE