

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

CRIMINAL APPEAL NO. 830 OF 2023

Purva Prashant Rane ...Appellant

vs.

The State of Maharashtra and Ors. ...Respondents

Adv. Nikhil Seth a/w Adv. Prajakta Tawde - Advocate for the Appellant

Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 23rd JANUARY, 2024

P. C. :-

1. Heard learned Advocate for the Appellant-first informant and learned APP.

2. The Appellant was asked to satisfy the Court about maintainability of this appeal before this Court. It is true that the Court of the JMFC, Thane as per Judgment dated 01/12/2022 has acquitted the accused for the offence punishable under Sections 498A, 406, 323, 504 and 506 read with 34 of the Indian Penal Code. The prosecution was instituted on the F.I.R. lodged by the present Appellant and it was prosecution initiated by the Police. This appeal is filed as per proviso to Section 372 of the Code of Criminal Procedure.

No doubt the first informant has got right to prefer an appeal

but forum selected by her is wrong, she ought to have filed an appeal before the Sessions Court. Why I am saying this is for following reasons :-

- (i) The provision of the Section 378 (4) of the Criminal Procedure Code will not be applicable because she is not Complainant but the first informant.
- (ii) As per proviso to Section 372, the victim is given right to prefer an appeal. The forum is also prescribed. Appeal lies before the Court before whom appeal against conviction lies.
- (iii) In this case, the trial is by the Court of the JMFC. If the accused would have been convicted, they could have preferred an appeal as per provisions of the Section 374 (3)(a) of the Code of Criminal Procedure before the Sessions Court.

3. He relied upon following judgments :-

- a) *Mallikarjun Kodagali (dead) represented through Legal Representatives Vs. State of Karnataka and Ors.* in Criminal Appeal Nos. 1281-82 of 2018, dated 12.10.2018.
- b) *Joseph Stephen Vs. Santhanasamy*¹
- c) *Parbhani District Central Co-operative Bank Vs. State*

¹ 2002 SCC Online 90

*of Maharashtra*²

These judgments are on the point of maintainability of the appeal by the victim. Here issue is different.

4. For the above reasons the appeal before this Court is not maintainable. Hence the following order :-

ORDER

- (i) The appeal is disposed of as not maintainable.
- (ii) Liberty is granted to the Appellant to move before the Court of the Sessions as per provisions of proviso of Section 372 of the Criminal Procedure Code.
- (iii) She is at liberty to pray for condonation of delay, if any caused due to filing of this appeal.

5. In view of that appeal is disposed of.

[S. M. MODAK, J.]

² (2016) 2 AIR Bom R(Cri) 774