
(2011) 03 KL CK 0032
In the High Court Of Kerala
Case No : Criminal L.P. No. 146 of 2011

N.P. Ahammed

APPELLANT

Vs

Abdul Latheef and Another

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2(wa), 372, 374, 377, 378
Penal Code, 1860 (IPC) — Section 279, 304

Citation : (2011) 2 KLJ 858 : (2011) 2 KLT 889

Hon'ble Judges : K. Hema, J

Bench : Single Bench

Advocate : K.M. Sathyanatha Menon and A.E. Aliyar, for the Appellant; P.A. Salim (P.P), for the Respondent

Final Decision : Dismissed

Judgement

K. Hema, J.—A charge sheet was laid against first respondent herein for offences u/s 279 and 304 of IPC, on the allegation that he drove a vehicle in a rash and negligent manner and as a result of such driving, petitioner's son sustained injuries and died. First respondent was tried before Additional Sessions Court and he was convicted and sentenced as follows:

considering the facts and circumstances of the case and age of the accused the sentence is limited to 2 years and a fine of Rs. 10,000/- (Rupees ten thousand only) in default of fine sentence to simple imprisonment of 3 months u/s 304 IPC and sentence to 6 months and a fine of Rs. 1,000/- (Rupees one thousand only) in default simple imprisonment of 1 month u/s 279 IPC. Both the sentences shall run concurrently.

Petitioner, who is the father of the victim filed this petition, seeking special leave u/s 378(4) of the Code. Section 378 of the Code (excluding the portion which is not relevant for disposal of this petition) reads as follows:-

S. 378. Appeal in case of acquittal--(1) Save as otherwise provided in subsection

(2), and subject to the provisions of sub-sections (3) and (5),--

(a) xxxx

(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) xxxx

(3) xxxx

(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) xxxx

(6) xxxx

2. A plain rea and its title reveal that Section 378 relate to appeal against order of acquittal. As per Section 378(4) of the Code, special leave can be granted by the High Court, for filing an appeal against an order of acquittal. But, what is sought to be challenged by petitioner is an order by which, first respondent-accused was convicted for offences under Sections 279 and 304 of Indian Penal Code. It is not an order of acquittal. Therefore, Section 378 does not apply and no leave can be granted by this court u/s 378(4) of the Code.

3. However, learned counsel for petitioner argued that a victim is entitled to file an appeal under the proviso to Section 372 of the Code. The proviso to Section 372 is introduced into the Code recently, by Act 5 of 2009 and it has come into force with effect from 2.11.2010. As per Section 2(wa) of the Code "victim" includes legal heir of the victim also and hence petitioner can file an appeal u/s 372 of the Code, it is argued. He also requested to treat this petition, as an appeal u/s 372 of the Code.

4. To consider the merit of this argument, a reading of Section 372 and Section 2(wa) of the Code is necessary. The above provisions are extracted as follows:-

S. 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.

S. 2. Definitions.--In this Code, unless the context otherwise requires, -

XXXX

XXXX

(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;

5. A reading of Section 372 of the Code shows that the proviso to Section 372 of the Code confers a right on the victim to file an appeal against certain orders. As per Section 2(wa) of the Code, the "victim" includes the legal heir of the victim also. But, the proviso to Section 372 of the Code permits the victim or legal heir of the victim to file an appeal only against certain orders, which are specifically stated in the said provision. The orders which can be challenged by the victim or legal heir under the proviso Section 372 of the Code are: i) order of acquittal of accused or ii) order of conviction for a lesser offence or iii) order imposing inadequate compensation.

6. The impugned order in this case is not an order of acquittal. It is not an order convicting the accused for a lesser offence. It is also not an order, directing payment of any compensation. Learned counsel for petitioner argued that petitioner is aggrieved since lower court did not allow any compensation and hence, petitioner can file an appeal against compensation, u/s 372 of the Code. From a reading of the proviso to Section 372 of the Code, it is quite clear that what can be challenged thereunder is inadequacy of compensation and not, failure or omission to order compensation.

7. Only if compensation is ordered, question of adequacy or inadequacy of compensation arises. But, in this case, no compensation is ordered. Hence, no appeal can be filed by the victim or legal heir of the victim under the proviso to Section 372 of the Code challenging failure or omission on the part of the court to pass an order of compensation. The request for treating this petition as an appeal u/s 372 of the Code cannot, therefore, be accepted.

8. Learned counsel for petitioner put forward another contention that petitioner can file this appeal u/s 374 of the Code, since petitioner is challenging inadequacy of sentence. With due respect, this contention also cannot be accepted. Section 374 deals with appeals from "conviction", but petitioner is not challenging the "conviction". He challenges inadequacy of sentence. Inadequacy of sentence can be challenged in an appeal u/s 377 of the Code, but, such an appeal can be filed by the Public Prosecutor, under direction from the State Government. The complainant cannot therefore file an appeal either u/s 377 or 374 of the Code challenging inadequacy of sentence.

9. The proviso to Section 372 of the Code also does not permit the victim or legal heir of the victim, to file an appeal challenging the inadequacy of sentence. It is quite clear from the proviso to Section 372 of the Code that the said proviso does not give victim or legal heir of victim any right to file an appeal challenging the

inadequacy of sentence. In such circumstances, this petition cannot be treated as an appeal u/s 374, or Section 377 of the Code.

10. Looking from any angle, the victim or legal heir of the victim cannot challenge either inadequacy of sentence or failure/omission on the part of the court to order compensation, under any of the provisions contained in Sections 372, 374, 377 or 378 of the Code. In the above circumstances, this petition cannot be treated as an appeal under Sections 372, 374, 377 or 378 of the Code. This petition filed u/s u of the Code is not maintainable. However, petitioner is at liberty to seek appropriate remedy, if so advised. In such event, this order will not stand in the way of his moving for appropriate relief, in accordance with law.

With this observation, this petition is dismissed.