



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.9888 OF 2024]

ASIAN PAINTS LIMITED

...APPELLANT

VERSUS

RAM BABU & ANOTHER

...RESPONDENTS

R1: RAM BABU

R2: STATE OF RAJASTHAN *THROUGH* P.P., JAIPUR

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Leave granted.

2. I.A. No.151948/2024 seeking exemption from filing O.T. is allowed.

3. The present Criminal Appeal traces its genesis to the impugned Final Judgment and Order dated 09.10.2023 in S.B. Criminal Appeal (SB) No.2354/2022 [2023:RJ-JP:36178] (hereinafter referred to as the

‘Impugned Judgment’) rendered by a learned Single Judge of the High Court of Judicature for Rajasthan Bench at Jaipur (hereinafter referred to as the ‘High Court’), whereby the High Court dismissed the Appellant’s appeal under the proviso to Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘CrPC’) as not maintainable. A neat question of law of significance is raised herein, namely, as to whether the Appellant would fall under the definition of ‘*victim*’ in terms of Section 2(wa) read with the proviso to Section 372 of the CrPC or whether Section 378 of the CrPC would prevail in the facts and circumstances of the present case.

FACTUAL SETTING:

4. The Appellant, Asian Paints Limited, a public limited company, has been engaged in the business of manufacturing paint and paint products for approximately the last 73 years. Its Head Office is located in Mumbai, Maharashtra. In the face of counterfeit products being made and sold in the market in its name and style, the Appellant had given a Power of Attorney (hereinafter referred to as the ‘PoA’) to one Mr. Ajay Singh, Proprietor, M/s Solution (an IPR consultancy firm) through its authorized representatives, who were tasked with monitoring, tracking down and

investigating unauthorised and illegal practices employed in respect of the Appellant's Intellectual Property Rights (hereinafter referred to as 'IPR') comprising, *inter alia*, trademarks and copyrights owned/used by the Appellant. Cases of trademark infringement, passing off *etcetera* were to be detected, and Mr. Ajay Singh was also asked to undertake survey, investigate and act against any person found to be engaged in violating or infringing the Appellant's IPR, including but not limited to the Trade Marks Act, 1999 and the Copyright Act, 1957 (hereinafter referred to as the 'Copyright Act').

5. Subsequently, Mr. Ajay Singh authorized Mr. Pankaj Kumar Singh to undertake surveys, inquire, detect and investigate against any and all organisations/individuals for any violation/infringement/passing off or unauthorized/unlawful use of the Appellant's brand names, trademarks, copyrights, special packing and designs (whether registered in the name of the Appellant and/or being used under license) apropos sub-standard and even counterfeit products, as also to file the necessary complaints against organizations/individuals responsible for the same, with the appropriate enforcement agency, Department, Police, Courts or any special agency for this purpose and to take all necessary action for and on behalf of M/s Solution. Mr. Pankaj Kumar Singh was also to ensure

immediate stoppage of such violation and inform and report to M/s Solution instantly and periodically, the status of such complaints.

6. The complainant-Pankaj Kumar Singh presented written information at the Tunga Police Station to the effect that on 06.02.2016, when he visited Tunga, he saw that counterfeit products, claiming to be of the Appellant, were kept at the shop of Ganpati Traders, which was owned by Respondent No.1. He disclosed his identity to the police and showed other relevant documents. After seeing all the documents, a police team accompanied him to the Ganpati Traders' shop from the Police Station.

7. The shop was thoroughly checked, wherein 12 buckets purportedly filled with paint bearing a mark similar to that of the Appellant were found. When the police asked the person sitting at the shop for his name and address, he said his name was Rambabu, Respondent No.1 [Rambabu or Ram Babu, as spelt in some records, is the same person]. In all, 4 buckets of Ace Emulsion Paint, each containing 20 litres, and 4 Ace Emulsion 10-litre buckets were allegedly filled with counterfeit paints, and further, 4 Tractor Emulsion 10-litre buckets also filled with counterfeit paints were discovered. When they checked the buckets, they found no

company mark at the bottom, though the Appellant's paint buckets always carry such mark. The counterfeit buckets were handed over to the police, who seized them and arrested Rambabu.

8. The complainant gave the Police two buckets filled with genuine Asian paint, one bucket of 10 litres of Tractor Emulsion Paint and one bucket of Ace Exterior emulsion Paint for the purpose of matching the counterfeit paint with the genuine.

9. On 06.02.2016, the police filed First Information Report No.30/2016 (hereinafter referred to as the 'FIR') under Sections 420/120B of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and under Sections 63/65 of the Copyright Act against Respondent No.1.

10. The investigation commenced, and the Investigating Officer submitted the Final Report under Section 173 of the CrPC on 23.04.2016 for offences under Sections 120B and 420 of the IPC and Sections 63 and 65 of the Copyright Act against Respondent No.1.

11. The State Forensic Science Laboratory submitted its Report No.fsl/jpr/qd/109/16 on 28.07.2016, stating that the seized counterfeit

material(s) did not tally with the original in size, spacing and design of characters.

12. The learned Additional Senior Civil Judge and Additional Chief Metropolitan Magistrate No.13, Bassi, Jaipur, Metropolitan City (hereinafter referred to as the 'Trial Court') *vide* order dated 03.10.2019 convicted the Respondent No.1 under Section 420 of the IPC and under Sections 63 & 65 of the Copyright Act and sentenced him to undergo 3 years' Simple Imprisonment with fine of Rs.10,000/- (Rupees Ten Thousand fine) under Section 420 of the IPC, 2 years' Simple Imprisonment with fine of Rs.50,000/- (Rupees Fifty Thousand) under Section 63 of the Copyright Act and 1 year Simple Imprisonment with fine of Rs.10,000/- (Rupees Ten Thousand) under Section 65 of the Copyright Act.

13. Pursuant to his conviction, Respondent No.1 preferred Criminal Appeal No.1657/2019 under Section 374 of the CrPC against the order of conviction *supra* before the learned Additional Sessions Judge, Bassi, Jaipur Metropolitan (hereinafter referred to as the 'First Appellate Court').

14. Subsequently, *vide* Judgment dated 16.02.2022, the First Appellate Court set aside the order of the Trial Court and acquitted the Respondent No.1 of the offences charged.

15. Aggrieved by Respondent No.1's acquittal, the Appellant preferred S.B. Criminal Appeal (SB) No.2354/2022 under the proviso to Section 372 of the CrPC before the High Court, challenging the judgment of acquittal dated 16.02.2022. The very maintainability of such appeal was heavily contested by the Respondent No.1 before the High Court.

16. The High Court, after perusing the relevant materials and hearing the parties, *vide* impugned order dismissed S.B. Criminal Appeal (SB) No.2354/2022 filed by the Appellant on the ground that the Appeal under the proviso to Section 372 of the CrPC to challenge an order passed in an appeal under Section 374 of the CrPC was not maintainable. The High Court opined that since the Appellant was neither considered as complainant nor as victim before the Trial Court, therefore, the Appellant's Appeal as a victim under the proviso to Section 372 of the CrPC was unsustainable.

APPELLANT'S SUBMISSIONS:

17. The primary contention of the learned counsel for the Appellant relates to the interpretation of the definition of '*victim*' contained in Section 2(wa) of the CrPC. It was pressed that a literal interpretation is sufficient to establish that the Appellant squarely fell within the ambit of the said provision.

18. Learned counsel submitted that the term '*person*' in Section 2(wa) of the CrPC also includes a '*Company or Association or body of persons*' by virtue of Section 11 of the IPC. As such, the Appellant would fall within the contours of the term '*victim*'.

19. To further substantiate the Appellant's claim, the learned counsel pointed out that the underlying FIR which was lodged, giving rise to the instant Appeal, was primarily registered under Sections 63/65 of the Copyright Act, on account of infringement of the Appellant's copyright by the Respondent No.1. It was urged that this was sufficient to prove that it was the Appellant who suffered '*loss or injury*' as mentioned in Section 2(wa) of the CrPC. The loss/injury was in the nature of reputational and financial losses on account of the commission of the afore-mentioned offence(s) by Respondent No.1.

20. Learned counsel vehemently argued that impleadment of the complainant/victim in an appeal filed by the accused under Section 374 of the CrPC is not a *sine qua non* for the complainant/victim to file an Appeal under the proviso to Section 372 of the CrPC in the High Court.

21. Learned counsel placed reliance on the ratio laid down in **Jagjeet Singh v Ashish Mishra alias Monu, (2022) 9 SCC 321**, wherein this Court held:

‘23. A “victim” within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a “victim” has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that “victim” and “complainant/informant” are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a “victim”, for even a stranger to the act of crime can be an “informant”, and similarly, a “victim” need not be the complainant or informant of a felony.’

22. Learned counsel submitted that the proviso to Section 372 of the CrPC is an enabling and a standalone provision meant to provide special rights to the victim of an offence to prefer an appeal against ‘any order’ passed by the Court acquitting the accused and the said proviso does

not impose any restriction upon the victim to prefer the appeal only against the order of acquittal passed by the Court of First Instance/Trial Court and not against an order of acquittal passed by the First Appellate Court.

23. Learned counsel emphasised the point that the Appellant could not have approached the High Court to invoke its revisional jurisdiction under Sections 397 and 401 of the CrPC, since sub-section (3) of Section 401 of the CrPC categorically states that '*Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.*'

24. Learned counsel also invited our attention to this Court's decision in ***Mallikarjun Kodagali v State of Karnataka, (2019) 2 SCC 752***, which held that a victim, as defined in Section 2(wa) of the CrPC, would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction and it is not necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 of the CrPC is concerned. It was prayed that the appeal be allowed.

RESPONDENT NO.1'S SUBMISSIONS:

25. *Per contra*, learned counsel for Respondent No.1 persuasively contended that an appeal under Section 372 of the CrPC is guided and controlled by Section 374 of the CrPC, which is evident from the words '*such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court*' used in the proviso to Section 372 of the CrPC. It was submitted that Section 374 of the CrPC does not provide for filing an appeal against an order passed in appeal by the First Appellate Court.

26. The learned counsel also submitted that Respondent No.2/State of Rajasthan has neither preferred an appeal nor a revision against the judgment of acquittal dated 16.02.2022 passed by the First Appellate Court.

27. Learned counsel further argued that the complaint dated 06.02.2016 was made by Mr. Pankaj Kumar Singh, an investigator employed by M/s Solution, who was neither an employee nor an authorised agent of the Appellant and therefore, he cannot be said to have acted as an agent of the Appellant apropos the Appellant being

covered under Section 2(wa) of the CrPC. As such, the Appellant has/had no *locus* or authority to initiate any proceedings challenging the correctness of Judgment dated 16.02.2022 passed by the First Appellate Court.

28. Learned counsel advanced that the Appellant's application seeking impleadment in Criminal Appeal No.1657/2019 was practically rejected by the First Appellate Court *vide* order dated 10.02.2022, but allowed the Appellant to assist the prosecution. Pointing out that such order was not challenged before the High Court by the Appellant, it was prayed that the instant appeal deserved to be dismissed.

RESPONDENT NO.2-STATE'S SUBMISSIONS:

29. The sole contention taken by the learned counsel for the State of Rajasthan is that the Appellant should have sought Special Leave to Appeal under Section 378(4) of the CrPC before the High Court, if maintainable, otherwise it ought to have filed a Revision Petition under Sections 397 or 401 of the CrPC. Thus, the State has maintained the position adopted by it before the High Court.

ANALYSIS, REASONING AND CONCLUSION:

30. The matter before us lies in a very limited compass. As noted in the introductory portion of this Judgment, the only issue is whether the Appellant comes under the definition of ‘victim’ in terms of Section 2(wa) read with the proviso to Section 372 of the CrPC or whether the provisions of Section 378 of the CrPC would prevail in the facts and circumstances. For convenience, Sections 2(wa), 372, 374 and 378 of the CrPC are reproduced herein below:

‘2. Definitions.— *In this Code, unless the context otherwise requires,—*

...

(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;

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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.

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374. Appeals from convictions.—

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced under Section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under Section 360 by any Magistrate,

may appeal to the Court of Session.

(4) When an appeal has been filed against a sentence passed under Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB or Section 376-E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

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378. Appeal in case of acquittal.—

(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(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 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) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any

Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) 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.

(3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(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) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).'

31. The undisputed factual matrix would reveal that it was the Appellant which had given Power-of-Attorney to M/s Solution through its Proprietor Ajay Singh for protecting its IPR by undertaking survey(s), investigating and acting against any person found to be engaged in violating/infringing the Appellant's IPR, including but not limited to, under the Trade Marks Act, 1999 and the Copyright Act.

32. In turn, M/s Solution appointed Mr. Pankaj Kumar Singh to carry out the task assigned by the Appellant. Thus, whatever action was taken either by Mr. Pankaj Kumar Singh or by M/s Solution related to the infringement of IPR with regard to the Appellant's products, was clearly for and on behalf of the Appellant. It was ultimately the interest of the Appellant which was sought to be served through the engagement of M/s Solution, which in turn, engaged Mr. Pankaj Kumar Singh as its Field Operative. In the present case, it is clear that the allegation directly relates to wrongdoings on the part of Respondent No.1 in displaying, keeping in his shop and being in possession of materials/products which are similar to those manufactured/sold/distributed by the Appellant which also bore its mark on the outside packaging i.e., the bucket in which it was contained, to be specific 'paints' which indicated/mis-indicated that such products were of the Appellant.

33. Further, before the First Appellate Court, the Appellant had filed an application/petition for impleadment, whereupon order dated 10.02.2022 was passed to the following effect:

'Ld. Advocates for the parties are present. The arguments have already been made by the respondent Shri Suresh Sharma on the file. Similarly, in the criminal appeal, an

application has been submitted on behalf of the complainant to the effect that he should also be given an opportunity of hearing.

Heard on the application.

The Appellant has no objection to the application and requested that the Complainant's Ld. Advocate can assist the Additional Public Prosecutor and his arguments should also be heard. In view of this consent, the complainant was heard on appeal.

In the file related to the present case, the Inspector stated that in the original case, the trial court had after concluding the trial, sentenced and convicted the accused. The appeal related to the conviction is also pending before this court. Therefore, the appeal against conviction and complainant's submissions should be heard together and decided. The arguments on side of Complaint has been heard before. The files related to the appeal were taken up for hearing today, and the advocate for the complainant, Mr. Naresh Sain, was given an opportunity to hear. The arguments between the appellant and the complainant were heard. Written arguments were also presented by the appellant. If the complainant wishes, he can obtain a copy of the written argument from the court, and the advocate for the appellant also assured that he will provide the copy of the written argument to the advocate. If the complainant wants to present written argument, he can present written argument till 11 am on 15.02.2022.'

(sic)

(emphasis supplied)

34. Thus, though no formal order on the impleadment application/petition may have been passed but the Appellant's arguments were heard by the First Appellate Court, as the complainant. Neither the State nor Respondent No.1 objected to the application filed by the

Appellant. In fact, the order *supra* also records that Respondent No.1 had agreed that the Appellant be also heard.

35. Pausing here, the observation in the Impugned Judgment that the impleadment application/petition was '*not allowed*' by the First Appellate Court is erroneous and in effect, the learned Single Judge, without saying so, has impliedly conveyed that a negative order was passed on the plea for impleadment. This would be an incorrect appreciation of the true import of the order passed by the First Appellate Court dated 10.02.2022, which clearly states that the '*complainant*' was heard on the appeal, though it has also been mentioned that it was in the background of the consent given. Indubitably, as noted in the Impugned Judgment itself in the very same sentence, '*but with the consent of respondent no.1 accused, present appellant was permitted to assist public prosecutor to advance arguments.*' Albeit, nothing much turns on this.

36. Section 2(wa) of the CrPC defines '*victim*' in plain and simple language as 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...*'. It is clear that Section 2(wa) of the CrPC has thoughtfully

accorded an expansive understanding to the term '*victim*' and not a narrow or restricted meaning.

37. In the present case, there cannot be any two opinions, that ultimately, it is the Appellant who has suffered due to the counterfeit/fake products being sold/attempted to be sold as having been manufactured by the Appellant. The Appellant would suffer financial loss and reputational injury if such products would be bought by the public under the mistaken belief that the same belonged to the Appellant's brand.

38. Similarly, Section 372 of the CrPC stipulates that no appeal shall lie from any judgment or order of a Criminal Court except as provided for by the CrPC by any other law for the time being in force. Section 372 of the CrPC falls under Chapter XXIX which relates to Appeals. Chapter XXIX also includes Section 378, beginning from Section 372, concluding with Section 394, and deals with all contingencies relating to Appeals under the CrPC.

39. It would be worthwhile to first consider the scope of Section 378 of the CrPC before reverting to Section 372 of the CrPC.

40. Section 378 of the CrPC relates to appeal in case of acquittal and sub-section (3) thereof stipulates that there shall be no appeal to the High Court under sub-section (1) or sub-section (2), which otherwise stipulates the condition necessary for maintaining an appeal under sub-section (1) or sub-section (2), except with the leave of the High Court.

41. Thus, on an isolated reading of Section 378(3) of the CrPC, the first impression is that leave of the High Court for maintaining an appeal to that Court is a mandatory condition. However, examining the issue in the facts of the present case, it has to be first considered as to whether Section 372 of the CrPC would directly cover the situation, or be circumscribed by the provisions of Section 378 of the CrPC.

42. We find that the High Court has taken an extreme direction while considering this issue by interpreting the term '*complainant*' to be only the person who actually filed the written complaint, namely Mr. Pankaj Kumar Singh. On this premise, it has gone on to hold that the Appellant cannot be a '*victim*' as it is only the complainant who can maintain such appeal and further, that even the complainant-Pankaj Kumar Singh could

maintain the appeal only after seeking the leave of the High Court in view of the provisions of Section 378(3) of the CrPC. The High Court also held that *'This is a case instituted upon a police report and only in cases instituted upon private complaint, leave to appeal under Section 378(4) of Cr.P.C. is maintainable. Therefore, leave to appeal against order of acquittal in appeal is also not maintainable in the instant case.'*

43. We are constrained to observe that the finding of the High Court that the Appellant could not have maintained the appeal before it would amount to completely negating the proviso to Section 372 of the CrPC. In our considered opinion, Section 372 of the CrPC is a self-contained and independent Section; in other words, it is a stand-alone Section. Section 372 of the CrPC is not regulated by other provisions of Chapter XXIX of the CrPC. The proviso to Section 372 of the CrPC operates independently of and shall not be read conjointly with any other provision in the CrPC, much less Section 378 of the CrPC.

44. At the cost of repetition, we have indicated above as to who would be covered as a '*victim*' under Section 2(wa) of the CrPC. There is no doubt that the Appellant is the '*victim*' herein. As explained in **Jagjeet**

Singh (*supra*), it is not necessary for the 'victim' to also be the 'complainant' or the 'informant' in a given case.

45. Furthermore, another aspect that needs to be considered is as to whether an appeal under the proviso to Section 372 of the CrPC would be restricted only to mean an appeal to the First Appellate Court or include even an appeal to the Second Appellate Court/High Court, which happens to be the case herein.

46. We find that this is not a very complicated issue of law. We do not propose to complicate it! The language employed by the proviso to Section 372 of the CrPC is unambiguous to the effect 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.'

(emphasis supplied)

47. From the aforesaid elucidation, it is clear that the right to appeal accrues on the 'victim' from the instance of a Court acquitting the accused. The proviso to Section 372 of the CrPC is agnostic to the factum of such acquittal being by the Trial Court or the First Appellate Court. We can see the situation through another lens also. In the facts at hand, acquittal was by the First Appellate Court and not by the Trial Court. Therefore, since, in the present case, for the first time, the acquittal comes in at the stage of the First Appellate Court (being a Sessions Court), in law, the right of appeal by the victim would be to the next higher level in the judicial hierarchy, which would be the High Court. However, for that purpose, the High Court could also have been the First Appellate Court, if the Trial Court, being a Court of Sessions, had acquitted the accused. Thus, the reasoning of the High Court that if the Appellant was allowed to maintain the appeal, it would amount to an appeal as envisaged under Section 378 of the CrPC, is factually and legally erroneous, which proposition we negate.

48. Reliance was placed by the learned counsel for the Appellant on ***Mallikarjun Kodagali*** (*supra*), wherein this Court discussed the substantive right of the victim as envisaged in the proviso to Section 372

of the CrPC, the conclusive paragraphs wherefrom are reproduced below:

'73. In our opinion, the proviso to Section 372 CrPC must also be given a meaning that is realistic, liberal, progressive and beneficial to the victim of an offence. There is a historical reason for this, beginning with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly of the United Nations in the 96th Plenary Session on 29-11-1985. The Declaration is sometimes referred to as the Magna Carta of the rights of victims. One of the significant declarations made was in relation to access to justice for the victim of an offence through the justice delivery mechanisms, both formal and informal. In the Declaration it was stated as follows:

"4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and

consistent with the relevant national criminal justice system;

Providing proper assistance to victims throughout the legal process;

Taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilised, where appropriate, to facilitate conciliation and redress for victims.”

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75. Under the circumstances, on the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, it is quite clear to us that a victim as defined in Section 2(wa) CrPC would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction. It must follow from this that the appeal filed by Kodagali before the High Court was maintainable and ought to have been considered on its own merits.

76. As far as the question of the grant of special leave is concerned, once again, we need not be overwhelmed by submissions made at the Bar. The language of the proviso to Section 372 CrPC is quite clear, particularly when it is contrasted with the language of Section 378(4) CrPC. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word “complaint” has been defined in Section 2(d) CrPC and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR, and therefore it is not at all necessary to consider the effect of a victim being the

complainant as far as the proviso to Section 372 CrPC is concerned.'

(emphasis supplied)

49. The law on the issue has been enunciated by the 3-Judge Bench, by a majority of 2:1, in ***Mallikarjun Kodagali*** (*supra*), which squarely applies to the instant matter. The exposition on the term 'victim' by 3 learned Judges in Paragraph 23 of ***Jagjeet Singh*** (*supra*) has already been taken note of by us hereinabove, with which we respectfully concur.

50. We may also indicate that the view taken by us that the right of a victim to prefer an appeal as granted under the proviso to Section 372 of the CrPC, which was inserted *vide* Section 29 of Act V of 2009, with effect from 31.12.2009, is not restricted by any other provision of the CrPC. It serves the salutary purpose of safeguarding the rights of the victim. Upon detailed discussion, a Co-ordinate Bench of this Court in ***Mahabir v State of Haryana, 2025 SCC OnLine SC 184*** observed:

'53. Therefore, by the aforesaid provision a right has been created in favour of the victim, which was not existing earlier in the Code, i.e., that a 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. The plain reading of the statement of objects and reasons for introducing the proviso to Section 372 CrPC makes it clear that it wanted to confer certain rights on the victims. It has been noted therein that the victims are the worst sufferers in a crime, and they don't

have much role in the court proceedings. They need to be given certain “rights” and compensation, so that there is no distortion of the criminal justice system. This, by itself, is clear that the object of adding this proviso is to create a right in favour of the victim to prefer an appeal as a matter of right. It not only extends to challenge the order of acquittal, but such appeal can also be filed by the victim if the accused is convicted for a lesser offence or if the inadequate compensation has been imposed.

54. Thus, it is clear as per the golden rule of interpretation, that the ‘proviso’ is a substantive enactment, and is not merely excepting something out of or qualifying what was excepting or goes before. Therefore, by adding the ‘proviso’ in Section 372 of CrPC by this amendment, a right has been created in favour of the victim.’

(emphasis supplied)

51. Accordingly, for the reasons aforesaid, we find the Impugned Judgment to be unsustainable. The same is set aside.

52. The Appellant’s Appeal [S.B. Criminal Appeal (SB) No.2354/2022] is held maintainable and is restored to its original file and number before the High Court. Since the incident in question is of the year 2016, the Registrar (Judicial), Jaipur Bench of the High Court is directed to place the matter before the learned Chief Justice, who in turn, is requested to allocate the same to a learned Single Bench to hear the matter on merits expeditiously, as per the Board position.

53. Registry of this Court is directed to send a copy of this Judgment forthwith to the Registrar (Judicial), Jaipur Bench of the High Court.

54. Needless to state, in this appeal, we have dealt with and decided only the question of law raised. Respondent No.1 will be at complete liberty to raise all defences of fact and law, as may be available, on merits.

55. The Appeal stands allowed in the above terms. No order as to costs.

.....J.
[AHSANUDDIN AMANULLAH]

.....J.
[PRASHANT KUMAR MISHRA]

NEW DELHI
JULY 14, 2025