



HIGH COURT OF CHHATTISGARH, BILASPUR

2023:CGHC:23540

Order Sheet

CRR No. 294 of 2016

- Smt. Sarita Tamrakar W/o Sudhir Kumar Tamrakar Aged About 50 Years R/o Tamerpara, Police Station Dhamdha, District Durg, Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh Through District Magistrate, District Durg, Chhattisgarh.
2. Sudhir Kumar S/o Faguram Aged About 45 Years Now Must Be 55 Years R/o Dhamdha, Police Station Dhamdha, Tahsil And District Durg, Chhattisgarh.
3. Faguram S/o Manrakhan Aged About 70 Years Now Must Be 80 Years R/o Dhamdha, Police Station Dhamdha, Tahsil And District Durg, Chhattisgarh.

---- Respondents

21.9.2023	Shri DK Gwalre, counsel for the applicant. Shri GP Kurre, Panel Lawyer for the State/non-applicant No.1. Shri Shrawan Agrawal, counsel for non-applicants 2 & 3. Heard on IA No.01/2023, application under Section 401(5) of the CrPC. Learned counsel for the applicant would submit that this revision has been preferred against judgment dated 10.2.2013 passed by 3rd Additional Sessions Judge, Durg in Criminal Appeal No.213/2013 whereby the conviction and sentence passed by the Judicial Magistrate First Class, Durg against respondents 2 & 3 has been quashed. It is further submitted by learned counsel for the applicant that in view of the proviso to Section 372 CrPC, the victim has right to file appeal, hence,



the applicant wanted to contest the instant case on merits with

facts of the case, therefore, the application may be allowed. 2023:CGHC:23540

Per contra, learned counsel for respondents 2 & 3 would submit that Section 401(4) of the CrPC is an absolute rule where no appeal lies and if an appeal is brought, revision shall be dismissed. He would further submit that Section 401(5) of the CrPC is not an absolute rule, where appeal lies and when a revision has been made to the High Court erroneously by believing that no appeal lies, the High Court may treat the same as appeal and deal accordingly. To substantiate his submission, learned counsel for respondents 2 & 3 has placed reliance in judgments of Bombay High Court in **Nandabai W/o. Popatrao Warat vs. Maruti Gopala Mehetre and Ors. (2012 STPL 27965 Bombay)**.

Learned counsel for the State has also raised formal objection in respect of allowing the aforesaid application.

Undisputedely, present applicant is a victim in the instant case and proviso to Section 372 CrPC gives right to the victim to file the appeal against any order passed by the court acquitting the accused, or convicting for a lesser offence or imposition of inadequate compensation. In the instant case, learned Judicial Magistrate First Class, Durg has convicted the respondents 2 & 3 for the offence under Section 498A/34 IPC and Section 4 of Dowry Prohibition Act, but in appeal, learned appellate Court has set aside the judgment passed by the learned trial Court.

Similar issue has been considered and decided by Division



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Bench of this Court in the judgment of ***Sunil Jangde Vs. State & Ors. (Criminal Revision No.643/2015)***, which says that in such case, instead of revision, appeal is maintainable. In view of aforesaid judgment rendered by this Court, I feel inclined to allow the IA No.01/2023.

Registry is directed to convert this revision into regular acquittal appeal and register the same accordingly.

Sd/-

(N.K. Chandravanshi)

Judge

Bini