

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (S.J) No. 1281 of 2016

With

Cr. Appeal (S.J) No.2066 of 2017

With

Cr. Appeal (S.J) No.2229 of 2017

With

Cr. Appeal (S.J) No.825 of 2014

With

Cr. M. P No.3260 of 2017

Cr. Appeal (S.J.) No.1281 of 2016

TuklalYadav Appellant
Versus
1. The State of Jharkhand
2. MahabirYadav Respondents

Cr. Appeal (S.J.) No.2066 of 2017

Radhika Devi Appellant
Versus
1. The State of Jharkhand
2. Shrishtidhar Mahto
3. Savitri Devi
4. Rameshwar Mahto
5. Dharni Devi Respondents

Cr. Appeal (S.J.) No.2229 of 2017

Tapas Kumar Sahu Appellant
Versus
1. The State of Jharkhand
2. SrimatiDebjaniBhattyacharjee Respondents

Cr. Appeal (S.J) No.825 of 2014

Anita Devi Appellant
Versus
1. The State of Jharkhand
2. Ganouri Prasad Gupta
3. Sunil Kumar Chandravanshi Respondents

Cr.M.P. No.3260 of 2017

KavitaKumari Petitioner
Versus
1. The State of Jharkhand
2. Balmiki Singh
3. Gayitri Devi Opposite Party

P R E S E N T

HON'BLE MR. JUSTICE H.C. MISHRA
HON'BLE MR. JUSTICE B.B. MANGALMURTI
HON'BLE MR.JUSTICE ANIL KUMAR CHOUDHARY

For the Appellants : M/s. Vishal Kumar Tiwary, Sachin Kumar,
Indrajit Sinha, K.S. Nanda, Namit Kumar,
Kirti Saboo, A.K. Sahani, Atul Kumar,
Advocates.

For the Respondents : M/s. Vikas Kishore, Pankaj Kumar, A.P.P.

C.A.V.on: - 31/08/2018

Pronounced on: - 19/09/2018

H.C. Mishra, J.:- Heard learned counsels for the appellants and learned counsel for the State.

2. This reference to the Full Bench has arisen out of the Order dated 09.07.2018, passed in Cr. Appeal (S.J) No.1281 of 2016, Cr. Appeal (S.J) No.2066 of 2017, Cr. Appeal (S.J) No.2229 of 2017 and Cr. Appeal (S.J) No.825 of 2014, and all these appeals arise out of the appellate judgments / orders passed by the different Courts of Session, which were originally listed before the Hon'ble Single Judge for adjudication. The Hon'ble Single Judge, however, referred those matters to the Division Bench, in view of the Rule 152 of the High Court of Jharkhand Rules, 2001.

3. While these matters were taken up, an objection was raised by the learned counsel for the State that in view of the proviso to Section 372 of the Code of Criminal Procedure, these appeals shall lie before the Single Judge and not before the Division Bench. It was pointed out that the Proviso to Section 372 of the Cr.P.C., was brought in by an Amendment Act, with effect from 31.12.2009, whereas, the High Court of Jharkhand Rules were framed in the year 2001, and in view of the settled principle of law that the provisions of the Rules cannot override the provisions of the Act, the acquittal appeals arising out of appellate judgments / orders passed by the Courts of Session, shall lie before the Single Judge only, in view of the Proviso to Section 372 of the Cr.P.C., which provides that the victim shall have a right to appeal against acquittal, or conviction for lesser offence, or inadequate

compensation, which would lie to the Court, to which, an appeal ordinarily lies against the order of conviction of such Court.

4. This Court took note of the law laid down by the Hon'ble Supreme Court in **Satyapal Singh Vs. State of Madhya Pradesh and others**, reported in (2015) 15 SCC 613, in which, in the cases arising out of the police case, regarding the right of victim questioning the correctness of the judgment / order of acquittal by preferring an appeal to the High Court, the Hon'ble Apex Court laid down that such right was conferred upon the victim, including the legal heirs and others, as defined under Section 2 (wa) of the Cr.P.C., under the Proviso to Section 372 of the Cr.P.C., but only after obtaining the leave of the High Court, as required under Section 378 (3) of the Cr.P.C.

5. However, the acquittal appeals, arising out of the appellate orders of acquittal passed by the Courts of Session, which were being decided by the Single Judge, were referred to the Division Bench, citing Rule 152 of the High Court of Jharkhand Rules, 2001. There also appeared to one procedural confusion, inasmuch as, whether the application for leave to appeal under Section 378 (3) of the Cr.P.C., had to be filed separately as an independent application in the form of Cr.M.P., or the same could be filed by way of Interlocutory Application (I.A) in the same appeal. Both these procedures are presently in vogue in the High Court of Jharkhand.

6. Another question that arose for consideration in two appeals, namely, Cr.Appeal (S.J) No.1281 of 2016 and Cr.Appeal (S.J) No. 2229 of 2017, which arose out of the complaint cases, and the question was whether in case of acquittal, these cases would also be governed by the Proviso to Section 372 of the Cr.P.C., read with Section 378 (3) of the Cr.P.C., or they would be governed exclusively by Section 378 (4) of the Cr.P.C. The Division Bench of the High Court of Jharkhand in **Bidya Laxhan Bhagat Vs. The State of Jharkhand & Ors.**, reported in (2013) 2 JBCJ 40, and in **Nirmal Kr. Agrawal Vs. The State of Jharkhand & Anr.**, reported in (2013) 4 JBCJ 60, had taken the view that the victim complainant in those cases, aggrieved by the judgment / order of acquittal, had the

remedy under the Proviso to Section 372 of the Cr.P.C., and not under Section 378 (4) of the Cr.P.C., and the special leave applications, filed in those cases under Section 378 (4) of the Cr.P.C, were dismissed by this High Court. However, in **Subhash Chand Vs. State (Delhi Administration)**, reported in (2013) 2 SCC 17, the law has been settled by the Apex Court that the complainant in such cases could only file the special leave to appeal against the order of acquittal of any kind only in the High Court and they could not file any appeal in the Sessions Court.

7. In the State of Jharkhand, the confusion was thus, prevailing with regard to the complaint cases, in as much as, in some Judgeships, the acquittal appeals arising out of the acquittal judgments / orders passed by the Magistrates even in complaint cases were being entertained by the Sessions Judges, relying upon the decisions of this Court in **Vaidh Lakhani Bhagat** and **Nirmal Kr. Agrawal** (*supra*), whereas in some of the Judgeships, such appeals were not being entertained by the Sessions Judges in view of the law laid down by the Apex Court in **Subhash Chand's** case (*supra*).

8. Taking into consideration all these facts, the following questions of law were referred by the Division Bench of this Court, for being adjudicated by Larger Bench, by order dated 09.07.2018 passed in these cases:-

(i) Whether the acquittal appeals arising out of the appellate judgments / orders passed by the Courts of Session should be heard by a Division Bench, or it should be heard by the Single Judge in view of Proviso to Section 372, r/w 378 (3) of the Cr.P.C., as was being done earlier.

(ii) Whether the orders passed by the Hon'ble Single Judge, referring the acquittal appeals filed against the appellate judgments / orders passed by the Courts of Session, in view of Rule 152 of the High Court of Jharkhand Rules, is in consonance with Proviso to Section 372 of the Cr.P.C., or whether such appeals shall lie to the Court to which the appeals ordinarily lie against the orders of conviction, i.e., Single Judge, in view of Proviso to Section 372 of the Cr.P.C.

(iii) Whether Rule 152 of the High Court of Jharkhand Rules, 2001, needs to be amended in view of subsequent amendment of Section 372 of the Cr.P.C., w.e.f. 31.12.2009.

(iv) Whether the acquittal appeals arising out of acquittal orders / judgments passed by the Magistrates in complaint

cases, can be entertained by the Courts of Session under the Proviso to Section 372 of the Cr.P.C., or the complainant has to prefer an application for special leave to appeal before the High Court, and if special leave is granted to him, to file the appeal in the High Court itself, as required under Section 378 (4) of the Cr.P.C.

(v) Whether such applications for leave / special leave to appeal, even in the acquittal appeals arising out of the appellate judgments / orders passed by the Courts of Session, are to be heard and decided by the Division Bench, as is being presently done, or they can be heard and decided by a Single Judge, which is the Court of appeal in such cases under Proviso to Section 372 of the Cr.P.C., on the analogy that the Court which can decide the main appeal, can also decide the question whether the leave / special leave to appeal in a particular case be granted or not.

(vi) Whether the applications for leave / special leave to appeal under Section 378 (3) Cr.P.C., and Section 378 (4) Cr.P.C., have to be filed separately as independent applications in the form of Cr.M.P., or the same can be filed by way of interlocutory applications (I.A.), in the same appeal, in which case the multiplicity of cases may also be avoided, thus, reducing the pendency of the cases.

(vii) Whether the acquittal appeals should necessarily be registered as Acquittal Appeals, and not as Criminal Appeals. The nomenclature Cr. Appeals should only be for the appeals arising out of the Judgments / Orders of conviction.

(viii) Any other question(s), which may arise, for consideration before the larger Bench.

9. When these matters came up before the Full Bench, again a question arose with respect to the complaint cases, i.e., in cases where complainant is also the victim, the case may be covered by the decision of the Apex Court in **Subhash Chand's** case (*supra*), but in the cases, the complainant is not a victim, and such victim wanted to prefer an appeal against the judgment of acquittal, whether the appeal filed by such victim could be entertained under Section 378 (4) of the Cr.P.C., or such victim had a right to file an appeal under the Proviso to Section 372 of the Cr.P.C., particularly in view of the fact that Section 378 (4) of the Cr.P.C., speaks about the acquittal appeals filed by the complainants only. The word 'victim' is not there in Section 378 (4) of the Cr.P.C.

10. Yet another question that would arise, is what shall be the remedy available to the complainant if he / she is victim also, in case

such complainant is aggrieved by the conviction of the accused for lesser offence, or due to imposing inadequate compensation, as Section 378 (4) of the Cr.P.C., does not provide any remedy in such situations.

11. Thus all these questions of law, and all the possible situations which could be foreseen, were addressed to us by the learned counsels, appearing for the parties in these matters. We have given a patient hearing to the learned counsels for both the sides, particularly learned counsels, Sri Indrajit Sinha, Sri Sachin Kumar, Sri Vishal Kumar Tiwary, Sri K.S. Nanda, appearing for the appellants and Sri Pankaj Kumar, appearing for the State.

Re. Question Nos. (i), (ii) and (iii).

(i) Whether the acquittal appeals arising out of the appellate judgments / orders passed by the Courts of Session should be heard by a Division Bench, or it should be heard by the Single Judge in view of Proviso to Section 372, r/w 378 (3) of the Cr.P.C., as was being done earlier.

(ii) Whether the orders passed by the Hon'ble Single Judge, referring the acquittal appeals filed against the appellate judgments / orders passed by the Courts of Session, in view of Rule 152 of the High Court of Jharkhand Rules, is in consonance with Proviso to Section 372 of the Cr.P.C., or whether such appeals shall lie to the Court to which the appeals ordinarily lie against the orders of conviction, i.e., Single Judge, in view of Proviso to Section 372 of the Cr.P.C.

(iii) Whether Rule 152 of the High Court of Jharkhand Rules, 2001, needs to be amended in view of subsequent amendment of Section 372 of the Cr.P.C., w.e.f. 31.12.2009.

12. For deciding these questions, Sections 372 and 378 of the Cr.P.C., and Rule 152 of the High Court of Jharkhand Rules, 2001, need to be referred.

Section 372 of the Cr.P.C., reads as follows:-

“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.”

(Proviso brought in by Amendment Act 5 of 2009, w.e.f. 31.12.2009.)

Relevant provisions of Section 378 of the Cr.P.C., reads as follows:-

“378. Appeal in case of acquittal. - (1) *Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5), -*

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence ;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(2) ----- .

(3) *No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.*

(4) *If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.*

(5) *No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.*

(6) *If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of*

acquittal shall lie under sub-section (1) or under sub-section (2).”

Rule 152 of the High Court of Jharkhand Rules reads as follows:-

“152. All Acquittal Appeals shall be listed before the Division Bench for Admission, and if admitted, shall be processed for hearing. The record of the Court below shall immediately be sent for.”

13. It may be stated that there is an amendment in the High Court of Jharkhand Rules in the year 2005, whereby Rules 35 and 36, as they presently exist, have been brought in the High Court Rules, 2001, wherein Rules 35 (1) (f) and 36 (ii) read as follows:-

“35. (1) The following matters may be heard and disposed of by a Single Judge:

(a) to (e) ----- .

(f) Appeal against judgment of acquittal in which a substantive sentence of less than 10 (ten) years of imprisonment could have been passed;

(g) & (h) ----- .

(2) ----- .

36. The following matters may be heard and disposed of by a Division Bench:-

(i) ----- .

(ii) Appeal against judgment of acquittal in which a substantive sentence of 10 (ten) years imprisonment or more could have been passed.

(iii) & (iv) ----- .”

14. It is submitted by the learned counsels that these questions are no more *res integra*, and are fully covered by the law laid down by the Hon'ble Supreme Court of India in **Satyapal Singh's** case (*supra*). The said case arose out of a police case, lodged by the father of the deceased for the offences punishable under Sections 498-A and 304-B of the Indian Penal Code. Being aggrieved by the decision of the Trial Court, acquitting the accused persons, the father approached the High Court against the order of acquittal under the Proviso to Section 372 of the Code of Criminal Procedure. The High Court disposed of the appeal without examining as to whether the leave to file appeal under Section 378 (3) of the Cr.P.C., could be granted to the appellant or not. As such, the correctness of the Judgment of the High Court was challenged before the Hon'ble Apex Court, where

reliance was placed upon the decision of the Delhi High Court in **Ram Phal Vs. State**, reported in (2015) 221 DLT 1. The Hon'ble Apex Court took into consideration the 154th report of the Law Commission, which had prompted the Legislature to bring Proviso to Section 372 of the Cr.P.C., in the statute book. It took note of the Law Commission's report that the victims are the worst sufferers in the crime, but they did not have much role in the Court proceedings, and they needed to be given certain rights and compensation so that there was no distortion of the Criminal Justice System. Therefore, the Parliament, on the basis of the aforesaid report of the Law Commission, which is victim oriented in approach, amended certain provisions of the Cr.P.C., and Proviso to Section 372 of the Cr.P.C., was added to confer the statutory right upon the victim to prefer an appeal against the acquittal order, or an order convicting the accused for the lesser offence, or against an order imposing inadequate compensation. The Apex Court held that the father of the deceased was a victim under Section 2 (wa), as also under the Proviso to Section 372 of the Cr.P.C. The Apex Court, however, did not find the view of the Delhi High Court to be the correct view, i.e., the victim had an independent statutory right under the Proviso to Section 372 of the Cr.P.C., and there was no need for the victim to seek the leave of the High Court as required under the proviso to Section 378 (3) of the Cr.P.C., to prefer an appeal under the Proviso to Section 372 of the Cr.P.C. The Hon'ble Apex Court laid down the law as follows:-

"14. Thus, from a reading of the above-said legal position laid down by this Court in the cases referred to supra, it is abundantly clear that the proviso to Section 372 Cr.P.C must be read along with its main enactment i.e. Section 372 itself and together with sub-section (3) of Section 378 Cr.P.C otherwise the substantive provision of Section 372 Cr.P.C will be rendered nugatory, as it clearly states that no appeal shall lie from any Judgment or order of a criminal court except as provided by Cr.P.C.

15. Thus, to conclude on the legal issue:

"Whether the appellant herein, being the father of the deceased, has statutory right to prefer an appeal to the High Court against the order of acquittal under the proviso to Section 372 Cr.P.C without obtaining the leave of the

High Court as required under sub-section (3) of Section 378 Cr.P.C?”

this Court is of the view that the right of questioning the correctness of the judgement and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2(wa) Cr.P.C, under the proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-section (3) of Section 378 Cr.P.C.”

(Emphasis supplied).

15. Having heard learned counsels, and taking a cue from the law laid down by the Hon'ble Apex Court, we find that though the victim has a right to appeal under the Proviso to Section 372 of the Cr.P.C., but the Proviso itself speaks that “*such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court*”. There is no provision of any appeal to the High Court against the orders / judgments of conviction passed by the Magistrates. As such no appeal can lie to the High Court against the appellate judgments / orders of acquittal passed by the Courts of Session. Even in **Satyapal Singh's** case (*supra*), the Apex Court has clarified the law that a statutory right under Section 372 Cr.P.C. to prefer an appeal is available against an order passed by the Trial Court (and not by the Appellate Court), as follows:-

"9. The proviso to Section 372 CrPC was amended by Act 5 of 2009. The said proviso confers a statutory right upon the victim, as defined under Section 2(wa) CrPC to prefer an appeal against an order passed by the trial court either acquitting the accused or convicting him/her for a lesser offence or imposing inadequate compensation. -----.

(Emphasis supplied)

16. Thus, in view of the discussions made above, the correct positions in law as regards these questions, with respect to appeals arising out of police cases, emerge as follows:-

(A). In cases of the appellate judgments / orders of acquittal passed by the Courts of Session, the informant, whether he is a victim or not, shall have no right to challenge the same under the Proviso to Section 372 of the Cr.P.C., in view of the expression in the Proviso “*such appeal shall lie to the Court*

to which an appeal ordinarily lies against the order of conviction of such Court”, there being no provision for any appeal to the High Court against the orders / judgments of conviction passed by the Magistrates. As such, no question survives to decide whether such appeals shall be heard by a Single Judge, or by a Division Bench.

(B). The appeals arising out of original judgments / orders of acquittal, or of conviction for lesser offence, or imposing inadequate compensation, passed by the Courts of Session, shall lie to the High Court, in view of the Proviso to Section 372 of the Cr.P.C, but only after obtaining the leave under Section 378 (3) of the Cr.P.C. And in view of Proviso to Section 372 of the Cr.P.C, read with Rule 36 (ii) of the High Court of Jharkhand Rules, 2001, the appeals shall lie before the Division Bench of the High Court.

(C). As a necessary corollary, the appeals arising out of judgments / orders passed by the Court of Magistrates, whether against acquittal, or convicting for a lesser offence, or imposing inadequate compensation, filed by the victims as defined under Section 2 (wa) of the Cr.P.C., shall lie before the Courts of Session, in which case, leave to appeal is not required. If such orders / judgments are also affirmed by the Courts of Session, there shall be no further appeal to the High Court under the Proviso to Section 372 of the Cr.P.C., in view of the expression in the Proviso “*such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court*”, there being no provision for any appeal to the High Court against the orders / judgments of conviction passed by the Magistrates.

(D). We also find that in view of the Rules 35 (1) (f) and 36 (ii) brought by amendment in the year 2005, in the High Court of Jharkhand Rules 2001, Rule 152 of the High Court Rules, which had originally been framed in the year 2001 itself, needs to be declared redundant, as the new Rules 35 (1) (f) and 36 (ii) take care of the situation.

Re. Question No. (iv).

(iv) Whether the acquittal appeals arising out of acquittal orders / judgments passed by the Magistrates in complaint cases, can be entertained by the Courts of Session under the Proviso to Section 372 of the Cr.P.C., or the complainant has to prefer an application for special leave to appeal before the High Court, and if special leave is granted to him, to file the appeal in the High Court itself, as required under Section 378 (4) of the Cr.P.C.

17. As regards this question, it is submitted by the learned counsels that in **Subhash Chand's** case (*supra*), arising out of acquittal of the accused in a complaint case filed by the State under the provisions of Prevention of Food Adulteration Act, the Hon'ble Supreme Court of India was considering the question whether the appeal by the State shall lie to the Court of Session, under Section 378 (1) of the Cr.P.C., or to the High Court under Section 378 (4) of the Cr.P.C. The Apex Court has laid down the law as follows:-

"23. In view of the above, we conclude that a complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court. He cannot file such appeal in the Sessions Court. In the instant case the complaint alleging offences punishable under Sections 16(1) & (1-A) read with Section 7 of the PFA Act and the Rules is filed by complainant Shri Jaiswal, Local Health Authority through Delhi Administration. The appellant was acquitted by the Metropolitan Magistrate, Patiala House Courts, New Delhi. The complainant can challenge the order of acquittal by filing an application for special leave to appeal in the Delhi High Court and not in the Sessions Court. Therefore, the impugned order holding that this case is not governed by Section 378(4) of the Code is quashed and set aside. In the circumstances the appeal is allowed." (Emphasis supplied).

18. It is submitted by Sri Indrajit Sinha, that in this case, the Hon'ble Supreme Court has not discussed the right of the victims under the Proviso to Section 372 of the Cr.P.C., and the law has been laid down only taking into consideration Section 378 (4) of the Cr.P.C. Learned counsel has also pointed out that in the said case, the

case arose out of a complaint, filed by a Public Officer, under the various provisions of the Prevention of Food Adulteration Act. The Hon'ble Apex Court has not taken into consideration the situations where the complainant is also the victim, and where the complainant is not a victim. It is pointed out that Proviso to Section 372 of the Cr.P.C., deals with the right to appeal by a victim only, whereas Section 378 (4) of the Cr.P.C., deals with the appeal to be filed by the complainant only. Our attention has been drawn towards the decisions of the various High Courts on this point by the learned counsel, Sri Indrajit Sinha. In **Tata Steel Ltd. Vs. M/s Atma Tube Products Ltd. & Ors.**, [(CRM-790-MA-2010) (O&M), decided on March 18, 2013], taking into consideration the Hon'ble Apex Court's decision in **Subhash Chand's** case (*supra*), and various other decisions, the Full Bench of the Punjab and Haryana High Court has laid down the law as follows :-

“139. (A) ----- .

(B) (iii) *The 'complainant' in a complaint case who is also a 'victim' and the 'victim' other than a 'complainant' in such case, shall have remedy of appeal against acquittal under Section 378(4) only, except where he/she succeeds in establishing the guilt of an accused but is aggrieved at the conviction for a lesser offence or imposition of an inadequate compensation, for which he / she shall be entitled to avail the remedy of appeal under proviso to Section 372 of the Code.*

(iv) *The 'victim', who is not the complainant in a private complaint case, is not entitled to prefer appeal against acquittal under proviso to Section 372 and his / her right to appeal, if any, continues to be governed by the unamended provisions read with Section 378 (4) of the Code.*

(v) *Those victims of complaint cases whose right to appeal have been recognized under proviso to Section 372, are not required to seek leave or special leave to appeal from the High Court in the manner contemplated under Section 378 (3) & (4) of the Code.*

(C) & (D)- (vi) *The right conferred on a 'victim' to present appeal under proviso to Section 372 is a substantive and independent right which is neither inferior to nor contingent upon the filing of appeal by the State in that case. Resultantly, the condition of seeking 'leave to appeal' or 'special leave to appeal' as contained in Section 378 (3) & (4) cannot be imposed*

for the maintainability of appeal by a 'victim' under proviso to Section 372 of the Code."

The same view has been expressed by the Division Bench of the Rajasthan High Court in **Dhanne Singh Vs. State of Rajasthan** [(D.B. Criminal Revision Petition No.411 of 2012) decided on 2nd December, 2014].

The Full Bench of the Madras High Court (Madurai Bench) in **S. Ganapathy Vs. N. Senthilvel**, reported in 2017 Cr L J 602 (Mad) has taken the view as follows :-

(1) *A victim of the crime, who has prosecuted an accused by way of a private complaint, has a statutory right of appeal within the limits prescribed under Section 372 of the Cr.P.C.*

(2) *A complainant (in a private complaint), who is not a victim, has a remedy and can file an appeal in the event of acquittal of the accused after obtaining leave to appeal under Section 378 (4) of the Cr.P.C.*

(3) *In a private complaint, even if the victim is not a complainant, he has a right to appeal under the proviso to Section 372 of Cr.P.C., but he has to seek leave as held by the Supreme Court in Satyapal Singh.*

The view taken by the Full bench of the Gujarat High Court in **Bhavuben Dineshbhai Makwana Vs. State of Gujarat & Ors.**, reported in 2013 CrL J 4225 (Guj.), is as follows:-

"Question No.3: If the victim also happens to be the complainant and the appeal is against acquittal, he is required to take leave as provided in Section 378 of the Criminal Procedure Code but if he is not the complainant, he is not required to apply for or obtain any leave. For the appeal against inadequacy of compensation or punishment on a lesser offence, no leave is necessary at the instance of a victim, whether he is the complainant or not."

The Division Bench of Kerela High Court in **Omanajose & Anr., Vs. State of Kerela & Ors.**, reported in 2015 CrL J 2784 (Ker), has held as follows :-

"35. For the aforesaid reasons, we hold that the Complainant in a case under Section 138 of the Negotiable Instruments Act cannot challenge the Order of Acquittal before the Sessions Court under the Proviso to Section 372 of the Code of Criminal Procedure and his remedy is only to file an Appeal to the High Court with Special Leave under Section 378 (4) of the Code of Criminal Procedure."

It is further pointed out by the learned counsel that the Allahabad High Court vide its order dated 25.1.2017 passed in **Anil Kr. Agrawal Vs. State of U.P. &Anr.**, (Application U/S 482 No. 3171 of 2016) has referred the following questions before the Larger Bench:-

(i) Whether against acquittal order in a criminal complaint case under Section 138 Negotiable Instruments Act victim, who is complainant also, may prefer appeal before the Sessions Judge taking recourse to the proviso to Section 372 Cr.P.C or the said appeal shall lie before the High Court under the said provisions?

(ii) Whether against the same judgment and order of acquittal in a complaint case, in a situation when victim and complainant both are different persons, victim may file appeal under the proviso to Section 372 Cr.P.C before the Sessions Judge or such appeal shall lie before the High Court?

Similarly, the Calcutta High Court has also referred the following questions for decision by the Larger Bench in **Mirnal Kanti Sil Vs. Smt. Sampa Kabiraj** and analogous cases (in CRR No.3048 of 2016 and analogous cases) by order dated 14th March 2017:-

a) Whether a victim in a complaint case can avail of the right to appeal under proviso to Section 372 Cr.P.C?

b) If so, what is the form and manner of availing of such remedy?

19. To the contrary, other learned counsels have drawn our attention towards the discussions made in **Subhash Chand's** case (*supra*), which are as follows :-

"18. If we analyse Sections 378(1)(a) and (b), it is clear that the State Government cannot direct the Public Prosecutor to file an appeal against an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence because of the categorical bar created by Section 378(1)(b). Such appeals, that is, appeals against orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence can only be filed in the Sessions Court at the instance of the Public Prosecutor as directed by the District Magistrate. Section 378(1)(b) uses the words "in any case" but leaves out orders of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence from the control of the State Government.

Therefore, in all other cases where orders of acquittal are passed appeals can be filed by the Public Prosecutor as directed by the State Government to the High Court.

19. Sub-section (4) of Section 378 makes provision for appeal against an order of acquittal passed in a case instituted upon complaint. It states that in such case if the complainant makes an application to the High Court and the High Court grants special leave to appeal, the complainant may present such an appeal to the High Court. This sub-section speaks of “special leave” as against sub-section (3) relating to other appeals which speaks of “leave”. Thus, the complainant’s appeal against an order of acquittal is a category by itself. The complainant could be a private person or a public servant. This is evident from sub-section (5) which refers to application filed for “special leave” by the complainant. It grants six months’ period of limitation to a complainant who is a public servant and sixty days in every other case for filing application. Sub-section (6) is important. It states that if in any case the complainant’s application for “special leave” under sub-section (4) is refused no appeal from the order of acquittal shall lie under sub-section (1) or under sub-section (2). Thus, if “special leave” is not granted to the complainant to appeal against an order of acquittal the matter must end there. Neither the District Magistrate nor the State Government can appeal against that order of acquittal. The idea appears to be to accord quietus to the case in such a situation.

20.----- Section 2(d) defines a “complaint” to mean any allegation made orally or in writing to a Magistrate with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence, but does not include a police report. The Explanation to Section 2(d) states that a report made by a police officer in a case which discloses after investigation, the commission of a non-cognizable offence, shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complainant. ----- Thus, whether a case is a case instituted on a complaint depends on the legal provisions relating to the offence involved therein. But once it is a case instituted on a complaint and an order of acquittal is passed, whether the offence be bailable or non-bailable, cognizable or non-cognizable, the complainant can file an application under Section 378(4) for special leave to appeal

against it in the High Court. Section 378(4) places no restriction on the complainant. So far as the State is concerned, as per Section 378(1)(b), it can in any case, that is, even in a case instituted on a complaint, direct the Public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any court other than High Court. But there is, as stated by us hereinabove, an important inbuilt and categorical restriction on the State's power. It cannot direct the Public Prosecutor to present an appeal from an order of acquittal passed by a Magistrate in respect of a cognizable and non-cognizable offence. In such a case the District Magistrate may under Section 378(1)(a) direct the Public Prosecutor to file an appeal to the Sessions Court. This appears to be the right approach and correct interpretation of Section 378 of the Code."

20. Referring to this decision, it is submitted that irrespective of the fact whether the complainant is a victim or not or the complainant is a private person or the State, the only possible view is that the complainant can file an application for special leave to appeal against the order of acquittal of any kind only to the High Court. In such cases, the complainant cannot file an appeal before the Sessions Court.

21. Another view by learned counsels is based on **Satyapal Singh's** case (*supra*), wherein the Hon'ble Supreme Court has discussed the law as follows :-

"9. The proviso to Section 372 CrPC was amended by Act 5 of 2009. The said proviso confers a statutory right upon the victim, as defined under Section 2(wa) CrPC to prefer an appeal against an order passed by the trial court either acquitting the accused or convicting him/her for a lesser offence or imposing inadequate compensation. -----. The said amendment to the provision of Section 372 Cr.P.C was prompted by the 154th Law Commission Report. -----.

Further, the Law Commission in its Report has noted the relevant aspect of the matter, namely, that the victims are the worst sufferers in a crime and they do not have much role in the court proceedings. They need to be given certain rights and compensation so that there is no distortion of the criminal justice system. The said Report of the Law Commission has also taken note of the views of the criminologist, penologist and reformers of criminal justice

system at length and has focused on victimology, control of victimization and protection of the victims of crimes and the issues of compensation to be awarded in favour of them. Therefore, Parliament on the basis of the aforesaid Report of the Law Commission, which is victim-oriented in approach, has amended certain provisions of Cr.P.C and in that amendment the proviso to Section 372 Cr.P.C was added to confer the statutory right upon the victim to prefer an appeal before the High Court against the acquittal order, or an order convicting the accused for the lesser offence or against the order imposing inadequate compensation.”

10. The Full Bench of the High Court of Delhi in Ram Phal case after examining the relevant provisions under Section 2(wa) and the proviso to Section 372 CrPC, in the light of their legislative history has held that the right to prefer an appeal conferred upon the victim or relatives of the victim by virtue of the proviso to Section 372 is an independent statutory right. Therefore, it has held that there is no need for the victim in terms of definition under Section 2(wa) CrPC to seek the leave of the High Court as required under sub-section (3) of Section 378 CrPC to prefer an appeal under the proviso to Section 372 CrPC. The said view of the High Court is not legally correct for the reason that the substantive provision of Section 372 CrPC clearly provides that no appeal shall lie from any judgment and order of a criminal court except as provided for by CrPC. Further, sub-section (3) of Section 378 CrPC provides that for preferring an appeal to the High Court against an order of acquittal it is necessary to obtain its leave.”

22. The same view is taken by the Supreme Court in a subsequent decision in **Roopendra Singh Vs. State of Tripura & Anr.**, reported in (2017) 13 SCC 612, wherein, it is held as follows:-

"8.----- . Though the High Court observed that no such leave was necessary, the matter now assumes different complexion in the light of the decision in Satya Pal Singh. However, since there was already an application on behalf of the victim to treat the appeal under Section 372 read with Section 378 CrPC, in our considered view, the leave ought to be granted, which we presently do. -----."

23. Placing reliance on these decisions, learned counsels drew our attention towards Section 378 (4) of the Cr.P.C., wherein the right to appeal against the order of acquittal in a complaint case is given to the

complainant by filing an application for special leave and if the application is allowed to present the appeal in the High Court itself. It is submitted by the learned counsels that Section 378 (4) of the Cr.P.C., does not speak about the right of a victim and as such, a person, who is a victim, under Section 2 (wa) of the Cr.P.C, whether such person is a complainant or not, has the right to appeal under the Proviso to Section 372 of the Cr.P.C, which right cannot be said to be taken away by Section 378 (4) of the Cr.P.C.

24. Learned counsels also drew our attention towards the decision of the Hon'ble Supreme Court of India in **S. Sundaram Pillai & Ors., Vs. V.R. Pattabiraman & Ors.**, reported in (1985) 1 SCC 591, wherein where the Hon'ble Supreme Court has discussed the effect of bringing proviso to a main section. Discussing the previous decisions of the Apex Court of India on this point, it has been held as follows:-

"43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

25. Learned counsels submitted that even though Section 372 of the Cr.P.C. lays down that no appeal shall lie from any judgment or order of a Criminal Court, except as provided by this Court or by any other law for the time being in force, but the proviso enlarges the scope of Section 372 of the Cr.P.C., and gives the right to the victim, irrespective of the fact that the victim is complainant, or not a complainant, to prefer an appeal in cases of acquittal, conviction of the accused for lesser offence, or imposing inadequate compensation.

Learned counsels submitted that there has to be harmonious construction of the statute, and where two contradictory views were possible, one which avoids the anomalies and creates the reasonable results should be preferred, which view has been expressed by the Supreme Court in **S. Sundaram Pillai's** case itself, (*supra*, para 86). Learned counsels also placed reliance upon the decision of the Hon'ble Supreme Court of India in **Municipal Corporation of Delhi Vs. Shiv Shanker**, reported in (1971) 1 SCC 442, wherein it has been held as follows :-

"5.----- . If the objects of the two statutory provisions are different and the language of each statute is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface. Statutes in parimateria although in apparent conflict, should also, so far as reasonably possible, be construed to be in harmony with each other and it is only when there is an irreconcilable conflict between the new provision and the prior statute relating to the same subject-matter, that the former, being the later expression of the legislature, may be held to prevail, the prior law yielding to the extent of the conflict.-----." (Emphasis supplied).

26. Placing reliance on these decisions, it is submitted by the learned counsels that the complainant, who is also a victim, has the right to avail both the remedies, i.e., either under the proviso to Section 372 of the Cr.P.C., or under Section 378 (4) of the Cr.P.C., as per his choice. It may be a case that if such victim comes before the Court of Session under the proviso to Section 372 of the Cr.P.C., and loses there also, he may have another remedy under the proviso to Section 378 (4) of the Cr.P.C., by filing appeal to this Court after seeking special leave. It is submitted that the harmonious construction of the statutes requires that since both these provisions are not in conflict with each other, both of them should co-exist. It is submitted that the statutory right to the complainant cannot be curtailed in any manner. However, where the victim is not a complainant, he / she has the only remedy under the Proviso to Section 372 of the Cr.P.C. It is also submitted that in cases, the victim is also a complainant or even if

the victim is not a complainant, and is aggrieved by the fact that the accused is convicted for the lesser offence, or by imposing inadequate compensation, they shall have the right to appeal only under Proviso to Section 372 of the Cr.P.C., as in such cases, no remedy is available of filing appeal in the High Court under Section 378 (4) of the Cr.P.C. It is submitted that if this view is not taken, such victim cannot file appeal under Section 372 of the proviso, and this provision shall become redundant for such victim. As such, harmonious construction of the statute is required to be made, recognizing the rights of such victims.

27. Yet another view is advanced by the learned counsels that as Section 378 (4) of the Cr.P.C., uses the term 'complainant' only, but it shall encompass within its meaning the 'victim' also in the complaint cases, and as such, even if the victim is not a complainant, such victim can also file an appeal against the judgment / order of acquittal passed in complaint cases by filing appeal in the High Court after seeking special leave under Section 378 (4) of the Cr.P.C.

28. Having considered the various stands advanced by the learned counsels on this question, taking into consideration the views of the other High Courts, as also the law laid down by the Apex Court, as referred above, and trying to harmonize the provisions of Proviso to Sections 372 of the Cr.P.C., and Section 378 of the Cr.P.C., we propose to answer this question, with respect to appeals arising out of complaint cases, as follows:-

(A). The complainant, whether the State or a private person, who is also the victim as defined under Section 2 (wa) of the Cr.P.C., if aggrieved by the judgment / order of acquittal passed by the Trial Court, their case is now set at rest by the decision of the Hon'ble Apex Court in **Subhash Chandra's** case (*supra*), and as such, they have the only remedy against the order / judgment of acquittal passed by the Trial Court, to seek special leave of the High Court under Section 378 (4) of the Cr.P.C., and in case the special leave is granted, to file appeal in the High Court itself. In case the special leave is not granted to the private complainant, the

appeal even by the State shall be barred in terms of Section 378 (6) of the Cr.P.C.

(B). Such complainants, even if they are victims as defined under Section 2 (wa) of the Cr.P.C., now cannot take recourse to Proviso to Section 372 of the Cr.P.C. They cannot be allowed two forums of appeal, as argued by learned counsels, and they can also be given only one forum of appeal, as is given to the victims in case of judgment / order of acquittal in police cases.

(C). In cases the victims are not the complainant, their cases cannot come under Section 378 (4) of the Cr.P.C., as Section 378 (4) clearly speaks about the right of complainant only. Such victims as defined under Section 2 (wa) of the Cr.P.C., can avail the remedy of appeal under the Proviso to Section 372 of the Cr.P.C. In such cases, if the order / judgment of acquittal is passed by the Court of Magistrate, the appeal shall lie to the Court of Session, in which case there shall be no requirement to seek any leave to appeal. If the order / judgment of acquittal is passed by the Court of Session, the appeal shall lie to the High Court, subject to leave to be taken under Section 378 (3) of the Cr.P.C.

(D). At the same time, we cannot ignore the right of the victim complainant, if such victim complainant is aggrieved by the conviction of the accused for lesser offence, or imposing inadequate compensation. Such appeals shall not be against the judgment / order of acquittal and shall not come within the purview of Section 378 (4) of the Cr.P.C., and are also not covered by the decision of the Apex Court in **Subhash Chandra's** case (*supra*). In such cases, we are of the considered view that the victims as defined under Section 2 (wa) of the Cr.P.C., whether they are complainant or not, shall have the right to appeal under the Proviso to Section 372 of the Cr.P.C. against the judgment / order of convicting the accused for lesser offence, or imposing inadequate compensation. In such cases also, if the order / judgment is

passed by the Court of Magistrate, the appeal shall lie to the Court of Session, in which case there shall be no requirement to seek any leave to appeal, and if the order / judgment is passed by the Court of Session, the appeal shall lie to the High Court, subject to leave to be taken under Section 378 (3) of the Cr.P.C.

Re. Question Nos. (v) & (vi)

(v) Whether such applications for leave / special leave to appeal, even in the acquittal appeals arising out of the appellate judgments / orders passed by the Courts of Session, are to be heard and decided by the Division Bench, as is being presently done, or they can be heard and decided by a Single Judge, which is the Court of appeal in such cases under Proviso to Section 372 of the Cr.P.C., on the analogy that the Court which can decide the main appeal, can also decide the question whether the leave / special leave to appeal in a particular case be granted or not.

(vi) Whether the applications for leave / special leave to appeal under Section 378 (3) Cr.P.C., and Section 378 (4) Cr.P.C., have to be filed separately as independent applications in the form of Cr.M.P., or the same can be filed by way of interlocutory applications (I.A.), in the same appeal, in which case the multiplicity of cases may also be avoided, thus, reducing the pendency of the cases.

29. Addressing question No.(vi), it is submitted by the learned counsels that the application for leave under Section 378 (3) of the Cr.P.C., need not be filed separately as an independent application in the form of Cr.P.C, rather the same can be filed by way of Interlocutory Application (I.A) in the same appeals, in order to avoid the multiplicity of cases. It is submitted that the same view has been taken by the Supreme Court also in **State of Rajasthan Vs. Ramdeen & Ors.**, reported in (1977) 2 SCC 630, which is as follows :-

"8. The matter will, therefore, have to be decided in terms of Section 378(1) and (3) of the Code of criminal Procedure, 1973. ----- Sub-section (3) of that section provides that such an appeal shall not be entertained except with the leave of the High Court. Under

the law it will be perfectly in order if a composite application is made giving the necessary facts and circumstances of the case along with the grounds which may be urged in the appeal with a prayer for leave to entertain the appeal, it is not necessary, as a matter of law, that an application for leave to entertain the appeal should be lodged first and only after grant of leave by the High Court an appeal may be preferred against the order of acquittal. If such a procedure is adopted, as above, it is likely, as it has happened in this case, the appeal may be time-barred if the High Court takes more than ninety days for disposal of the application for leave. The possibility that the High Court may always in such cases condone the delay on application filed before it does not, in law, solve the legal issue. -----."

(Emphasis supplied).

30. As regards filing the application for special leave under the proviso to Section 378 (4) of the Cr.P.C., there are two divergent views. It is submitted by some of the learned counsels that Section 378 (4) states that when special leave is granted then only the complainant may present such appeal before the High Court and as such, an application for special leave under the proviso to Section 378 (4) of the Cr.P.C. has to be filed separately, and when such an application is allowed, only thereafter, the appeal may be filed. However, the divergent view has also taken by some of the learned counsels, taking cue from **Ramdeen's** case (*supra*), that filing of the application for special leave separately may result in the delay in filing the appeal itself, thus, getting the appeal time barred, if the high Court takes more than six months or sixty days, as the case may be, for disposal of the application for special leave. Though the High Court in such cases, may condone the delay on an application filed for that purpose, but in order to avoid such situation, it would be appropriate that even an application for special leave under the proviso to Section 378 (4) of the Cr.P.C., should be filed by way of interlocutory application (I.A) in the main appeal itself, and in such cases, the I.A should be decided by the High Court first, and if the special leave is granted, the appeal shall be adjudicated.

31. Having given due consideration to the submissions of learned counsels, we are of the considered view that the application for leave / special leave under Section 378 (3) & (4) of the Cr.P.C., need not be filed separately as independent application in the form of Cr.M.P., rather the same can be filed by way of Interlocutory Application (I.A) in the same appeals, in order to avoid the multiplicity of cases. This shall not only avoid the multiplicity of cases, rather shall result in reduction in the pendency of cases as well. This shall also avoid the possibility of the appeal itself getting time barred. If the composite appeal is filed against the order / judgment of acquittal in the High Court, coupled with an interlocutory application therein, seeking leave to appeal under Section 378 (3) of the Cr.P.C., the same may be decided along with the appeal itself, and in cases of appeal against acquittal in complaint cases, the Court shall decide the interlocutory application filed under Section 378 (4) of the Cr.P.C. first, and in case, the special leave is granted, shall enter for adjudication of the main appeal.

32. As regards question No.(v), learned counsels submitted that the application for leave / special leave should be decided by the co-ordinate Bench, which decides the main appeal, on the analogy that a Bench, which can decide the main appeal, can also decide the issue as to whether the leave to appeal / special leave to appeal in a given case should be granted or not. This will also avoid a piquant situation in which if the application for leave / special leave is decided by the Division Bench in a separate application and thereafter, the appeal is to be decided by the Single Judge, the Single Judge may be bound with the view of the Division Bench and may have some difficulty in taking the divergent view, already taken by the Division Bench on an issue.

33. We are in agreement with the general views of the learned counsels in this regard. We may further clarify that this situation shall now not arise with respect to the appellate judgments / orders of acquittal passed by the Courts of Session, in view of our answer to the Question Nos. (i) (ii) and (iii) above, as now there is no scope left for filing any appeal in the High Court against the appellate judgments /

orders of acquittal passed by the Courts of Session. The situation shall not arise even with respect to the original judgments / orders of acquittal passed by the Courts of Session, if the composite appeals are filed with the I.A. for leave / special leave to appeal, under Section 378 (3) & (4) of the Cr.P.C., as the case may be, as in such cases the matters shall be heard by a Division Bench only. However, this situation shall govern only the matters in which the applications for special leave under Section 378 (4) of the Cr.P.C., arising out of the judgements / orders of acquittal passed by the Magistrates, have already been filed separately, and are pending.

34. In the High Court of Jharkhand Rules, 2001, Rule 84 (1) gives the nomenclature of I.A. as "Interlocutory Applications in pending civil cases.". The Format given in Rule 83 shows that that I.As. may be filed in Criminal cases also. As such it is apparent that word 'civil' in Rule 84 (1) of the High Court of Jharkhand Rules, 2001, is redundant and needs to be deleted.

35. As such, these questions are being answered by us in the following manner:-

(A). An application for special leave to appeal under Section 378 (4) of the Cr.P.C., shall henceforth be heard by the co-ordinate Bench, which ultimately decides the appeal, i.e., in the cases the appeals lie before the Division Bench, such applications shall also be heard by Division Bench and in cases the appeals lie before the Single Judge, such applications shall also be heard by the Single Judge.

(B). An application for leave to appeal under Section 378 (3) of the Cr.P.C., shall henceforth be maintainable only in the acquittal appeals arising out of the original judgments / orders passed by the Courts of Session, and shall necessarily lie before the Division Bench only.

(C). Applications for leave to appeal / special leave to appeal shall henceforth be filed in the same appeals by way of interlocutory applications (I.A.) and not by way of separate application in the form of Cr.M.P.

(D). The word 'civil' in Rule 84 (1) of the High Court of Jharkhand Rules, 2001, is redundant and needs to be deleted.

Re. Question No. (vii)

(vii) Whether the acquittal appeals should necessarily be registered as Acquittal Appeals, and not as Criminal Appeals. The nomenclature Cr. Appeals should only be for the appeals arising out of the Judgments / Orders of conviction.

36. This is a question of convenience of the High Court. The acquittal appeals, filed other than by the complainants, henceforth shall not be nomenclated as Criminal Appeals, rather they shall be nomenclated as Acquittal Appeals. The nomenclature of Criminal Appeal shall be confined only for the appeals, arising out of the judgment / order of conviction and not otherwise. The acquittal appeals filed by the complainants, shall henceforth be nomenclated as Acquittal Appeal (C), so as to differentiate them from the acquittal appeals, arising out of the police cases. The appeals filed by the victims against the conviction for a lesser offence, or imposing inadequate compensation shall be nomenclated as Criminal Appeal (V), so as to differentiate them from the criminal appeals, filed by the convicts against their conviction. Acquittal appeals, arising out of the complaint cases, which are filed by the victims, who are not the complainant, shall be nomenclated only as Acquittal Appeals.

37. While dealing with these matters, we learnt the Stamp Reporters of the High Court have stopped giving the report regarding the maintainability of the appeals / applications, or the *locus standi* of the petitioner / appellant in the cases filed in the High Court. We are informed that such objections are not raised by the Stamp Reporters, in view of the two Judicial Orders passed by the Hon'ble Single Judge of this Court, one being the order dated 17th April 2009, passed in *W.P(C) No.1277 of 2009 (Sujit Kumar Vs. The State of Jharkhand & Ors.)*, and other being the order dated 07.01.2014 passed in *W.P(HB) No.208 of 2013 (Awadhesh Singh @ Abhay Pratap Singh Vs. The State of Jharkhand & Ors.)*. It has been directed by the Hon'ble Single Judge that the objections relating to nomenclature or

maintainability should not be raised by the Registry, holding that these are legal matters, which can be raised by the counsel for the respondents and the matter can be adjudicated upon by the Court.

38. We are afraid that the view taken by the Hon'ble Single Judge is not a correct view. There may be many matters, which may not be maintainable in law, and in absence of pointing out by the Stamp Reporter, the matters may even be allowed with favorable orders, if not pointed out by the counsel of respondent. The Stamp Reporter earlier used to point out such defects in the matters filed in the High Court. In absence of any such objection, many matters, which are not maintainable in law, may be adjudicated upon by the High Court, and we are afraid that many such matters might have been adjudicated and decided by now. We are amply sure that many appeals, both against acquittal and also against conviction, arising out of appellate judgments / orders, passed by the Courts of Session, which were otherwise not even maintainable in law, have been adjudicated by the High Court by now, in absence of the required reporting by the Stamp Reporter, and not pointing out by the counsel of respondent.

39. We are of the considered view that the Stamp Reporter must report about the maintainability, *locus* of the applicant and nature of the matters in its report. Such reports, if adverse, may be listed 'for Orders' before the Court, where the objection to such reports may be taken by the aggrieved party and matter may be decided by the concerned Bench about the correctness or otherwise of the report. This shall also save the High Court from an embarrassment of adjudicating a non-maintainable matter. We accordingly, hold that the view taken by the Hon'ble Single Judge in the aforesaid two writ applications are not the correct view, and we hereby, direct the Registry / Stamp Reporter, to resume to make reporting about the maintainability, *locus* and nature of the matters filed in the High Court.

40. To conclude, we answer the questions referred to the Full Court, as follows:-

Question Nos. (i), (ii) and (iii).

With respect to appeals arising out of police cases

(1). *In cases of the appellate judgments / orders of acquittal passed by the Courts of Session, the informant, whether he is the victim or not, shall have no right to challenge the same under the Proviso to Section 372 of the Cr.P.C. As such, no question survives to decide whether such appeals shall be heard by a Single Judge, or by a Division Bench.*

(2). *The appeals arising out of original judgments / orders of acquittal, or of conviction for lesser offence, or imposing inadequate compensation, passed by the Courts of Session, shall lie to the High Court, in view of the Proviso to Section 372 of the Cr.P.C, subject to the leave to be taken of the High Court under Section 378 (3) of the Cr.P.C. In view of Proviso to Section 372 of the Cr.P.C, read with Rule 36 (ii) of the High Court of Jharkhand Rules, 2001, such appeals shall lie before the Division Bench of the High Court.*

(3). *The appeals arising out of judgments / orders passed by the Court of Magistrates, whether against acquittal, or convicting for a lesser offence, or imposing inadequate compensation, filed by the victims as defined under Section 2 (wa) of the Cr.P.C., shall lie before the Courts of Session, in which case, leave to appeal is not required. If such orders / judgments are also affirmed by the Courts of Session, there shall be no further appeal to the High Court, under the Proviso to Section 372 of the Cr.P.C.*

Question No. (iv).

With respect to appeals arising out of complaint cases

(4). *The complainant, whether the State or a private person, who is also the victim as defined under Section 2 (wa) of the Cr.P.C., if aggrieved by the judgment / order of acquittal passed by the Trial Court, shall have the only remedy against the order / judgment of acquittal passed by*

the Trial Court, to seek special leave of the High Court under Section 378 (4) of the Cr.P.C., and in case the special leave is granted, to file appeal in the High Court itself.

(5). In case the special leave is not granted to the private complainant, the appeal even by the State shall be barred in terms of Section 378 (6) of the Cr.P.C.

(6). Complainants, even if they are victims as defined under Section 2 (wa) of the Cr.P.C., cannot take recourse to Proviso to Section 372 of the Cr.P.C., for challenging the acquittal of the accused.

(7). In cases the victims are not the complainant, their cases cannot come under Section 378 (4) of the Cr.P.C. Such victims as defined under Section 2 (wa) of the Cr.P.C., can avail the remedy of appeal under the Proviso to Section 372 of the Cr.P.C. In such cases, if the order / judgment of acquittal is passed by the Court of Magistrate, the appeal shall lie to the Court of Session, in which case there shall be no requirement to seek any leave to appeal. If the order / judgment of acquittal is passed by the Court of Session, the appeal shall lie to the High Court, subject to leave to be taken under Section 378 (3) of the Cr.P.C.

(8). The victims as defined under Section 2 (wa) of the Cr.P.C., whether they are complainant or not, shall have the right to appeal under the Proviso to Section 372 of the Cr.P.C. against the judgment / order of convicting the accused for lesser offence, or imposing inadequate compensation. In such cases also, if the order / judgment is passed by the Court of Magistrate, the appeal shall lie to the Court of Session, in which case there shall be no requirement to seek any leave to appeal, and if the order / judgment is passed by the Court of Session, the appeal shall lie to the High Court, subject to leave to be taken under Section 378 (3) of the Cr.P.C.

Question Nos. (v) & (vi)

(9). *An application for special leave to appeal under Section 378 (4) of the Cr.P.C., shall henceforth be heard by the co-ordinate Bench, which ultimately decides the appeal, i.e., in the cases the appeals lie before the Division Bench, such applications shall also be heard by Division Bench, and in cases the appeals lie before the Single Judge, such applications shall also be heard by the Single Judge.*

(10). *An application for leave to appeal under Section 378 (3) of the Cr.P.C., shall henceforth be maintainable only in the appeals arising out of the original judgments / orders of acquittal, or of conviction for lesser offence, or imposing inadequate compensation, passed by the Courts of Session, and shall necessarily lie before the Division Bench only.*

(11). *Applications for leave / special leave to appeal shall henceforth be filed in the same appeals by way of Interlocutory Applications (I.A.) and not by way of separate application in the form of Cr.M.P.*

Question No. (vii)

(12). *The acquittal appeals, filed other than by the complainants, henceforth shall not be nomenclated as Criminal Appeals, rather they shall be nomenclated as Acquittal Appeals. The nomenclature of Criminal Appeal shall be confined only for the appeals, arising out of the judgment / order of conviction. The acquittal appeals filed by the complainants, shall henceforth be nomenclated as Acquittal Appeals (C). The appeals filed by the victims against the conviction for a lesser offence or imposing inadequate compensation shall be nomenclated as Criminal Appeal (V). Acquittal appeals, arising out of the complaint cases, which are filed by the victims, who are not the complainant, shall be nomenclated only as Acquittal Appeals.*

Other Matters

(13). *We direct the Registry / Stamp Reporter to resume to make reporting about the maintainability, locus and nature of the matters filed in the High Court.*

(14). *In view of the Rules 35 (1) (f) and 36 (ii) brought by the amendment in the year 2005, in the High Court of Jharkhand Rules, 2001, Rule 152 of the High Court Rules, which had originally been framed in the year 2001 itself, is hereby, declared redundant.*

(15). *The word 'civil' in Rule 84 (l) of the High Court Rules, 2001, giving the nomenclature of I.A., is hereby, declared redundant.*

(16). *The Registry is directed to place the matter before the Hon'ble the Chief Justice in the administrative side for carrying out necessary amendments in the High Court of Jharkhand Rules, 2001, for deleting Rule 152 and the word 'civil' in Rule 84 (l) from the High Court of Jharkhand Rules, 2001, and also for making following insertions in Rule 84 of the High Court of Jharkhand Rules, 2001, after Rule 84 (z9), by way of amendment:-*

<u>Abbreviated form</u>	<u>Nature of Proceedings</u>
(z10) Acq. App.(C).	<i>Acquittal appeals filed by the complainants.</i>
(z11) Cr. App.(V).	<i>Appeals filed by the victims against the conviction for a lesser offence, or imposing inadequate compensation.</i>

(17). *Even pending the exercise of carrying out the amendments as above, in the High Court of Jharkhand Rules, 2001, these decisions shall be followed and carried out by all concerned.*

(18). *The pending appeals arising out of the appellate judgments / orders of acquittal passed by the Courts of Session, shall now be listed before the appropriate Bench, after fresh stamp reporting, as early as possible.*

41. Let this Judgment be communicated to all the Sessions Divisions in the State of Jharkhand, so that the ambiguity in entertaining the appeals against the judgments / orders of acquittal is resolved and set at rest. It is directed that in the State of Jharkhand, the appeals against acquittals, punishment for lesser offences and imposing inadequate compensations, shall henceforth be strictly be governed by this Judgment.

42. The Registry of the High Court is also directed to ensure the strict compliance of all the aforesaid directions, henceforth.

43. Before parting with this Judgment, we must record that we have been given very valuable assistance by all the learned counsels for the parties and we shall be failing in our duty if we do not record our sense of appreciation for their assistance given to this Court, which we hereby, do.

44. In view of our answers to the questions referred above, Cr. Appeal (S.J) No.1281 of 2016, Cr. Appeal (S.J) No.2066 of 2017, Cr. Appeal (S.J) No.2229 of 2017 and Cr. Appeal (S.J) No.825 of 2014, are not at all maintainable, as all these appeals arise out of the appellate judgments / orders passed by the different Courts of Session. All these appeals are accordingly, dismissed as not maintainable. Consequently, all the I.As. filed therein, which are pending, also stand dismissed. The appellants, shall however, be at liberty to avail the other remedy in law, if available, and subject to the limitation, in which case the time spent in pursuing these appeals shall be accounted for, while counting the period of limitation, if any.

45. Cr.M.P. No.3260 of 2017 has been filed seeking special leave to appeal under Section 378 (4) of the Cr.P.C., against the judgement of acquittal passed in a complaint case. Let the same be listed before the appropriate bench.

(H.C. Mishra, J.)

B.B. Mangalmurti, J.:-

(B.B. Mangalmurti, J.)

A.K. Choudhary, J.:- I have gone through the well discussed Judgment of profundity of my learned Brother Mr. H.C. Mishra, J., and I am in full agreement with the same, except with regard to the Answer No. B on the Question Nos. (i) to (iii), wherein, learned Brother has held that if the appeal, arising out of the original Judgment, Orders of Acquittal or of conviction for lesser offence or imposing inadequate compensation passed by the Court of Session, the appeal shall lie before the Division Bench of the High Court.

Whether an appeal shall lie before the Division Bench or to the Single Judge of the High Court is determined on the basis of the High Court of Jharkhand Rules 2001. Certainly, the Code of Criminal Procedure does not prescribe, whether an appeal will lie before the Single Judge or the Division Bench of the High Court.

Rule 35 (1) (f) of the High Court of Jharkhand Rules as already referred to in Para-13 of the Judgment of my learned Brother, provides that the appeal against the Judgment of acquittal, in which, the substantive sentence of less than ten years of imprisonment could have been passed, such appeals shall be heard and disposed of by the Single Judge and as per Rule 36(ii) of the High Court of Jharkhand Rules, 2001, the appeal against the Judgment of acquittal, in which, the substantive sentence of ten years of imprisonment or more could have been passed, shall be heard and disposed of by the Division Bench.

Hence, in my considered opinion, if the appeal, arising out of the original Judgment, Orders of acquittal or conviction for a lesser offence or imposing inadequate compensation passed by the Court of

Session, is in respect of an offence in which the substantive sentence of less than ten years of imprisonment could have been passed, the same shall lie before the Single Judge of this Court and not before the Division Bench and if such appeal is in respect of the offence punishable with a substantive sentence of ten years imprisonment or more, it will lie before the Division Bench of this High Court. Subject to this reservation, I am in full agreement with the Judgment passed by the Hon'ble Mr. H.C. Mishra, J.

(A.K. Choudhary, J.)

Jharkhand High Court, Ranchi.
Dated the 19th of September, 2018.
A.F.R/ BS/-