

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

CRMSPL/4/2024

With

CRA (DB)/4/2024

Ms. X (Victim Lady)

Vs.

The State (UT of Andaman and Nicobar Islands)

Mr. Deep Chaim Kabir

Mr. S. Ajith Prasad

... for the petitioner

Ms. A.S.Zinu

... for the State

June 21, 2024

[SR]

Item No.3 & 4

An interesting point has cropped up for consideration before this Court. The present leave application has been filed by the victim against an order of acquittal within the contemplation of the proviso to Section 372 of the Code of Criminal Procedure.

Learned counsel for the petitioner, while drawing an analogy between Section 372 and Section 378, submits that the rigour of Section 378 (4), which mandates leave to be obtained before an appeal being filed at the instance of a complainant, it is not applicable to victims' appeals under the proviso to Section 372. It is contended that the since the Legislature intentionally excluded such rigour from the proviso to Section 372, the same cannot be read into by drawing inspiration from a different Section.

While explaining the law in the field, learned counsel first cites **Satyapal Singh vs. State of MP** and others reported at **(2015) 15 SCC 613** where the concept was laid down that the requirement of obtaining a leave in terms of Section 378 (4) is to be read into the proviso to Section 372.

However, it is argued that the said principle was watered down by two subsequent judgments of the Supreme Court itself. In **Mallikarjun Kodagali (Dead) represented through Legal Representatives Vs. The State of Karnataka** reported at **(2019) 2 SCC 752** the majority view as expressed by the Supreme Court, in no uncertain terms, clarified that the proviso to Section 372 gives an independent and additional right to the victim which cannot be fettered by the requirement of obtaining a leave in terms of Section

378 (4). The said position was further cemented in **Joseph Stephen and others vs. Santhanasamy and others** reported at **AIR 2022 SC 670** where it was reiterated that as there is no requirement to obtain a leave in the proviso to Section 372 itself, which confers an independent statutory right of appeal on the victim, no such requirement is to be read into the same.

Although the dissenting view in the judgment of **Mallikarjun Kodagali (supra)** was to the contrary, as per the law of precedents, the majority view prevails and is binding on this Court, more so since the same was further reiterated and clarified in **Joseph Stephen's case**.

The contradictory arguments possible in the present case would be that said Section 378 (4), which specifically deals with appeals against acquittal, puts some fetter to an appeal against an order of acquittal by incorporating the concept in criminal jurisprudence that a double layer of protection is given to an acquitted person, being the initial presumption of innocence and the subsequent presumption arising out of the acquittal. On the other hand, the proviso to Section 372 carves out a special niche for victims by conferring right of appeal to them in cases of acquittal as well.

In any case, it cannot be said that Section 378 (4) and the proviso to Section 372 operate in the same field, as in the case of Section 378 (4) the right is given to a complainant to prefer an appeal upon obtaining leave whereas it is the victim who is given primacy in the proviso to Section 372.

Although in certain cases there may be an overlap between the victim and the complainant, the same does not necessarily take away the independent right of a victim, in the capacity of a victim, which has been conferred by the proviso to Section 372 which is independent from Section 378 (4) which applies to complaint cases alone.

In such view of the matter and in the light of the latest view of the Supreme Court, there does not appear to be any necessity or requirement for the victim, coming within the contemplation of the proviso to Section 372 of the Code of Criminal Procedure, to obtain a leave, as the legislature did not envisage any such leave.

Accordingly, CRMSPL/4/2024 is disposed of as infructuous.

CRA (DB)/4/2024 be registered.

Call for the records.

Since at this juncture it is intimated to court that the respondent/ acquitted person is also represented through counsel, service of notice on the respondents is dispensed with.

The department shall prepare the requisite number of paper books and serve copies of the same on the learned advocates for the parties.

Liberty to the parties to mention the appeal for hearing as and when the trial court records arrive and, upon being examined, are found to be complete.

(Sabyasachi Bhattacharyya, J.)

(Ajoy Kumar Mukherjee, J.)