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

+ **CRL.REV.P. 773/2016**

SMT NEERU GUPTA

.....Petitioner

Through: Mr. Sameer Chandra, Mr. Aryan
Tomar, Mr. Shubham Parashar and
Mr. Himanshu Yadav, Advocates

versus

STATE (NCT OF DELHI) & ANR

.....Respondents

Through: Mr. Kiran Bairwa, APP for the State
SI Prem Raj, PS: Badarpur.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

09.01.2025

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1. The present revision petition has been filed seeking setting aside of the judgment dated 04.10.2016 passed in Criminal Appeal No. 204240/2016 by Raj Kumar Tripathi, Additional Sessions Judge-02, South East, Saket Courts, New Delhi, whereby the learned Session Judge was pleased to dismiss the appeal of the revisionist preferred against the order and judgment dated 05.05.2015, of acquittal of Respondent No. 2 herein, passed by Additional Chief Metropolitan Magistrate/ South East District/ Saket Court Complex, New Delhi in the case having case no. RBT-177/I dated 31.01.2014, FIR NO. 355/2008 registered at PS Badarpur under Sections 279/304-A of Indian Penal Code, 1860 ('IPC').

2. Learned counsel for the Petitioner states that the Petitioner herein is the mother of the deceased victim and is aggrieved by the order and judgment dated 05.05.2015, whereby Respondent No. 2 was acquitted. He



states that though the Petitioner had filed an appeal against the said order of acquittal before the court of Sessions, which was numbered at Criminal Appeal No. 204240/2016. He states that the appeal was dismissed as not maintainable vide judgment dated 04.10.2016.

3. He states that the judgment passed by the Appellate Court is erroneous in view of the law settled by the Supreme Court in **Mallikarjun Kodagali v. State of Karnataka**¹ which at paragraph 76 reads as under:

“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.”

4. He states that thus the Petitioner was well within her right to file the appeal and it was correctly filed in the Court of Session.

5. Ms. Kiran Bairwa, learned APP for the State as well fairly contends that the law has since been settled and the Petitioner’s appeal before the Court of Sessions was correctly filed.

6. Ms. Richa Dhawan, learned APP for the State who is present in Court for a separate matter has drawn this Court’s attention to the judgment of the Coordinate Bench of this Court in **Lalita v. State and Others**², where after referring to the judgment of **Mallikarjun Kodagali v. State of Karnataka**

¹ (2019) 2 SCC 752

² 2019 SCC OnLine Del 9808



(supra) the Coordinate Bench, at paragraph 14 has held as under: -

“14. A conjoint reading of Sections 372 and 374(3)(a) CrPC in the light of aforementioned passage quoted from the decision rendered in Mallikarjun Kodagali (supra) would show **that an order of acquittal passed by a Magistrate can be challenged by a victim before the Court of Session by filing an appeal** in the same way as a convict would challenge an order of conviction passed by the Magistrate before the Court of Sessions.”

(Emphasis Supplied)

7. In view of the aforesaid judgments of the Supreme Court and the High Court, the parties fairly states that the impugned judgment of the Appellate Court dated 04.10.2016 ought to be set aside and the Criminal Appeal No. 204240/2016 be restored to its original number and the matter be remanded for hearing on merits.

8. The Petitioner is the mother of the deceased victim. Being the mother she is the legal heir of the deceased and therefore she falls within the definition of victim as per Section 2(wa) of Code of Criminal Procedure, 1973 ('Cr.P.C').

9. Upon reading of the aforesaid judgment of **Mallikarjun Kodagali v. State of Karnataka** (supra) and the judgment of the Coordinate Bench in **Lalita v. State, 2019** (supra) as well as in view of the submissions of the parties, this Court finds merit in the plea of the Petitioner. The Petitioner is thus entitled to maintain an appeal before the Court of Session as per Section 372 read with 374 (3) (a) of Cr.P.C.

10. Accordingly, the judgment dated 04.10.2016 is hereby set aside. Criminal Appeal No. 204240/2016 is restored to its original number and it is directed that the appeal shall be decided on its own merits.

11. Keeping in view the fact that the appeal was initially filed in 2016 and nine (9) years have gone by, the Appellate Court is requested to hear the



matter expeditiously and preferably within six (6) months from the first listing.

12. A copy of the order be sent to the Principal District and Sessions Judge, Saket Courts, New Delhi for marking the matter to an appropriate Court.

13. With the consent of the parties, the Principal District and Sessions Judge, Saket Courts, New Delhi is requested to have the matter first listed on **29.01.2025**.

14. The concerned Appellate Court will issue appropriate notice to Respondent No. 2 for his appearance.

15. With the aforesaid directions, the present revision petition stands disposed of.

16. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

JANUARY 9, 2025/msh/MG

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any