

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1441 OF 2018

Sunil Kishanrao Jadhav

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr. A.A. Joshi, Advocate h/f Mr. S.V. Natu, Advocate for petitioner

Mr. S.P. Sonpawale, A.P.P. for respondent no.1 – State

Mr. G.L. Kedar, Advocate for respondent nos. 2 to 4

....

CORAM : R.G. AVACHAT, J.

DATED : 17th MARCH, 2022

PER COURT :

1. Heard.

2. The challenge in this petition is to the judgment and order dated 01st September, 2018 passed by the learned Additional Sessions Judge, Ambajogai in Criminal Appeal No. 4 of 2015. Vide the impugned judgment and order, the criminal appeal, 4 of 2015, has been disposed of for want of inherent jurisdiction to hear and decide the same.

3. The facts leading to the present petition are as under :-

The petitioner herein had lodged First Information Report ('F.I.R.') against Respondent Nos. 2 to 4 herein. It was Crime No. 18 of 2012

registered for the offences punishable under Sections 323, 325, 326, 504 and 506 read with Section 34 of the Indian Penal Code. On investigation of the crime, charge-sheet was filed against Respondent Nos.2 to 4 herein. The trial Court had acquitted them vide judgment and order dated 22nd December, 2014 passed in Regular Criminal Case No. 135 of 2012. The petitioner, being the victim of the crime, within the meaning of Section 2(wa) of the Code of Criminal Procedure ('Cr.P.C.') preferred appeal against acquittal in exercise of a right under Section 372 of the Cr.P.C.

4. Section 372 of the Cr.P.C. reads thus :-

“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.”

5. The learned Additional Sessions Judge, Ambajogai, on hearing the parties to the appeal and basically relying on the judgment of this Court in the case of ***Parbhani District Central Co-operative Bank Ltd. Vs. State of Maharashtra, 2016 SCC Online Bom. 5387***, had observed that the petitioner

should have preferred the appeal against acquittal to the High Court. In paragraph no.8 of the impugned judgment, the learned Additional Sessions Judge has quoted relevant paragraphs of the referred judgment which reads thus :-

“35. The Petitioner herein was the Complainant on behalf of the Bank. He was Auditor and in his capacity as being the Auditor, he had lodged the First Information Report against Respondent No.2. Therefore, though he is the author of the complaint as is understood under Section 2(d) of the Code of Criminal Procedure, he, as an individual, would not fall within the definition of victim under Section 2(wa). Therefore, though the right of the petitioner to file a complaint or lodge an F.I.R. can be recognized, yet, insofar as preferring an appeal against the order of acquittal is concerned, the right of the petitioner as a Bank under the proviso to Section 372 will have to be read within the scope of Section 378(3), (4) and (5) of the Code of Criminal Procedure.

36. In view of the above conclusion, the petitioner could not have preferred an appeal before the learned Additional Sessions Judge, Hingoli. The petitioner could have filed an appeal before this Court in its capacity of being the Complainant/victim by relying upon the proviso to Section 372 of the Code of Criminal Procedure.”

6. The issue is no longer res integra. The Apex Court in the case of ***Mallikarjun Kodagali Vs. State of Karnataka***, reported in ***(2019) 2 SCC 752***, specially in paragraph nos. 75 and 76 has observed thus :-

“75. Under the circumstances, on the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, it is quite clear to us that a victim as defined in Section 2(wa) Cr.P.C. would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction. It must follow from this that the appeal filed by Kodagali before the High Court was maintainable and ought to have been considered on its own merits.

76. As far as the question of the grant of special leave is concerned, once again, we need not be overwhelmed by submissions made at the Bar. The language to the proviso to Section 372 Cr.P.C. is quite clear, particularly when it is contrasted with the language of Section 378(4) Cr.P.C. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word “complaint” has been defined in Section 2(d) Cr.P.C. and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an F.I.R., and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 Cr.P.C. is concerned.”

7. Admittedly, the petitioner herein is the victim within the meaning of Section 2(wa) of the Cr.P.C. By virtue of proviso to Section 372 of the Cr.P.C. he has a right to prefer an appeal against the order of acquittal. Such appeal lies to the Court to which an appeal ordinarily lies against the order of

conviction of such Court. The judgment and order of acquittal was passed by the learned Judicial Magistrate First Class, Kaij. Against any judgment of conviction passed by such Court i.e. J.M.F.C., appeal would lie to the Court of Session (Section 374(3) of the Cr.P.C.). In view of proviso to Section 372 of the Cr.P.C. the appeal against the judgment and order of acquittal dated 22nd December, 2012 passed in Regular Criminal Case No. 135 of 2012 would lie to the Court of Additional Sessions Judge, Ambajogai. The petitioner had rightly filed the appeal before the Court of Additional Sessions Judge.

8. In view of above, the judgment and order impugned herein is hereby set aside. Criminal Appeal No. 4 of 2015 is restored to the file of learned Additional Sessions Judge, Ambajogai, Dist. Beed, who shall decide the same on its own merits. Criminal writ petition stands disposed of accordingly.

(R.G. AVACHAT, J.)

SSD