

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

925 CRIMINAL APPLICATION NO. 2476 OF 2018
in CRIMINAL APPEAL (ST.) NO.635 OF 2018

VILAS PANDHARINATH GONDKAR
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

...
Advocate for Appellant : Mr. Jeevan R. Patil
APP for Respondents/State : Mr. R.V. Dasalkar
...

**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRADE, JJ.**
DATE : 10th March, 2023

PC. :-

1. Present application has been filed for getting the delay of 47 days condoned in filing the appeal. From the tenor of the application, it can be seen that the present applicant who is the father of the deceased and original informant want to file appeal seeking enhancement of sentence imposed on the respondents in Special (MCOC) Case No.01/2011 by learned District Judge, Nasik on 03.05.2018.

2. We have heard Mr. Jeevan Patil the learned advocate for the applicant. He wants to place reliance on **Roopendra Singh V/s. State of Tripura and Anr.; AIR 2017 SUPREME COURT 1801**, wherein by placing

reliance on **Satya Pal Singh V/s. State; 2015 AIR SCW 6251**, it was observed that no leave is required to be obtained for filing appeal under the proviso to Section 372 and it is the substantive right which is independently conferred upon the victim and therefore under this right the victim can file appeal for enhancement of sentence also.

2. At the outset, we would like to say that the issue laid down in the **Mallikarjun Kodagali (dead) through L.R. v/s. State of Karnataka; (2019) 2 SCC 752** as well as **Roopendra Singh** cited (supra) is on the same lines, definitely leave is not required to be obtained for an appeal under Section 372 of Cr.P.C. to the victim who comes under the definition of Section 2(wa) of the Cr.P.C. However, here in this application as well as appeal i.e. intended to be filed the question is different, the question is whether the victim can ask for enhancement in the sentence, we would like to reproduce Section 372 of the Cr.P.C. for the sake of convenience:

“Section 372- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code 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.]”

3. Here we are more concerned with the proviso and it specifically confers right to prefer an appeal against any order passed by the Court 1) acquitting the accused or 2) convicting for a lesser offence or 3) imposing inadequate compensation. Since substantive rights are to be conferred by the legislature, when there is no specific mention in this proviso that a right has been conferred upon the victim to prefer an appeal for enhancement in the sentence, this Court cannot interpret the way the applicant want. So also it was not the intention of the legislature to grant such right to the informant as a substantive right. Under such circumstances, without going into the reasons for the delay, the appeal cannot be entertained. Hence, we reject the application.

[Y.G. KHOBRAGADE, J.]

[SMT. VIBHA KANKANWADI, J.]