
(2015) 08 TP CK 0020
In the Tripura High Court
Case No : Criminal Rev. P. 33 of 2015

Biplab Bhowmik and Others

APPELLANT

Vs

Sabitri Banik (Bhowmik) and Others

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 2(wa), 357, 357A, 372
Limitation Act, 1963 — Section 5

Citation : (2015) 4 GLT 508

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : K.N. Bhattacharjee, Senior Advocate and S. Pandit, for the Appellant; P.K. Biswas and P. Majumder, Advocates for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, C.J—This petition under Section 397 of the Code of Criminal Procedure (Cr.P.C.) is directed against the order dated 22-04-2015 passed by the learned Sessions Judge, South Tripura, Belonia in case No. CrI. Misc. 19 of 2014 whereby he held that in an appeal filed by the victim under Section 372 of the Cr.P.C. no limitation is prescribed.

2. The following interesting question of law arises in this appeal:-

"Whether, in appeal filed by a victim under Section 372 of the Cr.P.C., no limitation is applicable?"

3. Briefly stated, the facts are that the respondent No. 1 (hereinafter referred to as "the wife") filed a complaint before the learned Sub-Divisional Judicial Magistrate, Belonia against the petitioners, i.e. the husband, mother-in-law and sister-in-law of the complainant. After trial, the learned Magistrate acquitted the petitioners.

4. Aggrieved by the said order of acquittal, the complainant-wife filed an appeal before the learned Sessions Judge, South Tripura, Belonia and also filed a

petition under Section 5 of the Limitation Act for condonation of 340 days delay in filing the appeal. The petitioners filed objections to the application for condonation of delay. This application has been disposed of by the learned Sessions Judge by holding that there is no period of limitation prescribed in case of an appeal filed by the victim. His order reads as follows:-

"Heard both sides on this application filed under Sec. 5 of the Limitation Act to condone the delay.

At the time of hearing nobody could show the period of limitation where it is prescribed for filing an appeal by a victim under Sec. 372 proviso of Cr.P.C.

I am in the opinion that, the legislature did not provide any period of limitation for filing an appeal by a victim against order of acquittal. Since there is no prescribe statutory period of limitation for filing an appeal under Sec. 372 proviso of Cr.P.C., the question of allowing or rejecting of application filed under Sec. 5 of the Limitation Act does not arise.

I am in the opinion that, every victim has a statutory right to file appeal under Sec. 372 proviso of Cr.P.C. and for that purpose there is no law of limitation restraining him/her in this regard.

The appeal filed by the petitioner has to be admitted."

5. At the outset, we may note that the concept of the victim being allowed to prosecute a criminal case or file an appeal against acquittal of the accused is a new development and trend in law. The old conservative theory was that criminal offences were treated to be offences against the State and therefore, it was the State which prosecuted the case. If the State machinery did not act on the complaint the victim or the complainant could come to Court but again in terms of Section 156 of the Code the investigation had to be done by the police alone and later normally in such cases the State alone prosecuted the matters. There were rare cases where the criminal proceedings were initiated at the instance of a complainant and were termed as complaint cases. Complaint cases are dealt with under Chapter 15 of the Code which lays down the procedure to be followed in suit cases. Thus, as the law stood prior to the amendment of the Code of Criminal Procedure by the Code of Criminal Procedure (Amendment) Act, 2008, a victim had no right to file an appeal against acquittal.

6. Appeals against acquittal are governed by Section 378 of the Code. As per sub-section (1) of this Section only a District Magistrate or the State as the case may be is entitled to direct the Public Prosecutor to file an appeal. Sub-section (2) deals with cases investigated under the Delhi Special Police Establishment Act and in these cases the Central Government may also direct the Public Prosecutor to file the appeal. Sub-section (4) deals with appeals filed by the complainant in case the order of acquittal is passed in a case instituted upon a complaint. Sub-section (5) provides the limitation for filing the petition for grant of special leave to appeal in terms of sub-section (4). Sub-section (6) lays down that in case the

application for special leave to appeal filed by a complainant under sub-section (4) is refused then no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2). An analysis of Section 378 of the Code clearly shows that the Code envisaged and granted a predominant role to the State. It was the State alone which was entitled to file an appeal and only in complaint cases, the complainant could file an appeal. He also had to seek special leave to appeal in case the appeal lay to the High Court.

7. The law never remains static and over period of time it was felt that the rights of the victim also need to be addressed. There can be no manner of doubt that an appeal is a creation of the statute and right to file an appeal cannot be inferred but must be explicitly spelt out in the statute. Reference in this behalf may be made to the judgment of the Apex Court in National Commission of Women Vs. State of Delhi and Another, (2011) CriLJ 962 : (2010) 11 SCALE 17 : (2010) 12 SCC 599 : (2011) 1 SCC(Cri) 774 : (2011) AIRSCW 61 , wherein the Apex Court held that an appeal is creature of a statute and cannot lie under any inherent power. Interestingly, Section 372 of the Code which was amended in the year 2008 to give a right to the victim is a negative section which specifically provided, before its amendment that no appeal would lie from any judgment or order of a criminal Court except as provided for by the Code or by any other law in force. The Legislature while giving a victim the right to appeal did not, for reasons best known to it, give this right under Section 378 of the Code or any other specific Section but surprisingly this right to the victim was given as a proviso to Section 372 of the Code. A number of Courts have observed, and we are in agreement with these views, that this proviso is not very happily worded. Be that as it may, the fact is that a victim now has a right to appeal under this proviso. He can file the appeal against the following orders:-

- (i) any order passed by a Court acquitting the accused;
- (ii) any order passed by a Court where the accused is convicted of a lesser offence but the victim feels that he should have been convicted for a higher offence. Obviously the appeal lies against the acquittal of the accused for a higher offence;
- (iii) an appeal lies where the victim is not satisfied of the quantum of compensation imposed and this will relate to Sections 357 and 357A of the Code.

8. At this stage reference may be made to Section 2(wa) which was also introduced in the Code by the Code of Criminal Procedure (Amendment) Act, 2008 and the definition of victim was introduced which reads as follows:-

"2(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir."

9. The contention on behalf of the petitioner is that though the victim has a right under the proviso to Section 372 to file an appeal but this will be subject to the

limitation prescribed for filing an appeal under Section 378 of the Cr.P.C. According to the petitioner, the provisions of Section 378 of the Code must be read into the proviso to Section 372 of the Code and the law of limitation will apply.

10. The Himachal Pradesh High Court in *Joginder Singh vs. State of Himachal Pradesh and others* [Cr.M.P. (M) No. 276 of 2012 in Cr. Appeal No. 100 of 2012] was dealing with the following question:-

"Whether a victim, who files an appeal under Section 372 of the Code of Criminal Procedure in the High Court against the acquittal of the accused is required to obtain leave to appeal before his appeal can be entertained?"

11. This question was answered after reference to various judgments and case law in the following terms:-

"20. We are of the considered view that though the proviso to Section 372 of the Code does give a right to the victim to file an appeal, this proviso cannot be read in isolation. It has to be given a meaning which fulfills the intention of the Legislature. The Proviso to Section 372 of the Code does not lay down the procedure as to how, in what manner, and most importantly within which time the appeal has to be filed. An appeal, being a creature of the statute, it is also necessary to prescribe the limitation for filing the appeal and the procedure for filing the same. In some judgments, it has been held that if no limitation is prescribed we can put an interpretation whereby a reasonable limitation is provided. Reference in this behalf may be made to the judgment of the Delhi High Court in *Kareemul Hajazi Vs. State of NCT of Delhi and Others*, (2011) 1 JCC 500 .

21. The second division of the Schedule to the Limitation Act deals with appeals. Article 114 deals with appeals against acquittal and Article 115 deals with appeal against conviction. It is obvious that only Article 114, if at all, can apply. Article 114 deals with two types of appeals and the maximum limitation to file an appeal is 90 days. This has also been held by the Apex Court in *State (Delhi Administration) Vs. Dharampal*, AIR 2001 SC 2924 : (2001) CriLJ 4748 : (2001) 9 JT 136 : (2001) 7 SCALE 414 : (2001) 10 SCC 372 : (2001) AIRSCW 4385 : (2001) 8 Supreme 181 . Therefore, even if we have to hold that Article 114 applies then the limitation would be 90 days."

12. A full Bench of the Punjab and Haryana High Court in *M/s. Tata Steel Ltd. Vs. M/s. Atma Tube Products Ltd. and Others*, (2014) 1 PLR 1 : (2013) 2 RCR(Criminal) 1005 also answered the following question:-

"What would be the period of limitation for a "victim" to prefer an appeal under proviso to Section 372 Cr.P.C.?"

13. This question was answered by the full Bench of the Punjab and Haryana High Court after referring to the provisions of the Limitation Act in the following terms:-

"132. xxx xxx xxx

The appeal against acquittal in such cases can be filed within 30 days of the date of grant of special leave to appeal as provided under Clause (b) of Article 114 of the Limitation Act. The Hon"ble Supreme Court in Dharam Pal's case compared the provisions of old Code with Section 378 of the new Code and held that appeals against acquittal preferred by the State Government or the Central Government continue to be governed by Article 114(a) of the Limitation Act. In other words, those appeals must be filed within 90 days from the date of order appealed from. A "victim" therefore is also entitled to the said maximum period of limitation i.e. 90 days to prefer his/her appeal against an order of acquittal."

14. The Division Bench of the Chhattisgarh High Court in Kailash Murarka Vs. K. Geet Srijan(2015) CriLJ 1627 has held that where the victim is also the complainant, then the appeal would still be under Section 378 and not under Section 372 of Cr.P.C. This Court is not going into this aspect of the matter but for purposes of limitation, I am of the opinion that whether the appeal is under Section 372 or under Section 378, limitation as prescribed in the Limitation Act would be applicable.

15. The Andhra Pradesh High Court in Petta Satya Govinda Ramachandra Rao @ Babji Vs. Yarlagadda Vijaya Kumar and Another, (2014) 2 ALD(Cri) 900 held as follows:-

"48. Thus, even no specific procedure provided for the appeal under Section 372 Cr.P.C. the procedure applicable to appeal against acquittal generally provided in the chapter XXIX Cr.P.C. that is applicable automatically, so also the period of Limitation."

16. This Court is in total agreement with the aforesaid views of various High Courts. Where the appeal by the victim is not against an order of acquittal, it would fall under Article 115 and the limitation would be governed by Article 115. Therefore, in a case of acquittal the period of limitation for an appeal filed by a victim under proviso to Section 372 of the Code shall be as follows:-

17. In view of the aforesaid discussion, I am clearly of the view that even in an appeal filed by the victim under Section 372 of Cr.P.C., the provisions of the Limitation Act will apply and the appeal shall be governed as per the limitation prescribed in Article 114 or under Article 115 of the Limitation Act. The finding of the learned Sessions Judge that there is no limitation for filing an appeal filed by the victim is totally illegal and such finding is set aside.

18. The petition is accordingly allowed and the matter is remanded to learned Sessions Judge to decide the application filed by the complainant-victim for condoning the delay in filing the appeal.