

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

***CRM-42476-2022 in/and
CRA-AS-332-2022***

Date of Decision: 29.04.2023

VIJAY KUMAR

...Applicant/Appellant

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. H.S. Dhindsa, Advocate
for the applicant-appellant.

Mr. Harjinder Singh Sidhu, A.A.G., Punjab.

HARSH BUNGER, J.

The applicant-appellant has filed the instant application under Section 5 read with Section 14 of the Limitation Act, seeking condonation of delay of 2387 days in filing the accompanying appeal.

2. Briefly, the applicant-appellant is the complainant in case FIR No.20 dated 18.01.2006, registered under Section 420 of the Indian Penal Code (for short 'IPC'), at Police Station Division No.5, Ludhiana. The said FIR was registered against respondent No.2 herein namely, Ramanpal Singh son of Pritpal Singh. Vide judgment dated 30.11.2013 passed by learned Judicial Magistrate Ist Class, Ludhiana, respondent No.2- Ramanpal Singh, was acquitted of the charges framed against him under Section 420 of the IPC.

3. Dis-satisfied with the afore-said judgment of acquittal dated 30.11.2013 passed by learned Judicial Magistrate Ist Class, Ludhiana, the State of Punjab filed an appeal before the learned Additional Sessions

Judge, Ludhiana; however, the said appeal was dismissed vide judgment dated 06.05.2016 and the judgment of acquittal dated 30.11.2013 passed by learned Judicial Magistrate Ist Class, Ludhiana was upheld.

4. A perusal of the file reveals that the applicant-appellant filed a Criminal Revision under Section 401 of the Cr.P.C., before this Court against the afore-said judgment dated 06.05.2016 passed by the learned Additional Sessions Judge, Ludhiana; which came to be registered as CRR No.2972 of 2016. The said Criminal Revision was withdrawn by the applicant-appellant on 29.01.2020, seeking liberty to take recourse to the appropriate remedy available to him under the law. Accordingly, the petition (CRR No.2972 of 2016) was dismissed as withdrawn with the above-said liberty.

5. Thereafter, the present application has been filed, seeking condonation of delay in filing the accompanying appeal before this Court.

6. Learned counsel for the applicant-appellant submitted that the judgment of acquittal was passed by the trial Court on 30.11.2013 and an appeal filed against the same by State of Punjab was dismissed by the learned Additional Sessions Judge, Ludhiana, vide judgment dated 06.05.2016 and thereafter, the applicant filed a Criminal Revision (CRR-2972-2016), which was dismissed as withdrawn with permission to take recourse to the appropriate remedy available under the law, vide order dated 29.01.2020. Learned counsel for the applicant-appellant submits that the accompanying appeal was drafted in the month of February-2020; however, due to *pandemic* of COVID-19, the Courts were closed and after starting of regular Court work, the accompanying appeal was filed; accordingly, there was a delay of 2387 days upto 23.06.2022. It is submitted that the applicant has been pursuing the Criminal Revision

against the judgment dated 06.05.2016 passed by learned Additional Sessions Judge, Ludhiana, which was dismissed as withdrawn on 29.01.2020; accordingly, the applicant is entitled to the benefit of Section 14 of the Limitation Act. It is further submitted that even the appeal filed against the judgment of acquittal dated 30.11.2013 before the Court of learned Additional Sessions Judge, Ludhiana; was wrongly filed and decided on merits. Accordingly, prayer has been made for condonation of delay from 30.11.2013 to 29.01.2020 as per the provisions of Section 14 of the Limitation Act and thereafter, deducting the *pandemic* period and the actual delay (i.e. 166 days).

7. I have heard learned for the applicant-appellant and have gone through the paper book as well as impugned judgments.

8. In view of the peculiar facts and circumstances of this case, it would be apposite to refer to the provisions contained in Section 372 of Cr.P.C., as it stood prior to 31.12.2009, which read 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.

9. A bare perusal of aforesaid provision contained in Section 372 Cr.P.C. (as it stood prior to 31.12.2009) would manifest that the victim did not have the right to file an appeal. There has always been a consistent view that the State represents the victims of the crime. Every criminal offence was treated to be an offence against the State and the State alone had the power to investigate and prosecute such case. Thus, the victim/complainant in a State case had no right to file appeal against the judgment of acquittal.

10. The right to appeal was vested for the first time in a 'victim' under the proviso to Section 372 of the Code inserted by the Code of Criminal Procedure (Amendment Act) 2008. Section 1(ii) of the Amendment Act clearly stated that "it shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint; and different dates may be appointed for different provisions of this Act".

11. Still further Section 29 of the Amendment Act, 2008 pertaining to amendment of Section 372 of the Code states that "in Section 372 of the Principal Act, the following proviso shall be inserted, namely:-

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".

12. The Central Government, by Notification No.S.O.3313(E), dated 30.12.2009, appointed 31.12.2009, as the date for the Act No.5 of 2009 to come into force, which was published in the Gazette of India, extraordinary, Part 2(ii) Section 3(ii), dated 30.12.2009. Thus, the right of the victim, to prefer an appeal in terms of the said proviso to Section 372 Cr.P.C., became available to the victim(s) of all cases in which orders were passed by any criminal Court acquitting the accused or convicting him for a lesser offence or imposing inadequate compensation, on or after 31.12.2009.

13. The amended provision of Section 372 Cr.P.C. reads thus:-

"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 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.]

14. Further, the appeal against judgments of acquittal are governed by the provisions of Section 378 of Cr.P.C., which reads as under:-

378. Appeal in case of acquittal –

(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-section (3) and (5) -

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Sessions from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

*(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court **[not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.***

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, [the Central Government may, subject to the provisions of sub-section (3), also direct the Police Prosecutor to present an appeal -

- (a) to the Court of Sessions, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;*
- (b) to the High Court from an original or appellate order of an acquittal passed by any court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]*
- (3) [No appeal to the High Court] under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.*
- (4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.*
- (5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.*
- (6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).*

15. Here, section 24(8) of Criminal Procedure Code would also be relevant, which reads as under :

24(8) - The Central Government or the state Government may appoint, for the purpose of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

[Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section]

16. The perusal of Section 378 Cr.P.C. reveals that an appeal by the State against an order of acquittal passed by the Magistrate in respect of a cognizable and non-bailable offence, filed on a police report would lie to the Court of Sessions, and the District Magistrate is authorised to direct the Public Prosecutor to file such appeals. In respect of any other case filed on a police report, the appeal against order of acquittal passed by any Court other than a High Court shall lie only to the High Court and the authority to direct the Public Prosecutor to present the appeal continues to be with the State Government.

17. Further sub-Section (2) of section 378 Cr.P.C. does not debar jurisdiction of the State Government also to direct presentation of appeal against acquittal in a case investigated by Delhi Police Establishment and also by any other agency empowered under any Central Act other than the Criminal Procedure Code.

18. Section 378 Cr.P.C. also provides for an appeal by a private party to the High Court subject to limitation as provided under sub-section (5) thereof, against the acquittal passed by a Magistrate in a case instituted upon a complaint when special leave is obtained from the High Court.

19. Significantly, sub Section (4) of Section 378 Cr.P.C. allows a private complainant to prefer an appeal against an acquittal provided the case was instituted upon a "complaint", as defined in Section 2 (d) of the code of criminal procedure, which reads as under:

“(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or

unknown, has committed an offence, but does not include a police report.

Explanation. - A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognisable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

20. The instant case was a State case against the respondent No. 2 (Ramanpal) wherein the Magistrate acquitted the respondent No.2 (Ramanpal) of the charge framed against him under Section 420 of the Indian Penal Code vide judgment dated 30.11.2013. The offence under Section 420 of Indian Penal Code is cognizable and non-bailable. Therefore, the complainant in a State can file appeal in terms of the proviso added to Section 372 of the Code, which is as an exception to the main provision, giving a right to a "victim" to file an appeal. This proviso was added by an amendment in the year 2008. Thus, an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation can be maintained by a "victim" and such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such Court.

21. The word 'victim' has also been added in the definition clause under section 2(wa) of Cr.P.C. by the same 2008 amendment. Section 2(wa) reads as under: -

"(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".

22. In the case of ***M/s Tata Steel Ltd. V. M/s Atma Tube Products Limited and others 2013(2) RCR (Criminal) 1005***, Hon'ble Full Bench of

this Court, while considering the right of victim to file an appeal against judgment of acquittal, formulated the following questions for consideration :

“...We, therefore, formulate the following seven questions that arise for our consideration :-

(A) What is the true import and meaning of the expression 'victim' as defined under Section 2(wa) read with proviso to Section 372 Criminal Procedure Code?

(B) Whether 'complainant' in a private complaint-case, who is also the 'victim' and the 'victim' other than the 'complainant' in such cases are entitled to present appeal against the order of acquittal under proviso to Section 372 or have to seek 'special leave' to appeal from the High Court under Section 378(4) Criminal Procedure Code?

(C) Whether the 'rights' of a victim under the amended Criminal Procedure Code are accessory and auxiliary to those perceived to be the exclusive domain of the 'State'?

(D) Whether presentation of appeal against acquittal is a 'right' or an 'obligation' of the 'State' stemming from the Constitution?

(E) Where would the appeal of a 'victim' preferred under proviso to Section 372 lie when the State also prefers appeal against that order of acquittal under Clause (a) of Section 378(1) Criminal Procedure Code?

(F) Whether proviso to Section 372 Criminal Procedure Code inserted w.e.f. December 31, 2009 is prospective or retrospective in nature and whether a revision petition pending against an order of acquittal before the insertion of the said proviso, can be converted into an appeal and transferred to the Court of competent jurisdiction?

(G) What would be the period of limitation for a 'victim' to prefer an appeal under proviso to Section 372 Criminal Procedure Code?

23. After considering the relevant provisions of law and also the law on the subject, the Hon'ble Full Bench of this Court answered the above quoted seven questions as under :-

"139. For the reasons assigned above, we sum up our conclusions and answer the questions as formulated in para 6 of this order, in the following terms:-

Question - (A) (i) *The expression "victim" as defined in Section [2](#)(wa) includes all categories of his/her legal heirs for the purpose of engaging an advocate under Section [24](#)(8) or to prefer an appeal under proviso to Section [372](#) of the Code.*

(ii) *However, legal heirs comprising only the wife, husband, parent and child of a deceased victim are entitled to payment of compensation under Section [357](#)(1)(c) of the Code. Similarly, only those dependents of a deceased victim who have suffered loss or injury as a result of the crime and require rehabilitation, are eligible to seek compensation as per the Scheme formulated under Section [357A](#) of the Code.*

Question - (B) (iii) *The 'complainant' in a complaint-case who is also a 'victim' and the 'victim' other than a 'complainant' in such case, shall have remedy of appeal against acquittal under Section [378](#)(4) only, except where he/she succeeds in establishing the guilt of an accused but is aggrieved at the conviction for a lesser offence or imposition of an inadequate compensation, for which he/she shall be entitled to avail the remedy of appeal under proviso to Section [372](#) of the Code.*

(iv) *The 'victim', who is not the complainant in a private complaint-case, is not entitled to prefer appeal against acquittal under proviso to Section [372](#) and his/her right to appeal, if any, continues to be governed by the*

unamended provisions read with Section [378](#) (4) of the Code.

(v) those 'victims' of complaint-cases whose right to appeal have been recognised under proviso to Section [372](#), are not required to seek 'leave' or 'special leave' to appeal from the High Court in the manner contemplated under Section [378](#)(3) & (4) of the Code.

Questions - (C) & (D) *(vi) The right conferred on a 'victim' to present appeal under proviso to Section [372](#) is a substantive and independent right which is neither inferior to nor contingent upon the filing of appeal by the State in that case. Resultantly, the condition of seeking 'leave to appeal' or 'special leave to appeal' as contained in Section [378](#)(3) & (4) cannot be imposed for the maintainability of appeal by a 'victim' under proviso to Section [372](#) of the Code.*

Question - (E) *(vii) In view of proviso to Section [372](#) an appeal preferred by a 'victim' against the order of acquittal passed by a Magistrate in respect of a cognizable offence whether bailable or non-bailable shall lie to the Court of Session, the State's appeal under Section [378](#)(1)(a) of the Code against that very order shall also be entertained and/or transferred to the same Sessions Court.*

Question - (F) *(viii) The proviso to Section [372](#) inserted w.e.f. December 31, 2009 is prospective in application and only those orders which have been passed on or after December 31, 2009, irrespective of the date of occurrence or registration of FIR or filing of complaint, shall be appealable at the instance of a 'victim' under the afore-stated proviso. Consequently, a revision petition preferred against an order of acquittal passed prior to December 31, 2009 cannot be converted into an appeal and shall be decided accordingly.*

Question - (G) *(ix) Subject to the exception carved out in para-138 of this order, the period of limitation for an*

appeal by a 'victim' under proviso to Section [372](#) of the Code shall be as under :-

(a) In case of acquittal -

(i)	Where appeal lies to the High Court	90 days	Date of order appealed against
(ii)	Where appeal lies to any other Court	60 days	Date of order appealed against

(b) Any other sentence or order -

(i)	To the High Court	60 days	The date of sentence or order
(ii)	To any other Court	30 days	The date of sentence or order

140. Let the records of these cases be accordingly placed before the respective Benches as per roster for final disposal...”

24. Coming to the facts of this case, the Magistrate acquitted the respondent no. 2 (Ramanpal) of the charge framed against him under Section 420 of the Indian Penal Code vide its judgment dated 30.11.2013. The State of Punjab filed an appeal against judgment of acquittal dated 30.11.2013 passed by learned Judicial Magistrate 1st Class, Ludhiana. In terms of the provision of Section 24(8) Criminal Procedure Code, a victim could assist the Public Prosecutor at the time of final hearing of the appeal and/or by making the submission before the Court with the Public Prosecutor against the order of acquittal. Even as per the above-said judgment rendered by Hon’ble Full Bench of this Court in *M/s Tata Steel Limited’s* case (*supra*), the applicant had a right to file appeal against the judgment of acquittal only before the Court of Sessions Judge, Ludhiana; which was admittedly not filed by the applicant herein.

25. Be that as it may, the appeal filed by State of Punjab against judgment of acquittal dated 30.11.2013 passed by learned Judicial

Magistrate 1st Class, Ludhiana, was dismissed by the learned Additional Sessions Judge, Ludhiana, vide judgment dated 06.05.2016. A perusal of the judgment dated 06.05.2016 passed by the learned Additional Sessions Judge, Ludhiana would reflect that the applicant-complainant (Vijay Kumar) was infact present in person before the learned Additional Sessions Judge, Ludhiana at the time of hearing of the appeal filed by State of Punjab and his presence is duly marked alongwith Additional Public Prosecutor for the State. Thus, once the appellate Court has decided the appeal filed by State of Punjab wherein the present applicant (Vijay Kumar) had duly assisted the Additional Public Prosecutor for the State, in my considered view, no second appeal lies against the said judgment dated 06.05.2016 upholding the judgment of acquittal dated 30.11.2013 passed by Judicial Magistrate 1st Class, Ludhiana; under the Criminal Procedure Code to the High Court. A revision against an appellate judgment of a criminal Court is maintainable before the High Court but the same has its own limitations.

26. In the instant case, concededly, the applicant (Vijay Kumar) preferred a Criminal Revision (CRR-2972-2016) against the judgment dated 06.05.2016 passed by the learned Additional Sessions Judge, Ludhiana; before this Court, which was dismissed as withdrawn with permission to take recourse to the appropriate remedy available under the law, vide order dated 29.01.2020.

27. Now, the present application has been filed seeking condonation of delay in filing the accompanying appeal before this court.

28. In view of the above discussion, I am of the considered view that in terms of the judgment rendered in *M/s Tata Steel Ltd.*'s case (supra), the applicant had a right to file an appeal against the judgment of acquittal

dated 30.11.2013 passed by Judicial Magistrate Ist Class, Ludhiana before the Court of Additional Sessions Judge, Ludhiana, which was not filed by the applicant; however, in the appeal filed by the State of Punjab, the applicant had duly assisted the Additional Public Prosecutor at the time of final hearing of the appeal, which was ultimately dismissed by the Court of Additional Sessions Judge, Ludhiana, vide judgment dated 06.05.2016; accordingly, the instant appeal at the instance of the applicant after withdrawal of the criminal revision petition (CRR-2972-2016) is not maintainable before this Court; hence, there is no question of condonation of delay in filing the accompanying appeal.

29. Thus, the instant application under Section 5 read with Section 14 of the Limitation Act, seeking condonation of delay of 2387 days in filing the accompanying appeal is dismissed, as the accompanying appeal being the second appeal against the judgment of acquittal, is not maintainable in law.

30. All pending application/s, if any, shall stand closed.

April 29th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No