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

+ **CRL.A. 763/2017**

SHREE CHAND

.....Appellant

Through: *Appearance not given.*

versus

STATE & ORS

.....Respondents

Through: Ms. Teesta Mishra, Ms. Jaisal Singh
and Mr. Vinayak Mishra, Advocates
for R-3.
Mr. Mukesh Kumar, APP for State
with Mr. Sandeep Kumar, SI, PS-
Ambedkar Nagar.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

18.03.2025

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1. The present appeal seeks the following reliefs:

“(i) Allow the present appeal to enhance the award of punishment awarded by the court of Smt. Asha Menon, District & Sessions Judge(South), Saket Courts, New Delhi in in case No. 1225/2, FIR No. 502/2004, Police Station Ambedkar Nagar, under section 448/34 IPC, vide order dated 07.04.2017.

(ii) Direct the S.H.O. to comply the order dated 15.07.2013 and to restore the possession of the abovementioned property to the Victim/appellant in view of Section 456 Cr. P.C. and prevent interference in the possession of the property owned by the Victim appellant.

(iii) Pass such other order or direction as may be deemed just and proper in the facts and circumstances of the case.”

2. As far as the prayer (i) is concerned, Ms. Teesta Mishra, counsel for the Respondent No. 3 has drawn this Court's attention to the proviso to



Section 372 of the Code of Criminal Procedure, 1973¹, which limits the right of a victim to prefer an appeal under Section 372, in three eventualities only – i.e., when the accused is acquitted, where the accused has been convicted for a lesser offence or when inadequate compensation has been imposed. She argues that the proviso does not entitle a victim to particularly seek enhancement of the punishment awarded to the accused and therefore, the appeal is not maintainable. In this regard, she places reliance on the judgment of the Supreme Court in *Parvinder Kansal v. State (NCT of Delhi) and Another*², wherein it has been held as under:

“7. Having heard the learned counsel on both sides, we have perused the material on record and the relevant provisions of the Code of Criminal Procedure, 1973.

8. Chapter XXIX of the Code of Criminal Procedure, 1973 deals with "Appeals" and Section 372 makes it clear that no appeal to lie unless otherwise provided by the Code or any other law for the time being in force. It is not in dispute that in the instant case appellant has preferred appeal only under Section 372 CrPC. The proviso is inserted to Section 372 CrPC by Act 5 of 2009. Section 372 and the proviso which is subsequently inserted read as under:

"372. No appeal to lie unless otherwise provided. No appeal shall lie from any judgment or order of a criminal court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right 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 shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court."

A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377 CrPC gives the power to the State Government to prefer

¹ “Cr.P.C.”

² (2020) 19 SCC 496



appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377 CrPC but similarly no appeal can be maintained by victim under Section 372 CrPC on the ground of inadequate sentence. It is fairly well-settled that the remedy of appeal is creature of the statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further we are of the view that the High Court while referring to the judgment of this Court in *National Commission for Women v. State (NCT of Delhi)* has rightly relied on the same and dismissed the appeal, as not maintainable.”

[Emphasis added]

3. In fact, when confronted with the above legal proposition, counsel for the Appellant states on instructions that he does not wish to press the first prayer and instead, he presses the second prayer.
4. It is noted that the second prayer is in the nature of issuing directions for compliance of order dated 15th July, 2013, which, in the opinion of this Court, cannot be entertained in appeal proceedings under Section 372 of the Cr.P.C. Nonetheless, counsel for Respondent No. 3 states on instructions that the possession of the subject property has been restored. She further apprises the Court that during the pendency of the present proceedings, Respondent No. 2 has deceased.
5. Thus, in light of the foregoing, no relief can be granted as sought in the present appeal and accordingly, the same is dismissed, being not maintainable.

SANJEEV NARULA, J

MARCH 18, 2025/nk