

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Revision No. 421 of 2010**

Arjun Singh Patel S/o Dhani Ram Patel, Aged about 49 years, Occupation Teacher, R/o HTPP Darri, House No. F 1428, Everest Vihar, Korba, Distt. Korba, Chhattisgarh.

---Applicant

Versus

1. Ram Kumar Patel S/o Faiku Ram Patel, Aged about 27 years.
2. Faiku Ram Patel S/o Late Paras Ram Patel, Aged about 65 years.
3. Laksheshwari Patel W/o Faiku Ram Patel, Aged about 55 years.

All R/o Village Bhaison, P.S. Pamgarh, Distt. Janjgir-Champa, Chhattisgarh.

4. State of Chhattisgarh, Through District Magistrate, Sarguja, Distt. Sarguja, Chhattisgarh.

---Non-Applicants

For Applicant :- Mr. Awadh Tripathi, Advocate
 For Respondent 4 :- Mr. Animesh Tiwari, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

Arvind Singh Chandel, J.

09/11/2021

1. This criminal revision is directed against the judgment dated 27/05/2010 passed by learned 2nd Additional Sessions Judge, (FTC) Korba in S.T. No. 38/2008 whereby non-applicant No. 1 has been convicted for offences punishable under Sections 498A and 304B of IPC and he has been sentenced to undergo RI for 7 years and 1 year, respectively, however, non-applicants No. 2 and 3 have been acquitted from the charges under Sections 498A, 302/34 and 304B of IPC.

2. When the matter is taken up for hearing on admission, Mr. Animesh Tiwari, learned counsel for non-applicant No. 4/State, would submit that the impugned judgment of conviction of non-applicant No. 1 and acquittal of non-applicants No. 2 and 3 has been passed on 27/05/2010, as such, in view of the proviso to Section 372 of CrPC which has been brought into force in the statute book with effect from 31/12/2009, the instant revision would not be maintainable and the remedy of the applicant/victim's father would be to prefer an appeal. It has also been stated at the Bar that

non-applicant No. 1, being aggrieved from his conviction for offences punishable under Sections 498A and 304B of IPC, preferred Criminal Appeal No. 376/2010 (Ram Kumar v. State of Chhattisgarh) which has been dismissed on merits by this Court vide judgment dated 14/08/2013.

3. Mr. Awadh Tripathi, learned counsel for the applicant, could not competently dispute the said legal position of non-maintainability of the instant revision.

4. We have heard learned counsel for the parties, considered their submissions and went through the records with utmost circumspection.

5. Section 372 of the Code of Criminal Procedure, 1973 was amended and proviso to Section 372 was inserted by Act 5 of 2009 with effect from 31/12/2009, which states as under :-

“[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.]”

6. A careful perusal of the aforesaid provision would show that the victim has 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 an appeal preferred by the victim shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

7. Reverting to the facts of the case in light of the aforesaid fact that non-applicants No. 2 and 3 have been acquitted for offence under Sections 498A, 302/34 and 304B of IPC by the impugned judgment dated 27/05/2010 which has admittedly been passed after coming into force of proviso to Section 372 of CrPC with effect from 31/12/2009, as such, the instant revision against the judgment of acquittal of non-applicants No. 2 and 3 would not be maintainable by virtue of proviso to Section 372 of IPC. Similarly, though non-applicant No. 1 has been convicted for offence punishable under Sections 498A and 304B of IPC, it is also covered by proviso to Section 372 of CrPC as if the accused/non-applicant No. 1 has been convicted for lesser offence, then acquittal appeal would be maintainable. Furthermore, the appeal preferred by non-applicant No. 1 has also

been dismissed being the subject matter of Criminal Appeal No. 376/2010.

8. In view of the aforesaid legal position, the instant revision, as framed and filed, is held to be non-maintainable and is dismissed accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

Harneet