

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.700 of 2017

Arising Out of PS. Case No.-8 Year-2009 Thana- NOKHA District- Rohtas

Uma Shankar Prasad, son of Late Ram Barai Sah, resident of village-Nokha,
Police Station-Nokha, District-Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Kaushal Kumar @ Kaushal Kishore.
3. Ajay Prasad.
Both sons of Late Gupteshwar Prasad.
4. Vanshidhar Prasad, son of Late Laxman Prasad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Surendra Kumar Choubey, Adv.
For the Respondent/s	:	Mr. Jagdhar Prasad, APP

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 24-03-2023 The present Cr. Revision has been filed against order dated 11.05.2017 passed by Sessions Judge, Rohtas at Sasaram in Criminal Appeal No. 60 of 2016 by which the said appeal has been dismissed on technical ground, as not maintainable, against the judgment of acquittal order dated 26.09.2016 passed by Sub Judge-IV-cum-A.C.J.M., Sasaram in Nokha P.S. Case No. 8 of 2009 under Sections 341, 323, 379, 504/34 of the I.P.C.

Counsel for the petitioner submits that the present case has arisen from the police case. Counsel submits that after acquittal in this case vide dated 06.09.2016, the informant has filed a Criminal Appeal, against the judgment of acquittal before Sessions Court, which was rejected on the ground that

this Criminal Appeal is not maintainable and against the order passed by Sub Judge-IV-cum-A.C.J.M., Sasaram, as appeal is not maintainable. Counsel submits that provision of S.L.A. has to be filed against the charge of arising of complaint case. Counsel has placed a judgment of this Court in the Case of **Parmeshwar Mandal Vs. State of Bihar & Ors.** reported in **2014(I), Cr. R. 152 Pat.**, in which it has been decided that against the order of acquittal arising from police case, appeal under Section 372 proviso of Cr.P.C., 1973 is maintainable. The operative part of the charge is as follows:-

With all reverence to the Full Bench, this Court is unable to agree with this proposition of law also. If that would have been the intention of the Legislature, instead of giving unfettered right to the victim to file appeal in the opening section of the Chapter itself, it could have added one more sub-section in Section 378 itself. It has to be presumed that when unfettered right of appeal was being conferred upon the victim in the opening section of the Chapter itself, the Legislature was conscious of the restricted right of appeal granted to the State and the complainant under Section 378 of the Code. The recommendations in the Malimath Committee Report,

which has been adopted and implemented in the form of amendment in various provisions of the Code of Criminal Procedure by Act 5 of 2009, would show that, by the amendment, victim was intended to be placed at much higher pedestal in criminal justice delivery system than the State (prosecuting agency) or the complainant. Therefore, instead of adding one more sub-section in Section 378, providing for a right of appeal to a victim also, at par with the complainant of a complaint case, or with State in a police case, he/she has been conferred upon the right in the opening section of the Chapter itself without any qualifications. Clearly by introducing this amendment, the Legislature has recognized the victim in his/her independent capacity in the criminal justice delivery system than the State or informant or complainant. If the interpretation of the Full Bench is accepted, it will result into the victim getting a right to file an appeal only for a lesser wrong done to him/her by a criminal court, i.e. for convicting the accused for lesser offence or for awarding lesser compensation but will not be able to file an appeal, without a special leave, for greater wrong done to him/her by acquitting the accused

*altogether. Therefore, this Court is of the opinion that no distinction can/should be made between a case instituted by a complainant/informant with the police and by a complainant before the Court directly, for the purposes of determining the scope and ambit of right of a victim to file an appeal under the said proviso to Section 372. Consequently, this court is of the opinion that, any person, covered under the definition of 'victim' as contained in clause (wa) of Section 2 of the Code, and thus getting a right to file an appeal in terms of the said proviso to Section 372, cannot be held, in any way, handicapped in exercise of his/her said right by the provisions of Section 378 of the Code specially in the background of disadvantageous status of victim in the present criminal justice delivery system in the country. This view of the Court, on this issue, stand buttressed also by the findings of the Full Bench in respect of question (C) holding that the victim is not obligated to seek 'leave' or 'special leave' of the High Court for presentation of appeal under the said proviso to Section 372 of the Code and also by the learned Single Judge of Allahabad High Court in the case **Ashok Kumar***

Srivastva (supra) and by a Division Bench of Delhi High Court in its judgment dated 24.01.2011 in the case of Jagmohan Bhola vs. Dilbagh Rai Bhola & Ors.

In this view of the matter, the order dated 11.05.2017 passed by Sessions Judge, Rohtas at Sasaram in Criminal Appeal No. 60 of 2016 is hereby **set-aside** and petitioner is directed that he may file Cr. Appeal against the order passed by the original Court under Section 372 of the Cr.P.C.

With the aforesaid direction, this Cr. Revision is hereby allowed.

(Dr. Anshuman, J.)

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