

(2017) 01 MP CK 0207
In the Madhya Pradesh High Court
Case No : 2637 of 2014

Mohammade Yusuf s/o Habib Khan Mevati & others	APPELLANT
Vs	
Rajkumar S/o Vithalbhai Bandhwar & others	RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 372](#) - No appeal to lie unless otherwise provided

Citation : (2017) 01 MP CK 0207

Hon'ble Judges : J K Maheshwari

Bench : Single Bench

Advocate : Rajesh Kumar Jain, S.K. Shrivastava

Judgement

1. Both these revisions are filed arising out of judgment dated 30.8.2014 passed by learned 12th Additional Sessions Judge, Bhopal in Criminal Appeals No. 1182/2012 and 1082/2012. By the impugned judgment, learned Sessions Court dismissed the appeals preferred by the complainant as well as the State Government as not maintainable. Criminal Revision No. 2637/2014 has been filed by the complainant while Criminal Revision No. 253/2015 has been filed by the State Government assailing the same order, however, both these cases are heard analogously.

2. Learned counsel for the applicants have drawn the attention of this Court to Section 372 Cr.P.C. Its proviso has been amended by Act No.5 of 2009 with effect from 31.12.2009 conferring the power to the victim to prefer an appeal against an order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation and such appeals would lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. It is the contention of counsel for victim that judgment of acquittal was pronounced on 30.10.2012 after commencement of the amendment under Section 372 of the Cr.P.C., therefore, question of applicability of the amendment retrospectively in relation to the date and time of occurrence is irrelevant. It is

urged that by adding the proviso, power to file an appeal has been given against the judgment of acquittal to the victim or for less punishment after conviction. In case, the judgment of acquittal has been pronounced after commencement of the amendment, the appeal preferred by the victim cannot be dismissed as not maintainable.

3. After having heard counsel for applicants, I find much force in his submission as made by him looking to the language of the proviso to Section 372 Cr.P.C. and on going through the provisions as contained, it is observed that the victim is having a right to file an appeal against any order passed by the Court acquitting the accused. Under the proviso, the cause of action accrues to file an appeal to the victim against acquittal, however the date of occurrence has no relevance looking to its language. Therefore, in case the accused person has been acquitted on 30.10.2012, right to file an appeal has been given to the victim by amendment brought prior to the said date. In that view of the matter, the finding recorded by the appellate Court dismissing the appeal as not maintainable because the amendment is of the date 31.12.2009 and the date of occurrence is of 2006 is unsustainable. The said analysis made by the trial Court is without any basis looking to the intention of the legislature and the language engrafted under proviso to Section 372 Cr.P.C.

4. Accordingly, the order passed by the Sessions Court is hereby set aside. As the order passed by the Sessions Court is set aside, therefore, dealing the issue of maintainability of revision preferred by the State Government before this Court is of no relevance in the present case. However, in consequence to allow the revision filed by the Complainant, the revision preferred by the State Government stands disposed of.

5. Record of the appellate Court be post haste transmitted by the Registry. C.C. as per rules.