

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.105 of 2019

Arising Out of PS. Case No.-49 Year-2012 Thana- MAHILA P.S. District- Kishanganj

Rekha Devi wife of Sankar Gupta Resident of Hospital Road Gandhinagar,
Police Station- Kishanganj, District- Kishanganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sangeeta Rai @ Babli @ Bobi Wife of Priyanath Rai Resident of Hospital Road Gandhi Nagar, P.S-Kishanganj, Dist.-Kishanganj
3. Priyanath Rai @ Buddha Rai Son of Late Anath Bandhu Rai Resident of Hospital Road Gandhi Nagar, P.S-Kishanganj, Dist.-Kishanganj

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kr. Pandey, Amicus Curiae
For the State	:	Mr. Upendra Kumar, APP
For the O.P. Nos. 2 & 3	:	Mr. Rohit Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 04-04-2025

Learned counsel for the petitioner is not present.

Hence, on request of this Court, Mr. Ranjeet Kumar Pandey, learned Advocate has agreed to assist the Court as Amicus Curiae on behalf of the petitioner.

2. The present criminal revision petition has been preferred by the victim/petitioner/Rekha Devi (Informant) against the impugned judgment dated 02.11.2018 passed by learned Sessions Judge, Kishanganj in Criminal Appeal No. 16 of 2018, whereby Criminal Appeal filed by the O.P. Nos. 2 and 3 has been allowed, setting aside the judgment of conviction and



the order of sentence dated 25.06.2018 passed by Shri Punit Kumar Tiwary, learned Judicial Magistrate-Ist Class, Kishanganj in G.R. Case No. 1270 of 2012 corresponding to Kishanganj Mahila P.S. Case No. 49 of 2012, whereby learned Trial Court convicted the O.P. Nos. 2 and 3 under Sections 341, 323, 504 read with Section 34 of the Indian Penal Code.

Factual Background

3. The factual background of the case is that on the basis of the written report of the victim/informant/Rekha Devi, who is petitioner herein, Kishanganj Mahila P.S. Case No. 49 of 2012 was registered on 28.10.2012 against three accused persons including the O.P. Nos. 2 and 3 and one Pramod Sharma. As per allegation, the victim was subjected to assault by the accused persons.

4. After submission of charge-sheet and taking of cognizance and framing of charge, the trial commenced, in which learned Trial Court found O.P. Nos. 2 and 3 and Pramod Sharma guilty. However, on appeal bearing Criminal Appeal No. 16 of 2018 before the Court of Sessions, learned Appellate Court acquitted the appellants of all charges. Hence, being aggrieved by the Appellate judgment, the victim/informant/Rekha Devi has preferred the present criminal



revision.

Submissions of the parties

5. However, during hearing of the revision petition, preliminary objection has been raised by learned APP for the State and learned counsel for the O.P. Nos. 2 and 3 that present criminal revision petition is not maintainable.

6. They submit that in view of the Proviso to Section 372 read with Section 378 Cr.PC, the petitioner should have filed Criminal Appeal after obtaining Leave of this Court. They further submit that the present Criminal Revision is hit by Section 401(4) Cr.PC.

7. Per contra, learned Amicus Curiae submits that in view of the acquittal of O.P. Nos. 2 and 3 by lower Appellate Court in Criminal Appeal No. 16 of 2018, the petitioner/informant/victim has rightly filed the present Criminal Revision, because the impugned judgment is already passed by the Lower Appellate Court and no further appeal could lie against the Appellate judgment. Under such circumstances, only remedy left with the victim/petitioner herein was to file Criminal Revision against the impugned judgment.

Consideration

8. I considered the submissions advanced by both the



parties and perused the material on record.

The question involved

9. In view of the facts and circumstances of the case, the question is what is the legal remedy to the victim/petitioner herein against the Appellate judgment of acquittal – whether the petitioner has rightly filed Criminal Revision or she should have filed Criminal Appeal with or without Leave of this Court.

Legal provisions

10. Criminal Appeal in case of acquittal is provided under Section 378 Cr.PC, which reads as follows:

**“Section 378 in The Code of Criminal Procedure, 1973
Appeal in case of acquittal.-**

[(1) Save as otherwise provided in Sub-Section (2), and subject to the provisions of Sub-Sections (3) and (5),-

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session 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 constituted under 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 Public Prosecutor to present an appeal—



(a) to the Court of Session, 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 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)."

(Emphasis Supplied)

11. Sub-Sections (1), (2) and (3) deal with appeal in case of acquittal in a police case, whereas sub-section (4) provides for an appeal against acquittal in any case instituted upon the Complaint. Sub-Section (5) provides for limitation period for filing such appeals under Section 378, whereas Sub-Section (6) provides that if grant of Special Leave to appeal is refused under Sub-Section (4), no appeal could be filed. Under Section 378(1) and 378(2), no appeal can be filed to High Court unless except with Leave of the High Court. Again,



appeal under Section 378(4) Cr.PC, can be filed to the High Court only with the grant of Special Leave to the complainant.

12. Section 372 Cr.PC provides that no appeal lies from any judgment or order of criminal Court, except as provided for by this Court or by any other law for the time being in force. It means that nobody can file any Criminal Appeal, except there is provision in the criminal procedure code or any other law for the time being in force. It is also pertinent to point out that prior to addition of the Proviso to Section 372 Cr.PC in the year of 2009, the victim had no independent right to file any Criminal Appeal, except under Section 378(4) Cr.PC, which provides for right to the complainant to file an appeal to the High Court against an order of acquittal in any case instituted upon complaint, subject to grant of Special Leave to the complainant by the High Court.

13. However, Proviso to Section 372 Cr.PC provides for special right to the victim of a crime 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 lies to the Court to which an appeal ordinarily lies against the order of conviction of such Court.



14. There was divergence of opinion regarding the procedure for filing the appeal by the victim under the Proviso to Section 372 Cr.PC. As per one view, the right of the victim to file an appeal to the High Court under the Proviso to Section 372 Cr.PC is not absolute. The victim requires no grant of Leave or Special Leave by the High Court under sub-sections (3) and (4) of Section 378 Cr.PC. However, as per another view, the right of the victim to file appeal to High Court even under the Proviso to Section 372 Cr.PC is not absolute and the victim requires Leave or Special Leave under sub-Sections (3) and (4) of Section 378 Cr.PC from the High Court to file appeal before it as provided.

15. However, the controversy stands settled by the authoritative decision of Hon'ble Supreme Court in **Mallikarjun Kodagali Vs. State of Karnataka, (2019) 2 SCC 752**. As per the majority view of the three Judge Bench, the right of the victim to file appeal under Proviso to Section 372 Cr.PC is absolute and the victim requires to no Leave or Special Leave to file appeal to the High Court.

16. In **Mallikarjun Kodagali case** (supra), the victim of assault had lodged the First Information Report with the police, leading to the registration of Criminal Case against the



accused. In the consequent trial conducted by the court of Sessions, the accused was acquitted by the Trial Court. Thereafter, the victim preferred Criminal Appeal to the High Court on 06.02.2009 under the Proviso to Section 372 Cr.PC against the acquittal. But the appeal was dismissed as not maintainable, holding that Proviso to Section 372 came into statute with effect from 31.12.2009 and the incident has occurred well before that date. Subsequently, the victim preferred another Criminal Appeal in the High Court under Section 378(4) Cr.PC. However, this appeal was also held not maintainable, holding that the case was not instituted upon complaint before a Magistrate. Hence, against the order of the High Court, the victim preferred appeal before Hon'ble Supreme Court.

17. Hon'ble Apex Court in Mallikarjun Kodagali case (supra) discussed Section 372 and Section 378 Cr.PC in great detail and the appeal of the victim was allowed, setting aside the judgment of the High Court and remitting the matter to the High Court to hear and decide the appeal filed against the judgment of acquittal passed by the Trial Court. The appeal filed by the victim to the High Court was maintainable under the Proviso to Section 372 Cr.PC. During the discussion, Hon'ble



Supreme Court observed as follows:

“73. In our opinion, the proviso to Section 372 CrPC must also be given a meaning that is realistic, liberal, progressive and beneficial to the victim of an offence. There is a historical reason for this, beginning with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly of the United Nations in the 96th Plenary Session on 29-11-1985.

74. Putting the Declaration to practice, it is quite obvious that the victim of an offence is entitled to a variety of rights. Access to mechanisms of justice and redress through formal procedures as provided for in national legislation, must include the right to file an appeal against an order of acquittal in a case such as the one that we are presently concerned with. Considered in this light, there is no doubt that the proviso to Section 372 CrPC must be given life, to benefit the victim of an offence.

75. Under the circumstances, on the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, it is quite clear to us that a victim as defined in Section 2(wa) CrPC would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction. It must follow from this that the appeal filed by Kodagali before the High Court was maintainable and ought to have been considered on its own merits.

76. As far as the question of the grant of special leave is concerned, once again, we need not be overwhelmed by submissions made at the Bar. The language of the proviso to Section 372 CrPC is quite clear, particularly when it is contrasted with the language of Section 378(4) CrPC. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word “complaint” has been defined in Section 2(d) CrPC and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR, and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 CrPC is concerned.

Final order

77. For the reasons mentioned above, the appeals are



allowed and the judgment and orders Mallikarjun Kodagali Vs. State of Karnataka, passed by the High Court are set aside and the matters are remitted back to the High Court to hear and decide the appeal filed by Kodagali against the judgment and order of acquittal dated 28-10-2013 passed by the District and Sessions Judge, Bagalkot (Karnataka) in SC No. 49 of 2010.”

(Emphasis Supplied)

18. However, as per the minority view in **Mallikarjun Kodagali case** (supra), the right of the victim to file appeal under Proviso to Section 372 Cr.PC cannot be read in isolation. It must be read with Section 378(3) and Section 378(4) of Cr.PC which provide for provision for grant of Leave or Special Leave of the High Court before filing appeal before it. The right of the victim must be balanced with the right of the accused. The presumption of innocence of the accused gets strengthened when the person is acquitted. Hence, High Court should look into the matter and first decide as to whether there are sufficient reasons to grant leave to file an appeal or not. There is no reason why such scrutiny should not be done in appeal filed by the victim. The victim cannot be placed on a higher pedestal than the State or the complaint.

19. Joseph Stephen Vs. Santhanasamy, (2022) 13 SCC 115 is another landmark judgment of the Apex Court on the issue, delivered by Hon'ble Division Bench of the Supreme Court relying upon the **Mallikarjun Kodagali case** (supra). In



this case, the accused were convicted under Sections 147, 148, 324 and 326 of the Indian Penal Code, but they were acquitted of the charges framed under Sections 307 and 506 IPC. The convicts preferred Criminal Appeal against the judgment of conviction before the Court of Sessions and the victim preferred appeal before the Sessions Court against the judgment of the acquittal of the charges under Sections 307 and 506 IPC. By a common judgment, the appeal of the accused were allowed, whereas the appeal of the victim was dismissed, acquitting the accused of all the charges. Hence, being aggrieved by the judgment of acquittal passed by the First Appellate Court, the victim preferred Criminal Revision before the High Court under Section 397 read with Section 401 Cr.PC. The High Court, exercising the revisional jurisdiction under Section 401 Cr.PC, set aside the judgment of the acquittal passed by the First Appellate Court and restored the judgment of conviction and the order of the sentence passed by the Trial Court. During discussion, Hon'ble Apex Court observed as follows :

“8. We have heard the learned counsel appearing on behalf of the respective parties at length. Having heard the learned counsel for the respective parties, the following questions arise for the consideration of this Court:

8.1. (i) Whether the High Court in exercise of the revisional jurisdiction under Section 401CrPC is justified in setting aside the order of acquittal and convicting the accused by converting the finding of acquittal into one of



conviction?

8.2. (ii) In a case where the victim has a right of appeal against the order of acquittal, now as provided under Section 372CrPC and the victim has not availed such a remedy and has not preferred the appeal, whether the revision application is required to be entertained at the instance of a party/victim instead of preferring an appeal?

8.3. (iii) While exercising the powers under sub-section (5) of Section 401CrPC treating the revision application as petition of appeal and deal with the same accordingly, the High Court is required to pass a judicial order?

.....
13. Now so far as Issue (ii), namely, in a case where no appeal is brought though appeal lies under the Code, whether revision application still to be entertained at the instance of the party who could have appealed, the answer lies in sub-section (4) of Section 401CrPC itself. Sub-section (4) of Section 401CrPC reads as under:

“401. (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

13.1. It cannot be disputed that now after the amendment in Section 372CrPC after 2009 and insertion of the proviso to Section 372CrPC, a victim has a statutory right of appeal against the order of acquittal. Therefore, no revision shall be entertained at the instance of the victim against the order of acquittal in a case where no appeal is preferred and the victim is to be relegated to file an appeal. Even the same would be in the interest of the victim himself/herself as while exercising the revisional jurisdiction, the scope would be very limited, however, while exercising the appellate jurisdiction, the appellate court would have a wider jurisdiction than the revisional jurisdiction. Similarly, in a case where an order of acquittal is passed in any case instituted upon complaint, **the complainant (other than victim)** can prefer an appeal against the order of acquittal as provided under sub-section (4) of Section 378CrPC, subject to the grant of special leave to appeal by the High Court.

13.2. As observed by this Court in Mallikarjun Kodagali v. State of Karnataka, (2019) 2 SCC 752, so far as the victim is concerned, the victim has not to pray for grant of special leave to appeal, as the victim has a statutory right of appeal under Section 372 proviso and the proviso to Section 372 does not stipulate any condition of obtaining



special leave to appeal like sub-section (4) of Section 378CrPC in the case of a complainant and in a case where an order of acquittal is passed in any case instituted upon complaint. The right provided to the victim to prefer an appeal against the order of acquittal is an absolute right. Therefore, so far as Issue (ii) is concerned, namely, in a case where the victim and/or the complainant, as the case may be, has not preferred and/or availed the remedy of appeal against the order of acquittal as provided under Section 372CrPC or Section 378(4), as the case may be, the revision application against the order of acquittal at the instance of the victim or the complainant, as the case may be, shall not be entertained and the victim or the complainant, as the case may be, shall be relegated to prefer the appeal as provided under Section 372 or Section 378(4), as the case may be. Issue (ii) is therefore answered accordingly.”

(Emphasis Supplied)

20. Hence, after **Joseph Stephen case** (supra) and **Mallikarjun Kodagali case** (supra), it is settled that the right of the victim to prefer an appeal under the Proviso to Section 372 Cr.PC is absolute. The victim is not required to obtain any Leave or Special Leave from High Court to file appeal to it under the Proviso of Section 372 Cr.PC. However, in complaint case, the complainant, not being a victim, is required to obtain Special Leave as required under Section 378(4) Cr.PC from the High Court to file Appeal before it. It is apparent from the last line of Para 13.1 of **Joseph Stephen case** (supra). Moreover, the victims of both complaint case and police case are equally entitled to file appeal under the Proviso to Section 372 Cr.PC to High Court without any Leave or Special Leave as required under Sections 378(3) and 378(4) Cr.PC because the Proviso to



Section 372 Cr.PC does not discriminate between the victim of a police case or that of a complaint case.

21. There is also no substance in the submission of learned Amicus Curiae that no Criminal Appeal can lie against the judgment of an Appellate Court. Here, it becomes relevant to point out that the remedy of Criminal Appeal is the creature of the statute and unless the same is provided either in the Code of Criminal Procedure or in any other law for the time being in force, no appeal is maintainable as is evident from Section 372 Cr.PC and it is also true that as per Section 393 Cr.PC, there is generally finality of the judgments and orders passed in Criminal Appeals. But even Section 393 Cr.PC provides for some exceptions to the general rule by making general provision of Section 393 Cr.PC subject to provisions of Sections 377, 378 and 384 Cr.PC whereunder appeal has been provided to High Court even against Appellate judgments. Even under the Proviso to Section 372 Cr.PC, there is no stipulation at all that such appeal could be filed by the victims only against Trial Court judgments.

22. Now, sub-sections (4) and (5) of Section 401 Cr.PC come into play. Section 401(4) Cr.PC provides that where Criminal Appeal lies and no appeal is brought, no Criminal



Revision at the instance of the party who could have appealed is maintainable. However, Section 401(5) enables the High Court to treat the Criminal Revision as Criminal Appeal and deal with the same accordingly.

23. Section 401 Cr.PC deals with revisional power of High Court which reads as follows:

"401. High Court's powers of revision.-(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

(Emphasis Supplied)

24. Here, it would be again profitable to refer to



Joseph Stephen case (supra), wherein Hon'ble Supreme Court has directed the High Court concerned to treat the Criminal Revision as Criminal Appeal under Section 372 Cr.PC and decide the same in accordance with law on their own merits. However, it was clarified by Hon'ble Apex Court that for treating the Criminal Revision as Criminal Appeal by High Court, the High Court is required to pass judicial order for such conversion of Criminal Revision into Criminal Appeal. The relevant portion of the judgment reads as follows:

“.....As observed hereinabove, as such, while exercising the powers under sub-section (5) to Section 401CrPC to treat the revision application as a petition of appeal, the High Court is required to pass a judicial order. However, considering the fact that even otherwise being victims they are having the statutory right of appeal as per proviso to Section 372CrPC, we deem it fit and proper to remit the matter to the High Court to treat the revision applications as petition of appeals under Section 372CrPC and to decide the same in accordance with law and on their own merits. The same would be in the interests of all, namely, the victims as well as the accused, as the appellate court would have a wider scope and jurisdiction as an appellate court, rather than the Revisional Court.”

(Emphasis supplied)

25. Relying upon the **Joseph Stephen case** (supra), **Jharkhand High Court** in the case of **Renu Mishra Vs. State of Jharkhand and Anr.** (Criminal Revision No. 520 of 2019 decided on 18.04.2024) held the Criminal Revision filed against the Appellate judgment of acquittal as non maintainable. In this



case, arising out of Parsudih P.S. case No. 309 of 2012, learned Trial Court had found the accused guilty. However, the judgment of conviction and order of sentence was set aside by the First Appellate Court. Hence, the informant preferred Criminal Revision before the High Court of Jharkhand against the Judgment of acquittal passed by the Appellate Court. The High Court dismissed the Criminal Revision holding it as non maintainable in the light of the judgment of **Joseph Stephen case** (supra) giving liberty to the victim/petitioner to take appropriate steps in accordance with law.

Present Case

26. Coming to the case on hand, I find that on the basis of the written report of the victim who is petitioner herein, Kishanganj Mahila P.S. Case No. 49 of 2012 was registered against O.P. Nos. 2 and 3 herein and one Pramod Sharma. During the trial, they were convicted but subsequently in Criminal Appeal bearing No. 16 of 2018 filed by the O.P. Nos.2 and 3 herein, both were acquitted of all charges and hence, the present Criminal Revision has been filed by the victim/petitioner against the Appellate judgment of acquittal.

27. In view of the aforesaid facts and circumstances and the binding judicial precedents, the victim-petitioner had



remedy to file Criminal Appeal to this Court under the Proviso to Section 372 Cr.PC without any Leave or Special Leave. However, the victim-petitioner has preferred the present Criminal Revision. But in view of the availability of the remedy of Criminal Appeal to the victim-petitioner, the present Criminal Revision is hit by Section 401(4) Cr.PC. However, Sub-Section 5 of Section 401 Cr.PC enables this Court to convert the Criminal Revision into Criminal Appeal and treat the same accordingly and to decide it on merit.

Conclusion/Order

28. Hence, this Criminal Revision petition is accordingly converted into Criminal Appeal. The office is directed to do necessary correction in this revision petition and list the Appeal before appropriate Bench with permission of Hon’ble the Chief Justice.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	AFR
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