
(2015) 06 BOM CK 0126
In the Bombay High Court
Case No : Criminal Appeal No. 27 of 2014

Sushama Sushilkumar Dalmia	Vs	APPELLANT
State of Maharashtra and Others		RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 372, 378, 392
Penal Code, 1860 (IPC) — Section 306, 34, 498-A

Citation : (2015) 4 BomCR(Cri) 188

Hon'ble Judges : A.R. Joshi, J.

Bench : Single Bench

Advocate : H.H. Ponda, Senior Advocate, for the Appellant; Anamika Malhotra, A.P.P., for the Respondent

Judgement

A.R. Joshi, J.—Heard rival submissions at length on this appeal which is preferred by the victim challenging the judgment and order of acquittal of the respondent Nos. 2 to 5 for the offences punishable under sections 498-A , 306 read with section 34 of IPC. A preliminary objection raised in the present appeal is on the question whether the victim is required to obtain leave of this Court so as to prefer an appeal under the amended section 372 of Cr.P.C. This objection was raised on behalf of the respondents. Counter to these arguments, the learned Senior Counsel for the appellant placed reliance on the decision of the Division Bench of this Court in the case of Balasaheb Rangnath Khade Vs. The State of Maharashtra and Others, . Apart from this decision, other authorities are also cited before this Court on behalf of the appellant i.e. the case of Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Another, .

2. At the threshold it must be mentioned that the first authority cited before this Court in the case of Balasaheb Khade (supra) shows that initially both the learned Judges of the Division Bench in Balasaheb Khade (supra) had different view on the aspect whether the leave under section 378 of Cr.P.C. is contemplated and required to be taken when the appeal is preferred by the

victim under proviso to section 372 of Cr.P.C. When there was difference in views of Judges of the Division Bench, the matter was referred to a third Judge. Even the decision of the third Judge (Coram: Mrs. Roshan Dalvi, J.) is reported in Balasaheb Rangnath Khade Vs. The State of Maharashtra and Others, wherein the learned third Judge has dealt with this aspect in detail and has come to the conclusion that the rights of the victim are at par with those rights available with the accused in preferring the appeal before this Court challenging his conviction. After going through the ratio propounded by the said authority, it must be said that this is a judgment of the Division Bench in view of the provisions of section 392 of Cr.P.C. and Rule 7 of the Bombay High Court Appellate Side Rules. As such it is a factual position that this issue at hand whether the victim is required to obtain leave while preferring an appeal under proviso to section 372 of Cr.P.C., has already been decided and the decision of the Division Bench clearly indicates that no such leave is required. Moreover the right vesting with the victim is more than the right which is vested with the State and in fact it is a right which is equated with the right of a convicted person when he prefers to challenge the order of his conviction in an appeal.

3. In view of the above, it is not necessary to go into the details and reproduce section 392 of Cr.P.C. The decision in Balasaheb Khade (supra) is required to be considered as a decision of the Division Bench thus endorsing the view that leave is not necessary to be taken as contemplated under section 378 of Cr.P.C., when the victim prefers an appeal under any of the three contingencies stipulated by proviso to section 372 of Cr.P.C.

4. In other words in the present matter it must be mentioned that reference to the third Judge is answered and accordingly the view of the majority is required to be followed as a judicial discipline and the said decision is required to be considered as a decision of the Division Bench.

5. During the arguments, the learned Counsel for the respondents stated that though the question as to no requirement to obtain leave to file appeal is no longer res integra still the question remains whether the appeal is required to be admitted as a matter of course or whether the Court is still required to look in the merits of the matter when the victim comes before the Court under proviso to section 372 of Cr.P.C. On these arguments, it is submitted on behalf of the appellant that not only the dictum of the Division Bench judgment is to the effect that no leave is required to be obtained when the appeal is by the victim under proviso to section 372 of Cr.P.C. but the right of the victim is taken at par with that of the accused when the accused challenges the conviction by way of filing an appeal. Definitely there is distinction made by the third learned Judge when the earlier matter of the Division Bench was referred to her that the right available to the victim is more than the right available to the State and when the State comes in appeal against acquittal rigors of section 378 of Cr.P.C. as to obtaining leave came into operation, but it is not so for the victim for the reason that the right available to the victim is considered at par as that of the accused.

In view of this position, there is no substance in the argument advanced on behalf of the respondents that still the Court is required to look into the merits of the appeal at the time of admission. This is more so when it is held that the leave contemplated by section 378 of Cr.P.C. is not required and the right of the victim is taken at par with that of the accused when the appeal is preferred by the victim under proviso to section 372 of Cr.P.C. In view of this settled position, present appeal is admitted. Call for R & P.