

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

**APPLICATION FOR LEAVE TO APPEAL (PVT.) NO.2145 OF  
2023  
WITH  
INTERIM APPLICATION NO.3742 OF 2024**

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**Ganesh Shamshunder Akula**

(Brother of the deceased Complainant/Informant,  
Prakash Shamsunder Akula),

Age : 55 Years, Occupation : Service,

Residing at : Building No.105, 5<sup>th</sup> Lane,

Kamathipura, Nagpada, Mumbai Central,

Mumbai : 400 008.

**...Applicant/Appellant**

Versus

1. **The State of Maharashtra**

2. **Manohar Rangayya Chippa**

Age : 56 Years, Occupation : T.V.Repairing,

3. **Lalita Manohar Chippa**

Age : 53 Years, Occupation : Housewife,

Both Residing at:- Room No. : Nil,

Building No.105, 5<sup>th</sup> Lane, Kamathipura,

Nagapada, Mumbai : 400 008.

**...Respondents**

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|----------------------|------------------------------------|
| Mr.R.N.Prabhu:-      | Advocate for Applicant/Appellant.  |
| Ms.Sangita E. Phad:- | APP for Respondent No.1 -State.    |
| Mr.M.A.Ansari:-      | Advocate for Respondent Nos.2 & 3. |

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**CORAM : S. M. MODAK, J.**

**DATE : 25<sup>th</sup> JUNE 2025**

**ORAL ORDER :-**

1. On the complaint lodged by one Prakash Shamsunder Akula, the Nagpada Police Station lodged an offence punishable under Sections 465, 467, 468, 471 read with 34 of the Indian Penal Code, 1860 (“**IPC**”) against the present 3 Respondents. The charge-sheet came to be filed. The case was tried before the Court of Metropolitan Magistrate – Mazgaon Court, Mumbai and it resulted into an acquittal on 9<sup>th</sup> June 2023. The present Appellant being a brother of the Complainant – Prakash Akula has sought a leave to prefer an Appeal as per the provisions of Section 378(4) of the Code of Criminal Procedure, 1973 (“**Code**”). The allegation was about forging a rent receipt and the present Appellant is also a witness examined in the said trial.

2. When the matter came up before this Court on 13<sup>th</sup> January 2025, a query was raised with the learned Advocate for the Applicant as to whether the Appeal will be maintainable as per the provisions of Section 378(4) of the Code. Because, the case is not arisen on the basis of a private complaint. On 18<sup>th</sup> February 2025, learned Advocate Mr.Prabhu for the Applicant relied upon the observations in case of *Parbhani District Central Bank Ltd. V/s. The*

***State of Maharashtra and Anr.***<sup>1</sup> Mr.Prabhu invited my attention to the observations in Para No.27 and the conclusion drawn in Para No.36. Today, additionally he relied upon the observations in case of ***Joseph Stephen and Others V/s. Santhanasamy and Others***<sup>2</sup>. Accordingly, I have heard him. I have also heard learned Advocate for the Respondent Nos.2 and 3 and learned APP.

3. According to Mr.Ansari, the observations in case of ***Parbhani District Central Bank Ltd.*** (*supra*) are on the basis of facts of that case and in fact, the observations by the Hon'ble Supreme Court in case of ***Mallikarjun Kodagali (dead) Represented Through Legal Representatives V/s. State of Karnataka and Others***<sup>3</sup> opined otherwise and they were pronounced later on. But today we need to consider them.

4. Though Mr.Prabhu tried to impress upon me that Appeal is maintainable in this Court, I am not impressed. The judgment in case of ***Parbhani District Central Bank Ltd.*** (*supra*) is on the basis of observations in 2 Supreme Court judgments (***Satya Pal Singh*** and ***Subhash Chand***). But facts of those cases are totally different.

5. It is true, the right of a victim to prefer an Appeal as per

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1 2016 ALL MR (Cri) 4822

2 2022 SCC OnLine SC 90

3 (2019) 2 Supreme Court Cases 782

the proviso to Section 372 of the Code is upheld. But the question posed was “*whether such a right can be exercised de hors the provisions of Section 378(4) of the Code?*” (Para No.27). On the basis of the observations in case of ***Satya Pal Singh V/s. State of M.P.***<sup>4</sup>, it is observed, “*Appeal can be preferred in High Court as per the proviso to Section 372 read with the provisions of Section 378 of the Code*” (Para No.39). There is also reliance on the observations in case of ***Subhash Chand V/s. State (Delhi Administration)***<sup>5</sup>. There was a complaint filed as per the provisions of Prevention of Food Adulteration Act. It was held, “*appeal has to be filed after obtaining leave under Section 378(4) of the Code*”.

6. In case of ***Satya Pal Singh*** (*supra*), there was a police case and the Supreme Court emphasized need of obtaining leave when victim files an Appeal against the judgment of acquittal. While interpreting the proviso to Section 372 of the Code, the Supreme Court borrowed the provisions of Section 378(4) of the Code and held, “*obtaining leave is mandatory*”. The requirement of such leave is held not required by Supreme Court in case of ***Mallikarjun Kodagali*** (*supra*).

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4 2016(1) SCC 691

5 (2013) 2 SCC 17

7. Secondly, in case of ***Satya Pal Singh*** (*supra*), the issue of ‘*maintainability of forum*’ was not the issue. That is to say, an Appeal against acquittal lies to Sessions Court or to High Court. Whereas, learned Single Judge in case of ***Parbhani District Central Bank Ltd.*** (*supra*) held, “*an Appeal against acquittal by Magistrate Court in a police case is maintainable before High Court (after obtaining leave)*”. In fact, in ***Satya Pal Singh*** (*supra*), the Supreme Court borrowed the principle laid down in Section 378(4) of the Code but it never changes the forum of filing an Appeal from Sessions Court to High Court.

8. For the above discussion, the observations in case of ***Parbhani District Central Bank Ltd.*** (*supra*) will not be useful to the Appellant.

9. I am of the view, that the Appeal is not maintainable before this Court and in fact, it is maintainable before the Court of Session. I will give reasons for the same. They are as follows:-

- (a) Section 378 of the Code deals with the Appeals to be filed against the order of acquittal. The case may be instituted on a police report or otherwise on a police report.
- (b) Sub-sections 1, 2 and 3 refer to the cases instituted on a police report whereas, Sub-sections 4, 5 and 6 deal with the cases which are instituted on a complaint.

- (c) The meaning of the word '*complaint*' is given in Section 2(d) as "*allegation made to a Magistrate for taking action*". The complaint made before the police stands on a different footing. So, on prima facie reading, the provisions of Sub-section 4 of Section 378 cannot be made applicable to the case which is instituted on a police report.
- (d) To such cases and when there is an acquittal, the provisions of Section 378(4) of the Code are applicable. The Appellant cannot take recourse to Section 378(1) and (2) because they can be exhausted only on the directions of the District Magistrate or State Government.

10. The subsequent judgment in case of *Mallikarjun Kodagali* (*supra*) was delivered by 3 Judges Bench (*Satya Pal Singh* is delivered by 2 Judges Bench). The Hon'ble Supreme Court has considered the provisions of proviso to Section 372 and the provisions of Section 378(4) of the Code and material observations are there in Para No.76.

The material observations are as follows:-

*"....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*”.

*(Emphasis supplied)*

It is further observed in Para No.75 that:-

*“A victim can prefer an Appeal before the Court to which an Appeal ordinarily lies against the order of conviction”.*

The observations in case of ***Mallikarjun Kodagali*** (*supra*) are after the case of ***Parbhani District Central Bank Ltd.*** is decided. The observations of the Supreme Court are binding on us.

11. In case of ***Joseph Stephen*** (*cited supra*), it was a police case. Some of the accused are acquitted and some of the accused are convicted. There were Appeals filed by both the parties before the District Court. The conviction was set aside whereas, the acquittal was maintained. The victim preferred a Criminal Revision Application before the High Court. The acquittal was set aside and there was conviction. When the matter reaches to the Supreme Court, the question involved was “*whether the order of acquittal can be reversed by the High Court in a revisional jurisdiction?*”. The questions are framed in Para No.7. Learned Advocate Mr.Prabhu invited my

attention to the observations in Para No.8 of the said judgment. It talks about the power of a revisional Court when there is a judgment of acquittal. I do not think that the issue involved in this case was the issue involved in case of *Joseph Stephen (supra)*.

12. For the reasons stated above, the Appellant ought to have preferred an Appeal as per the proviso to Section 372 of the Code. Admittedly, this is a police case. Admittedly, he cannot prefer an Appeal as per the provisions of Section 378(1) and (2). Only remedy is as per the proviso. There is a submission that the Appellant cannot be treated as a ‘victim’. The meaning of the word ‘victim’ is given in Section 2(wa) of the Code. A person who has suffered any loss or injury is a victim. When the judgment is perused, it can certainly be said that the Appellant falls within the meaning of ‘victim’.

13. For the above discussion, the Appeal is not maintainable before this Court and is liable to be dismissed. Hence, the following order:-

### **ORDER**

- (i) The Appeal is dismissed as not maintainable.
- (ii) Application for Leave to Appeal is disposed of.
- (iii) Liberty is granted to the Appellant to prefer an Appeal before the Court of City Civil – Greater Mumbai as per the

proviso to Section 372 of the Code.

- (iv) The Appellant can satisfy the City Civil Court that he was prosecuting the present Leave Application and if there is a delay, he can convince the City Civil Court for condonation of delay.
- (v) In view of the above, Interim Application is also disposed of.

**[S. M. MODAK, J.]**