

(2015) 07 BOM CK 0191

In the Bombay High Court

Case No : Criminal Appeal Nos. 156 and 216 of 2015

Manikrao and Others

APPELLANT

Vs

Vasantrao Vishwasrao Charjan and Others

RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 372, 374, 378(4), 382, 383

Citation : (2015) ALLMR(Cri) 4754 : (2015) 3 BomCR(Cri) 341 : (2015) 3 Crimes 478

Hon'ble Judges : B.P. Dharmadhikari, J;P.N. Deshmukh, J

Bench : Division Bench

Advocate : Adwait S. Manohar, for the Appellant; Shirish Gupte, Senior Advocate and S.V. Dere, Advocates for the Respondent

Judgement

B.P. Dharmadhikari, J—Judgment on preliminary point.

2. On 29.06.2015, this Court has passed the following order in these appeals :

"Heard the respective counsel appearing for the appellant and respondents in both the appeals.

The respective counsel appearing for the appellant complainant submit that as requirement of obtaining leave is deleted in the wake of right given to the complainant under Section 372 of the Code of Criminal Procedure, the appeals must be directly admitted and placed for final hearing. According to them, there is no question of hearing the appeal again for admission as parameters to be applied for grant of leave to appeal and for admission, are same.

The respective counsel appearing for the respondents urged that law on the point is well settled and deleting the requirement of leave does not tantamount to grant of admission of appeal for its final hearing.

We have heard respective counsel only on this question and the Appeals are closed for passing orders on it."

Accordingly, we decide the question, whether the Appeal filed by the victim under Section 372 of the Code of Criminal procedure stands admitted for final hearing as a matter of course or then it is subjected to provisions of Section 384 of the Code of Criminal Procedure and, therefore, can be summarily dismissed.

3. In Criminal Appeal No. 25 of 2015, this Court has on 05.05.2015 while delivering a judgment, has considered this issue. In para 7 thereof, the said Division Bench has looked into the conclusions of learned Single Judge, when on account of difference between judges comprising the Division Bench, the matter was placed before the Hon''ble third judge of this Court. The said Division Bench judgment in the case of Balasaheb Rangnath Khade Vs. The State of Maharashtra and Others, (2013) ALLMR(Cri) 1184 : (2012) BomCR(Cri) 632 , while judgment of learned Single Judge is reported in the case of Balasaheb Rangnath Khade Vs. The State of Maharashtra and Others, (2013) ALLMR(Cri) 1184 : (2012) BomCR(Cri) 632 . One of us, P.N. Deshmukh, J., is a party to the judgment dated 05.05.2015 in Criminal Appeal No. 25 of 2015. There, after reproducing in para 8, the findings recorded in para 66 of Single Judge's judgment (supra), the Division Bench has found that question whether such an appeal of victim can be summarily dismissed or not, was not open before the learned Single Judge. In para 10, finding that requirement of obtaining leave and power of High Court to dismiss appeal summarily, is not one and the same, is also recorded. The discussion in this respect is contained in para 11 of the judgment dated 05.05.2015. The Division Bench on 05.05.2015 has held that High Court has got power to summarily dismiss the victim's appeal against the acquittal.

4. Shri Manohar, learned counsel for the appellant has urged that as there is no question of obtaining leave of this Court by victim while filing appeal under Section 372 of Cr. P.C., the appeal must be deemed to have admitted for final hearing. He is relying upon the judgment of the learned Single Judge of Madhya Pradesh High Court in the case of Dongar Singh Vs. Krishan Kant Vyas and Another, AIR 1957 MP 162 : (1957) CriLJ 1143 , to urge that scope of hearing, while considering the question of grant of leave and while admitting such appeal, is identical and hence in case leave is granted, the appeal against the acquittal automatically stands admitted. He has taken us through paragraphs 15 to 18 of the observations of the Madhya Pradesh judgment. He points out that if leave is granted, judgment of acquittal is likely to be reversed. The support is also taken from the judgment of the Hon''ble Apex Court in the case of State of Madhya Pradesh Vs. Giriraj Dubey, (2013) 3 AD 47 : (2013) CriLJ 1676 : (2013) 1 Crimes 282 : (2013) 2 JCC 1257 : (2013) 3 JT 198 : (2013) 2 RCR(Criminal) 239 : (2013) 2 SCALE 635 : (2013) AIRSCW 3449 : (2013) AIRSCW 1354 : (2013) 1 Supreme 737 : (2013) 4 Supreme 131 . There, the Hon''ble Apex Court has in paragraphs 4 & 5 pointed out the obligation of High Court to give reasons while dismissing the application for grant of leave. In paragraph 12, the Hon''ble Apex Court has pointed out that a crime generally creates disturbance in the society and it is the duty of High Court to see that justice is done to the sufferer of crime. Recording of reasons is found necessary to demonstrate discharge of such

a duty or obligation.

5. Shri Gupte, Senior Advocate with Shri Dere, learned Advocate for respondent Nos. 1 to 4 has, however, submitted that due to amendment giving a right to victim to file appeal vide Section 372 of Cr. P.C., only the requirement of prior leave of this Court has been removed. The leave was essential in view of provisions of Section 378(4). After that leave is granted, the appeal presented by the complainant could have been entertained by High Court. He submits that thus, victim could have earlier come to this Court after obtaining leave and if that leave is granted, his appeal could have been entertained. That requirement now no more exists but then the appeal needs to be placed for admission and considered as per law. He states that presumption of innocence of the accused is reinforced by his acquittal and that acquittal, therefore, cannot be lightly interfered by this Court. The limited scope of hearing available in the appeal against acquittal is also pressed into service by him.

6. Before proceeding further, it will be appropriate to look into the provisions of Rules 19 & 20 of Chapter XXVI of the Bombay High Court Appellate Side Rules, 1960, dealing with the appeal against acquittal. Rule 19 of Chapter XXVI provides for filing of composite petition, seeking leave and giving grounds of appeal. If the leave is granted, the same memo is registered as appeal. The appellant is obliged to pay Court fee on his memo of appeal at that stage. Next provision is the procedure to be followed by the office, if the appeal is admitted. Thus, Appellate Side Rules themselves contemplate different stage for grant of leave, of registration of appeal and stage of its admission for final hearing. Procedure stipulated in Rule 20 i.e. notice to District Magistrate and obligation of later to inform the High Court whether accused is in jail and in what jail, starts only after such an appeal is admitted.

7. In this background, when the parameters pointed out by Shri Manohar, learned counsel, indicating scope of hearing at the stage of grant of leave are looked into, it is apparent that the provisions of High Court Appellate Side Rules are in consonance therewith. Duplication has been avoided by providing hearing for grant of leave and at that stage to demonstrate merits in the matter.

8. A perusal of Section 384 of Code of Criminal Procedure shows that if after examining the petition of appeal and copy of the judgment received under Section 382 or Section 383, the Appellate Court finds that there is no sufficient ground for interfering, it can dismiss the appeal summarily. However, if appeal is presented under Section 382 of Cr. P.C., it cannot be dismissed unless the appellant or his Advocate are given reasonable opportunity of hearing. Appeal presented under Section 383 of Cr. P.C. also cannot be dismissed without such opportunity unless the Appellate Court considers that appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case. Appeal presented under Section 383 of Cr. P.C. cannot be dismissed summarily until period allowed for preferring such appeal has expired. Sub-section (2)

thereof provides that before summary dismissal of appeal, the Court can call for records from trial Court. Sub-section (3) is on requirement of recording reasons in support of such dismissal. The provision contained in sub-section (4) of Section 384 is not relevant for this consideration. Thus, appeal preferred by the accused against his conviction under Section 374 can also be dismissed summarily after following procedure prescribed under Section 384 of Cr. P.C. In other words, that appeal also need not be automatically admitted for final hearing. Hence, it cannot be accepted that an appeal against acquittal filed by the victim cannot be summarily dismissed. The presumption of innocence of acquitted accused is more strong and hence in appeal, scope of interference therewith lies in narrow compass.

9. Section 372 of Cr. P.C. only dispenses with procedural requirement of securing leave. Earlier, in absence of that leave, the appeal presented by such victim could not have been touched. After such leave is granted in terms of provisions contained in High Court Appellate Side Rules (*supra*), the petition seeking leave itself becomes an appeal as it is entertained by High Court. Section 372 of Cr. P.C. which gives right of appeal to victim, therefore, does not expect him to obtain leave of High Court for that purpose. However, the question whether that appeal has any merit or not or in other words whether it can be summarily dismissed under Section 384 or not, can still be examined by this Court. Hearing for admission inherent in unamended provisions of Cr. P.C. read with Chapter XXVI of High Court Appellate Side Rules, 1960, is not deleted while giving the victim, a right of appeal under new Section 372 of Cr. P.C. It cannot be said that appeal of victim is placed at higher pedestal or in any way becomes superior as compared with appeal of accused against his conviction or any other appeal against acquittal of accused. Therefore, mere deletion of requirement of obtaining leave by conferring a right of appeal upon the accused, does not mean that such appeal is automatically admitted for final hearing.

10. We, therefore, find no substance in the contention of Shri Manohar and Shri Surjuse, learned counsel for the appellants. Accordingly, the preliminary contention raised by the appellants is rejected.

The Registry to place Criminal Appeals for admission in accordance with law.