

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 504 of 2020

Bahidul Sk.

Versus

The State of West Bengal & Anr.

For the Petitioner	:	Mr. Kallol Mondal, Adv. Mr. Krishan Ray, Adv. Mr. Souvik Das, Adv. Mr. Shamsheer Ansari, Adv. Mr. Ayan Mondal, Adv.
For the State	:	Mr. Madhusudan Sur, Adv. Mr. Manoranjan Mahata, Adv.
Heard on	:	21.04.2023
Judgment on	:	03.05.2023

Ajay Kumar Gupta, J:

1. This revisional application has been filed by the petitioner against an order dated 06.01.2020 passed by the Learned Sessions Judge in Criminal Appeal No. 2/2018 arising out of judgment and order of acquittal dated 05.12.2017 passed by the Learned Chief Judicial Magistrate, Malda in connection with G.R. Case No. 315 of 2008 arising out of Kaliachak Police Station Case No. 56 of 2008 dated 10th February, 2008 under Section 420 of the Indian Penal Code, 1860, whereby the learned Sessions Judge heard an appeal and dismissed the said appeal as not maintainable because right to prefer an appeal under Section 372 of the Criminal Procedure Code lies with the victim and none else. Further view of the Learned Sessions Judge was that case in hand relates to an offence under Section 420 of IPC, the complainant cannot be termed as 'victim' and accordingly the applicability of Section 372 of Cr.P.C. does not arise at all.

2. The case of the petitioner, in brief, is that on 03.04.2005 the petitioner and his brother Aushed Sk entered into an agreement for sale with the opposite party no. 2 to purchase his share in the property in full and final consideration amount of Rs. 2,50,000/- in

respect of two plot nos. 204 and 229 of Mouza Mosimpur measuring an area 2 ½ Katas of land. Out of the said amount, the petitioner and his brother have paid a sum of Rs. 71,000/- as advance on the date of execution of the said agreement on 03.04.2005 and a further sum of Rs. 50,000/- on 06.09.2005. It was the condition that within six months from the date of execution of the said agreement for sale, the opposite party no. 2 will execute a registered sale deed in favour of the petitioner and his brother subject to payment of remaining balance consideration amount. Opposite party no. 2 did not register the sale deed in respect of the said property to them rather he cheated the appellant and his brother by selling the said property to a third party. Accordingly, the petitioner moved an application under Section 156 (3) of the Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.') before the learned Chief Judicial Magistrate, Malda and on the basis of direction passed by the learned Chief Judicial Magistrate, Malda an FIR was registered vide Kaliachak Police Station Case No. 56 of 2008 dated 10.02.2008 under Section 420/34 of the Indian Penal Code, 1860 against the opposite party no. 2. After completion of investigation, a charge sheet was submitted, charge was framed under Section 420 IPC and trial commenced when he pleaded not guilty and claimed to be tried. Prosecution had examined

as many as five witnesses and exhibited number of documents in course of trial.

3. No witnesses adduced from the side of the defence. However, the learned Judge, after marshalling and appreciation of the evidence of the prosecution, finally acquitted the accused/opposite party no. 2 from the charge under Section 420 of the Indian Penal Code in terms of Section 248 (1) of the Code of Criminal Procedure, 1973 vide order dated 05.12.2017. Petitioner, being dissatisfied, had filed an appeal before the Learned Sessions Judge, Malda under Section 372 of the Cr.P.C. and after hearing, learned Sessions Judge dismissed the same on 06.01.2020 on the ground that the appeal is not maintainable as complainant does not come within the definition of 'Victim' under Section 2 (wa) of the Cr.P.C. and cannot file appeal under Section 372 of the Cr.P.C.

4. It is necessary to quote the said impugned order dated 06.01.2020 passed, *inter alia*, by the learned Sessions Judge as follows:-

"Upon cursory reading of the aforesaid provision enshrined in the Code of Criminal Procedure I find that

the right to prefer an appeal under section 372 of CrPC lies with the victim and none else. Thus, as the case in hand relates to an offence under section 420 of IPC, the complainant cannot be termed as 'victim' and accordingly the applicability of section 372 of CrPC does not arise all.

Section 378 of CrPC which deals with Appeal in case of acquittal provides that Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5), the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence; Thus, in case of acquittal the Public Prosecutor can present the appeal before the Court of Sessions as per direction of the District Magistrate. In the case in hand the appellant is the complainant of the case and thus he cannot also invoke section 378 of CrPC for considering the appeal against order of acquittal”.

Finally, Criminal Appeal being No. 2 of 2018 has been dismissed as not maintainable at the threshold without going into the matter of the case. This order is under challenge before this Court in this revisional application.

5. Learned counsel appearing on behalf of the petitioner submitted that the learned Sessions Judge has wrongly observed and dismissed the said appeal although the petitioner is a de facto complainant and he is the 'victim' as per the Section 2 (wa) of the Cr.P.C. Being 'victim' he can file an appeal against the order of acquittal under Section 372 of the Cr.P.C. This provision has given right to appeal by the victim because he has suffered financial loss along with his brother due to intentional action and omission of the opposite party no. 2 who had cheated the petitioner as well as his brother. Accordingly, appeal is maintainable and opposite party no. 2 is liable to be convicted under Section 420 of the Cr.P.C.

6. The provision u/s 372 of the Cr.P.C. also clearly states that victim shall have a right to prefer an appeal against any order of acquittal passed by the Court or convicting for a lesser offence or imposing inadequate compensation. Therefore, the impugned order is bad in law and should be set aside.

7. Per contra, the learned counsel appearing on behalf of the State submitted that the learned Sessions Judge has rightly

dismissed the appeal observing that de facto complainant cannot be termed as 'victim'. Accordingly, he cannot prefer an appeal under Section 372 of the Cr.P.C. Therefore, the revisional application may be dismissed.

8. Heard rival submissions of the parties and on perusal of the impugned order, at the very outset this Court would like to refer the provision stipulated under Section 372 of the Cr.P.C. for ready reference and discussion 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.”

9. On perusal of the aforesaid provision two law points emerge before this Court:-

(1) Whether the de facto complainant terms as 'victim' in view of definition mentioned under Section 2(wa) of CrPC in a case based on police report?

(2) Whether de facto complainant is entitled to file an appeal invoking the provision of Section 372 of Cr.P.C. as 'victim' before the learned Sessions Judge to which an appeal lies against the conviction?

10. For proper adjudication, this Court would also like to refer the Section 2 (wa) of the Criminal Procedure Code. Which defines 'victim' as follows:-

“S. 2(wa)- *“victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.”*

11. From perusal of the aforesaid definition, it reveals firstly, who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged is a victim

and secondly, it further clarifies that victim also includes his or her guardian or legal heir.

12. In the case in hand, first part of Section 2(wa) will be applicable because here the allegation of the de facto complainant is that he suffered loss when the opposite party no. 2 registered the sale deed to a third party avoiding the agreement for sale. He has suffered financial loss along with his brother due to intentional action and omission of the opposite party no. 2 who had cheated the petitioner as well as his brother. Loss caused due to reason or act of omission for which the accused person has been charged. If the de facto complainant suffered loss then he is a 'victim' as per section 2 (wa) of the Criminal Procedure Code. There is a clear provision to file appeal by the victim under Section 372 of the Criminal Procedure Code, 1973 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 of Sessions to which an appeal ordinarily lies against the order of conviction of such Court.

13. In addition, this Court would also like to say the proviso of Section 372 of the Cr.P.C. inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009) with effect from 31.12.2009 vide Notification No. S.O. 3313E, dated 30.12.2009 only to give statutory right to 'victim' to file appeal under Section 372 of the CrPC under three situations as mentioned hereunder:

Firstly, any order passed by the Court acquitting the accused;

Secondly, the Court convicting for a lesser offence and

Lastly, if the Court impose inadequate compensation.

Section 372 of the Code of Criminal Procedure after its amendment allowed a 'victim' to prefer an appeal against an order of acquittal before a Court of appeal i.e. Sessions Judge, where ordinarily appeal lies against the order of conviction of such Court. Section 372 of the Code provides a right to a 'victim' for preferring an appeal in cases arising out of a Police Report and the present case in hand is arisen out of Police Report.

This Court also relied a judgment of the Andhra Pradesh High Court decided by Division Bench in **Smt. P. Vijaya Laxmi Vs. Smt. S.P. Sravana and Anr. (Criminal Petition No. 16742 of 2016)**. Where the High Court observed that:

“At the outset, it would be necessary to understand and delineate the contours of a complainant in the scheme of the Code. Though the term complainant has not been defined thereunder, sufficient guidance is available to understand its content and import from the definition of a complaint under Section 2(d) of the Code. This definition makes it clear that a police report is not included in the ambit of a complaint, as defined, but the explanation appended thereto indicates that such a police report shall be deemed to be a complaint and the police officer making such police report shall be deemed to be the complainant therein. The distinction between a private complainant and the police officer submitting a police report, who is deemed to be a complainant in that case, is therefore clear.

The victim or his near relation, in the case of homicide, who gives information to the police as to the commission of a non-cognizable offence, though they are the actual affected parties, do not assume the status of a complainant in that case and it is only the police officer who finally submits the police report under Section 173 of the Code, who is conferred the deemed status of being the complainant in that case. In consequence, in a criminal case arising out of a police report under Section 173 of the Code, the actual victim or his near relation, in the case of homicide, has a very limited participatory role. The law, as it existed prior to amendment of Section 372 of the Code, only provided for appeals being preferred against acquittal in such cases by the State. The victim or his near relation in a case of this nature only had the right of preferring a

revision under Section 397 of the Code, if an order of acquittal was passed therein. As it was felt that this limited remedy of revision was not adequate, as the scope of interference in a revision would be far less than in an appeal, the law makers thought it fit to provide the right of appeal to such a victim or his near relation by inserting the proviso to Section 372 of the Code”.

Accordingly, both law points involved in this case answered in affirmative.

In the light of aforesaid discussion, it clarifies the order passed by the learned Sessions Judge is perverse and not sustainable in law. Therefore, the impugned order needs to be set aside.

14. Accordingly, impugned order dated 06.01.2020 passed by the learned Sessions Judge in Criminal Appeal No. 2/2018 arising out of judgment and order of acquittal dated 05.12.2017 passed by the learned Chief Judicial Magistrate, Malda in connection with G.R. Case No. 315 of 2008 arising out of Kaliachak Police Station Case No. 56 of 2008 dated 10th February, 2008 under Section 420 of the Indian Penal Code, 1860 is hereby set aside.

15. The revisional application being no. C.R.R. 504 of 2020 is hereby allowed without order as to costs.

16. Let the copy of the judgment of this Court be sent to the learned Sessions Court for information and for deciding the appeal afresh on merit as this Court has not expressed anything on merit of the case.

17. Photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)