

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 252 OF 2010

Avdhesh Balbir Pal and anr.	... Applicants
v/s.	
Vinod Bhaichand Nisar and anr.	 Respondents

Mr. Chetan Akerkar for the Applicants.
Mr. P.B. Patil a/w. Mr. S.A. Waradkar for Respondent No.1.
Mr. Arfan Sait, APP for the State.

CORAM: R.G. AVACHAT, J.

DATED : 25th JANUARY, 2023.

P. C. :-

. The challenge in this Revision Application is to the order dated 08/04/2010 whereby the 43 days delay in preferring the appeal against acquittal came to be condoned with a direction to the register the Appeal.

2. The Appeal also preferred by victim before the Appellate Court. The objection was raised as to the maintainability of the Appeal on the ground that the proviso to section 372 of the Criminal Procedure Code is prospective in nature. The order of acquittal was passed before section 372 of Criminal Procedure Code came to be amended with an introduction of proviso thereto.

3. Learned counsel for the Respondents submits that the period of limitation to prefer an appeal is of 30 days and therefore the appeal shall be deemed to have been filed in terms of rights conferred by the proviso to section 372 of Cr.P.C.

According to the learned APP, the provision is retrospective in nature. He therefore urge for dismissal of this Revision Application.

4. Considered the submissions advanced by the learned counsel for the respective parties.

5. The Applicants herein were prosecuted at the instance of the Respondents herein. It was the case instituted on police report. The Applicants came to be acquitted. The State did not prefer Appeal against Acquittal. The date of the acquittal of the Applicants is 04/12/2009. The Respondent-informant preferred an Application for condonation of delay along with an Appeal against acquittal. He claims to have right to appeal in view of proviso to section 372 of Cr.P.C. The question whether the proviso introduced to section 372 is retrospective or prospective in nature is no longer res-integra.

6. In this regard, paragraph 72 of the judgment of the Apex Court in ***Mallikarjun Kodagali (Dead) represented through legal representatives v/s. State of Karnataka and ors. (2019) 2 SCC 752***, reads thus :-

“ 72. What is significant is that several High Courts have taken a consistent view to the effect that the victim of an offence has a right of appeal under the proviso to Section 372 of the Cr.P.C. This view is in consonance with the plain language of the proviso. But what is more important is that several High Courts have also taken the view that the date of the alleged offence has no relevance to the right of appeal. It has been held, and we have referred to those decisions above, that the significant date is the date of the order of acquittal passed by the Trial Court. In a sense, the cause of action arises in favour of the victim of an offence only when an order of acquittal is passed and if that happens after 31st December, 2009 the victim has a right to challenge the acquittal, through an appeal. Indeed, the right not only extends to challenging the order of acquittal but also challenging the conviction of the accused for a lesser offence or imposing inadequate compensation. The language of the proviso is quite explicit, and we should not read nuances that do not exist in the proviso. ”

7. In view of the dictum of the Apex Court, the proviso to section 372 Cr.P.C. is prospective in nature meaning thereby if a judgment of

the acquittal is passed post introduction of the proviso to section 372 Cr.PC, then the victim will have a right to prefer an Appeal against Acquittal. Admittedly, the proviso to section 372 Cr.PC. came into force on 31/12/2009 whereas the date of the acquittal is 04/12/2009 and therefore, the Respondent-victim has no right to prefer an Appeal.

8. In view of the above, the Revision Application is allowed in terms of prayer clauses (a) and (b).

9. Application stands disposed of in above terms.

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(R.G. AVACHAT, J.)