



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 01st August, 2025
Pronounced on: 06th November, 2025*

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CRL.REV.P. 659/2013 & CRL.M.A. 17546/2013

RAKESH KUMAR SHARMA

S/o Sh. Radhey Shyam Sharma
R/o 3B, H.P. Block, DDA Staff Quarters,
Pitampura, Delhi

.....Petitioner

Through: Mr. Neeraj Anand, Advocate

versus

1. **THE STATE (Government of NCT of Delhi)**

2. **SMT. RITU SHARMA**

D/o Late Sh. S.R. Batra,
R/o B-18/C, Tilak Nagar, New Delhi,

.....Respondents

Through: Mr. Utkarsh, APP with SI Arti, PS:
R. K. Puram

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed on behalf of the **Petitioner/Rakesh Kumar Sharma** challenging the Judgment dated 11.09.2013 *vide* which learned ASJ has allowed the Criminal Appeal No. 6/2012 against the Judgment of Acquittal dated 07.01.2012 under Section

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498A/406/494/495/419 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) in FIR No.326/1989 and has remanded the case for retrial.

2. ***Briefly stated***, the Complainant/Respondent No. 2, Smt. Ritu Sharma and the Petitioner were working in the same Department of the DDA. The Complainant alleged that through a friend of the Petitioner, their marriage got arranged and thereafter they got married. They started residing together in *quarter No. 26, Type-III, Varun Niketan Pitam Pura, Delhi*.

3. It was further alleged in the Complaint that Respondent No. 2 had gone back to her parental home for a few days and when she came back, she found that the Petitioner had vacated the premises and was living with his first wife and children.

4. On this, complaint FIR No. 326/1989 under Sections 498A/406/494/495/419 IPC was registered.

5. On completion of investigation, the **Chargesheet** was filed in the Court. The Complainant and the other public witnesses failed to appear, consequently, leading to the Acquittal of the Petitioner *vide* Judgment dated 07.01.2012 of learned M.M.

6. The Complainant aggrieved by the said Acquittal, filed an Appeal No. 6/2012 before the Court of learned ASJ, who *vide* the impugned Judgment dated 11.09.2013 noted that the Complainant was available and had in fact not been served with the summons during the trial, as she had shifted the residence. Considering the availability of the Complainant, the Judgment of Acquittal dated 07.01.2012 was set aside and the matter was remanded back to the Court of learned M.M. for recording of all the material evidence and thereafter, to decide the case afresh.



7. *Aggrieved by the said Order dated 11.09.2023 of learned ASJ, the present petition has been filed.*

8. The **grounds for challenge** are that the Appellate Court erred in law by observing that the Appeal was maintainable under Section 378 (2)(a) read with proviso to Section 372 Cr.P.C. It is asserted that the Appeal filed by the Complainant was not maintainable.

9. The FIR has been registered in the year 1989 and there existed no provision in the Code of Criminal Procedure, 1973 till the Criminal Law Amendment, 2005 for filing of Appeal against the Acquittal, by the Complainant. The Criminal Law Amendment, 2005 is not applicable to the present case as the Petitioner was prosecuted in the year 1989 i.e. prior to the Amendment in the year 2005. The Amendment is not retrospective and thus, could not be made applicable to a case which got initiated in the year 1989.

10. In view of Section 378 Cr.P.C., no Appeal against Acquittal was maintainable before the Court of Sessions. The learned ASJ, therefore, committed an error in entertaining the Appeal and setting aside the Order of Acquittal.

11. It is further contended that the learned ASJ has failed to appreciate that the Complainant had deliberately not turned up in spite of her having knowledge about the case. She had ample opportunities to appear as a Prosecution witness, but she failed to do so. The Prosecution miserably failed to discharge its onus and therefore, the Petitioner had been rightly Acquitted by the Court of learned M.M. The learned ASJ fell in error in setting aside the Judgment of Acquittal.



12. It is further contended that Petitioner never got married to the Complainant and no evidence during the investigation, was collected to substantiate the allegation. The instant FIR was manipulated at the instance of father of the Complainant who at the relevant time, was a Sub-Inspector in Delhi Police. The sole intention of Respondent No. 2 is to extort money from the Petitioner.

13. It is further submitted that the learned ASJ had erroneously not considered the judgments relied by the Petitioner i.e. Hirabhai Jhaverbhai vs. State of Gujrat & Ors., (2010) 6 SCC 688; Pramod Kumar Saxena vs. Union of India & Ors., (2008) 9 SCC 68; Lalu Prasad Yadav & Anr vs. State of Bihar and Anr.; Central Bureau of Investigation vs. State of Bihar; AIR 2010 SCC 1561 and P.M. Singh vs. C.B.I. 145(2007) DLT 375. Hence, the prayer is made that the impugned judgment dated 11.09.2013 of learned ASJ, be set aside.

14. The **Respondent No. 2/Complainant in her detailed Reply** has submitted that the Petitioner has not challenged the judgment on merits, but on the technical ground in regard to the maintainability of the Appeal before the Court of learned ASJ. The Petition is a sheer misuse of the judicial process and is filed for oblique motive of lingering the case. The FIR is of 1989 and the litigation has already got protracted over 25 years. This Petition is another endeavour to drag it further.

15. The parents of the Complainant, who were the two important witnesses, have already expired. It is asserted that there is no illegality, perversity or infirmity in the impugned judgment remanding the case for retrial in the facts and circumstances of the case.



16. Proviso to Section 372 Cr.P.C., gives a right of Appeal to the Complainant in a State case and it does not take away any right, what to speak of alleged vested right of the Petitioner, as alleged in the Petition. The Acquittal of the Petitioner was illegal, unfounded and unsustainable in the eyes of law.

17. It is further claimed that the Proviso to Section 372 Cr.P.C. has only changed the nomenclature of the remedy, but does not take away any right vested in the Petitioner. Section 378(4) Cr.P.C. is applicable to a Complaint Case and not a State case.

18. The Proviso to Section 372 Cr.P.C. was added to give the Complainant in a State case, a fair chance of justice and her right was not limited to the case of Acquittal but to all other cases where she finds herself aggrieved by the impugned judgment, in order to ensure that the Accused may not go scot free. Section 372 Cr.P.C. is only procedural in nature and has retrospective effect. Even if it is construed as a substantive right, then too it has a retrospective effect, being a beneficial legislation.

19. ***On merits***, it is explained that there is not a single summons served upon her and her non-appearance as a witness, was purely on account of not being served with the summons. She and the other witnesses had changed their residence and being layman people, were not aware that they were supposed to inform the IO about the change of address.

20. *It is thus, submitted that the present Petition is without merit and is liable to be dismissed.*

21. **Written Submissions** have been filed by the Petitioner and Respondent No.2 wherein they have reiterated their respective submissions.



Submissions heard and record perused.

22. The learned ASJ *vide* impugned Judgment dated 11.09.2013 has set aside the Judgment of Acquittal of learned M.M. dated 07.01.2012, essentially by observing that Complainant was available, though not served with the summons which led to her non-appearance as a witness, and she must be given an opportunity to depose in the case.

23. The ***main ground of challenge*** is that the Appeal before learned ASJ was not maintainable against the judgment of Acquittal and the Appeal was maintainable only in the High Court under Section 378(4) Cr.P.C.

24. In this context, it is pertinent to observe that Section 378(4) Cr.P.C. provides for the Appeal by the Complainant in Complaint Cases and not the State cases. The Proviso to Section 372 Cr.P.C. was introduced w.e.f. 31.12.2009 only to provide a remedy to the Complainant to be able to file an Appeal against an Order, by which he/she is aggrieved and need not depend upon the Prosecutor for filing the Appeal.

25. The Apex Court in the case of Joseph Stephen vs. Santhanasamy, (2022) 13 SCC 115 had observed that after the amendment in Section 372 CrPC in 2009 and insertion of the proviso to Section 372 CrPC, ***a victim has a statutory right of appeal against the order of Acquittal.***

26. In Joseph Stephen, (supra), the Apex Court placed reliance on the case of Mallikarjun Kodagali vs. State of Karnataka, (2019) 2 SCC 752 and observed that the victim need not seek 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, unlike sub-section (4) of Section 378 Cr.P.C where the Complainant has to seek leave to Appeal against an Order of Acquittal passed in any case instituted upon a Complaint.

27. A three-judge bench of the Apex Court in Mallikarjun Kodagali, (supra), after discussing various judgments of different High Courts, observed as under:

*“72. What is significant is that several High Courts have taken a consistent view to the effect that **the victim of an offence has a right of appeal under the proviso to Section 372 CrPC. This view is in consonance with the plain language of the proviso.....** It has been held, and we have referred to those decisions above, that **the significant date is the date of the order of acquittal passed by the trial Court. In a sense, the cause of action arises in favour of the victim of an offence only when an order of acquittal is passed and if that happens after 31.12.2009 the victim has a right to challenge the acquittal, through an appeal. Indeed, the right not only extends to challenging the order of acquittal but also challenging the conviction of the accused for a lesser offence or imposing inadequate compensation. The language of the proviso is quite explicit, and we should not read nuances that do not exist in the proviso.**”*

(Emphasis supplied)

28. Therefore, following the judgments in Joseph Stephen, (supra) and Mallikarjun Kodagali, (supra), it is now well established that ***a victim’s right to file an appeal under the proviso to Section 372 of the Cr.P.C. is absolute and the effective date for its applicability is the date of final***



judgement. The judgement of Acquittal is dated 07.01.2012 i.e. after 2009, and thus, the Appeal before learned ASJ, was maintainable.

29. Therefore, the contention of the Respondent No. 2 that the Appeal before the learned ASJ was not maintainable, is totally fallacious.

30. *The Order of Acquittal was of 2012, when the Proviso had already been added and was applicable and the Appeal had been rightly filed by the Respondent against the judgment of Acquittal.*

31. The ***other contention on behalf of the Petitioner*** is that the Complainant despite being aware of the pendency of the Criminal Case, chose not to appear and cannot now after so many years, make a grievance of the judgment of Acquittal, which has followed. However, as has been rightly appreciated by the learned ASJ in the impugned Order, there is not a single summon which reported that despite being served with the summons, the Complainant has failed to appear.

32. The record reflects that the summons were never served upon the Complainant. It has been explained that the Complainant and the other public witnesses, had changed their residence on account of which summons could not be served.

33. The learned ASJ has rightly noted that the contradictory reports were given on the Summons wherein it was reported that the witnesses do not exist or that they have chosen not to appear. Such different reports reflect that no sincere effort was made by the Prosecution to serve the Complainant. Furthermore, when the Complainant herself is standing before the Court (learned ASJ), knocking its doors, seeking justice, she should be shunted out. It was further observed that the Complainant was an employee in the



DDA, where the Petitioner was also working and had sincere efforts been made by the Prosecution, she could have been easily served at her office. Pertinently, the Complainant came to know about the judgment of Acquittal only when the Petitioner distributed sweets in the office.

34. Learned ASJ has rightly observed that there was no effective service of the summons to the Complainant, she cannot be denied a right to appear as a witness in the Trial Court in support of her Complaint. The Acquittal has been on account of non-examination of Complainant and other public witnesses, the Court cannot deny her the right of deposing simply because a considerable time has passed. Learned ASJ rightly observed that *“If the period was painful and testing for the Accused, then the agony of the Appellant cannot be belittled, if she is right, as she too had squandered her entire prime life being a victim of the so called acts of the Accused.”*

35. The Order of learned ASJ is well-reasoned and has balanced the right of the Accused who has been suffering of protracted litigation with the substantive rights of the Complainant to seek justice.

Conclusion:-

36. There is no infirmity in the impugned Order. There is no merit in the present Petition, which is hereby **dismissed**. However, considering that the FIR was of 1989 and the trial has got protracted for about 36 years, the learned Trial Court must make an endeavour to conclude the trial within six months. The Complainant shall present herself before the Trial Court for recording of her testimony and no unjustified adjournments may be given to either Party.



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37. Pending Application(s), if any, are accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 06, 2025

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