

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

CRR No.1195 of 2013

Date of Decision: February 27, 2023

**Zile Singh
Versus**

...Petitioner

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Ms. Shalini Sharma, Advocate for the petitioner.
Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.(Oral)

In Criminal Case No.310-1 of 2009 arising out of FIR No.320 dated 04.08.2009, registered on the statement of petitioner Zile Singh, at Police Station Sadar, Bhiwani under Section 279/304-A IPC, accused Subhash (now petitioner) was acquitted by the Court of learned Additional Chief Judicial Magistrate, Bhiwani vide judgment dated 13.09.2011. Aggrieved by the said acquittal, Zile Singh, the complainant of the FIR and the father of the deceased filed Criminal Appeal No.36 of 2011 before the Court of Sessions. Vide order dated 21.02.2013, the said appeal has been dismissed by learned Additional Sessions Judge, Bhiwani on two grounds, firstly, that it was barred by limitation and secondly, that it was not maintainable before the Court of Sessions. Against the said order of learned Additional Sessions Judge, Bhiwani, this revision has been filed.

2. After hearing learned counsel for both the sides, I find merit in the revision. The issue as to where the jurisdiction will lie to entertain the appeal against acquittal in a State case, is not res integra. The matter has

been settled by a Full Bench of this High Court in ***M/s Tata Steel Ltd. Vs. Atma Tube Limited, CRM-790-MA-2010 (O&M)*** decided on March 18, 2013, wherein after considering the issue at length, it was concluded 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 357-A 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 un-amended provisions read with Section 378 (4) of the Code.*

(v) those 'victims' of complaint-cases whose right to appeal have been recognized 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 - (vi) The right conferred on a 'victim' to present (C) & (D) 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.”

3. It is, thus, clear that an appeal filed by the ‘victim’ against order of acquittal in a State case, which is instituted in respect of cognizable offence, is maintainable before the court of Sessions; and in case, any such appeal is filed by the state against that very order, it shall also be entertained and/or transferred to the same Sessions Court.

4. In view of the legal position as above, present revision is accepted. Order dated 21.02.2013 passed by learned Additional Sessions Judge, Bhiwani is hereby set aside. The matter is remanded back to the Court of learned Additional Sessions Judge concerned to consider the

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plea of the appellant on the point of limitation sympathetically and then
to consider the appeal on merits.

February 27, 2023

(DEEPAK GUPTA)
JUDGE

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Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No