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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 467 OF 2012

Anand Singh

.. Appellant

Versus

The State of Maharashtra
At the instance of Senior Inspector
of Police, Panvel City Police Station
vide their F.I.R. No.I-489 of 2010. .. Respondent

WITH
CRIMINAL APPEAL NO. 669 OF 2015

.. Appellant
(Orig. Complainant)

Versus

1. Anand Rahul Singh

2. The State of Maharashtra
At the instance of Senior Inspector
of Police, Panvel City Police Station
vide their F.I.R. No.I-489 of 2010. .. Respondents

WITH
CRIMINAL APPLICATION NO. 1508 OF 2015

WITH
CRIMINAL APPLICATION NO. 1236 OF 2015
IN
CRIMINAL APPEAL NO. 669 OF 2015

Anand Rahul Singh .. Applicant

Versus

The State of Maharashtra .. Respondent

.....

- Ms. Akshata Desai i/by Mr. Nitin Sejpal, Advocate for the Appellant in Appeal No.467 of 2012
- Mr. Mihir Joshi, Appointed Advocate for Appellant in Appeal No.669 of 2015
- Ms. P.P. Shinde, APP for the Respondent - State

.....

CORAM : SMT. SADHANA S. JADHAV & MILIND N. JADHAV, JJ.

RESERVED ON : MAY 05, 2022.
PRONOUNCED ON : JUNE 10, 2022.

JUDGMENT (PER : MILIND N. JADHAV, J.)

1. Criminal Appeal No.467 of 2022 is filed by the Appellant to challenge the impugned judgment dated 04.04.2012 passed by the learned Sessions Judge, Raigad at Alibag in Sessions Case No.8 of 2011 convicting the Appellant for the following offences:

(i) Under section 328 of the Indian Penal Code, 1860 ("**IPC**"), the Appellant was sentenced to rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default of payment of fine to suffer rigorous imprisonment for six months;

(ii) under section 382 IPC the Appellant was sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default of payment of fine to suffer rigorous important for six months;

(iii) punishable under section 417 IPC the Appellant was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default of payment of fine to suffer rigorous imprisonment for one month;

(iv) punishable under section 448 IPC the Appellant was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default of payment of fine to suffer rigorous imprisonment for one month;

(v) punishable under section 506 IPC the Appellant was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default of payment of fine to suffer rigorous imprisonment for one month.

2. Criminal Appeal No.669 of 2015 is filed by the victim / original complainant for the following relief:-

> "b) That this Hon'ble Court may be pleased to suitably enhance the sentence of accused passed by Judgment and Order dated 04/04/2012 passed by the learned Additional Sessions Judge, Alibag in Sessions Case No.8 of 2011 and kindly may be given the maximum punishment to the Respondent No.1 in all the charges leveled against him."

3. By this common judgment, both the Appeals are disposed of. For the sake of convenience the parties shall be referred to as "**accused**" and "**complainant**".

4. It is seen that by the impugned judgment accused has been convicted for offences punishable under Sections 328, 382, 417, 448 and 506 IPC and has been acquitted by the Trial court for offences committed under sections 504, 509, 647 and 471 IPC. Though the only relief prayed for in the appeal filed by the complainant is for seeking enhancement of the sentence awarded to the accused, the pleadings also impugn the acquittal of the accused for the offences under sections 504, 509, 647 and 471 IPC. In short, the question that arises for consideration in the appeal filed by the complainant before this Court is whether this Court can consider the plea in view of the provisions of section 372 Cr.P.C.

4.1. Section 372 Cr.P.C. reads thus:-

> "**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.]"

4.2. It is seen that under the provisions of section 377, power is given to the State Government to prefer an appeal for enhancement of sentence. However correspondingly no such power is given to the victim / complainant to file an appeal seeking enhancement of sentence. Hence the question would be the maintainability of the appeal filed by the victim / complainant to be decided.

5. Before we advert to the legal submissions, it will be apposite to refer to such of the relevant facts which are necessary to adjudicate both the appeals filed by the parties.

6. The case of the prosecution is as under:-

(i) that on 03.10.2010, father of the complainant a resident of Gaziyabad (Uttar Pradesh) published advertisement for search of bride-groom in the 'Times of India'; served as an employee in a multinational company and stayed in a rented premises at New Panvel, Taluka Panvel, District Raigad;

(ii) that the accused responded to the advent as a potential bridegroom;

(iii) that the father of complainant shared her mobile phone number with the accused to facilitate a meeting of both of them;

(iv) that the accused called the complainant and informed her that his father served in the air-force at Pune and had died in a plane crash; that his residence was at Rajani Villa E-63, M.B. Extension Badarpur, Delhi; that he was a garment exporter and that he had sent his bio-data via email to her;

(v) that on 07.10.2010, the accused arrived at Mumbai and met the complainant in Sahara Hotel and gave details of his family history as residing in Lajpat Nagar, Delhi and spent the entire day chatting with the complainant; that on the next day, both visited the Siddhivinyak and Gavdevi temples in Mumbai; thereafter they visited Shirdi and on 12.10.2010 celebrated the birthday of the accused.

(vi) that on 15.10.2010 the accused called the complainant informing her about his arrival from Delhi by plane alongwith his mother and brother's wife and told her to personally come and meet them in Hotel Celebration, Vashi and insisted that she should wear gold ornaments to impress them. The complainant acceded to the request of the accused, put on gold ornaments and went to meet them, however the accused informed her that they were tired and therefore sleeping in their room and did not allow the meeting to take place; that there after the accused asked the complainant to hand over to him

her gold ornaments as her jewellary was old and he wanted to purchase a new diamond set for her. The complainant refused to hand over the gold ornaments, hence to win her confidence the accused took her to a nearby jewelry shop and advised her to select a diamond set of her choice. At that time when they were at the jewelry shop the accused suddenly left the shop on the pretext of buying medicine for his mother and did not return throughout the day. The complainant waited for him and called him on his phone but there was no reply, hence the complainant returned back to her house at Panvel. However upon her arrival, when the complainant checked her purse she found that her credit card, debit card, pan card and driving license were missing. The complainant therefore informed the bank authorities to cancel her cards so as to stop any possible misuse of her credit and debit cards. She also informed the accused about the missing articles from her purse; the accused after some time informed her on phone that the missing articles were with him and that he shall send them back to her by courier; that after some time the accused informed her that he was sending the missing articles to her after returning a colour xerox of the same; this was followed by an altercation between the two;

(vii) that thereafter on 23.10.2010 the accused arrived in Mumbai and attempted to meet the complainant to tender his apology;

he made several phone calls to the complainant and called her to meet him in Hotel Shubham; between 23.10.2010 and 27.10.2010 both of them met each other and also had dinner on one occasion; on 28.10.2010 the accused called the complainant to Hall Mark Honda City Car Showroom, showed her a number of cars and asked her to select a car for them to keep after marriage; that immediately on the next date the accused took the complainant to see several flats in highrise towers for them to stay in after marriage; that both were tired and therefore returned back to Panvel and when the accused expressed his desire to have a cup of tea at her house; the complainant reluctantly took the accused to her house;

(viii) that at that time the accused convinced the complainant that since both of them were tired they should consume a tablet i.e. pain killer to feel better and administered a tablet to her; though initially the complainant was reluctant to take the tablet, ultimately, because of the force of the request by the accused she consumed it. On 30.10.2010 i.e. the following day, the complainant regained consciousness and saw the accused in her house but she again became unconscious. The accused woke up the complainant and subsequently expressed his desire to meet her son, hence the accused took the complainant to the railway station and boarded the train Punjab Mail from Mumbai to reach Agra. Throughout the entire journey the

complainant was sleeping and feeling giddy; they also changed their train and early in the morning of 01.11.2010, they reached Agra Cantonment Railway Station; that outside the station the accused made the complainant sit in an auto rickshaw and left; the complainant somehow reached the house of Shambunath Gupta her maternal uncle, and informed him about what happened; thereafter the complainant attempted to contact and call the accused on his mother's phone number and in the afternoon on that date the accused answered her phone and informed her that after she had become unconscious at Panvel the accused had taken the key of her cupboard from her purse in order to remove all the gold and silver ornaments, passports of her and her son, bank papers and national savings certificates contained in the cupboard; she was also informed by the accused that he had taken obscene photographs of the complainant alongwith an obscene video recording and the complainant was ultimately threatened with abuse, defamation, maligning her image and dire consequences if she approached the police;

(ix) On 02.11.2010, the complainant proceeded to visit her parents at Gaziyabad and narrated the entire sequence of events to them; she also spoke to the accused on phone and both of them had a verbal altercation; on 03.11.2010, she returned back to Panvel and on conducting a search of her house found that her gold and silver

ornaments, national saving certificates, two passports and bank papers were missing; the value of the missing goods at the time of the incident was approximately Rs. 11,25,000/-;

(x) On 10.11.2010, the accused once again called the complainant informing her that he intended to return back to her articles, photographs and passports that he had taken and told her that he had booked a Honda City Car and had given a cheque for the same; on 11.11.2010, the accused once again made a phone call to the complainant and informed her that she should meet him in Garden Hotel Panvel (Room No. 116) where he intended to return back her ornaments; the complainant went to meet him but found his behavior to be suspicious; the accused became aggressive, arrogant and violent with the complainant; hence the complainant went into the bathroom and called her friend one Mr. Sharma to help her; Mr. Sharma alongwith the police arrived at the hotel and took the accused in custody; on search of the goods of the accused, one gold chain and national savings certificate etc. were seized from his possession;

(xi) C.R. No I-489 of 2010 was registered by the complainant in Panvel City Police Station for offences punishable under Sections 328, 417, 420, 448, 504, 506, 509, 467 and 471 IPC.

(xii) after registration of the crime, seizure panchanama of the

seized articles was prepared in the presence of panchas; the accused was produced before the Judicial Magistrate First Class, Panvel; investigation was carried out and it was revealed that the accused had pledged the gold and silver ornaments to one goldsmith named Akhtarali Abdul Rauf Mandal who had melted the gold and silver ornaments into lagads which were seized; further investigation revealed that the accused had also impersonated himself as Niraj to a landlord in Govindpuri, New Delhi; assistance was taken from the officials of Govindpuri Police Station; statements of witnesses i.e. Managers of Hotel Garden and Hotel Shubham were recorded; the Investigating Officer seized a spy pen camera, digital camera, memory card etc.; the material evidence was downloaded in the presence of panchas and panchanama was prepared; after completion of investigation chargesheet was filed in the court of the Judicial Magistrate First Class, Panvel;

(xiii) since the case was exclusively triable by the Court of Sessions as the offence alleged was under Section 328 IPC, the Magistrate Panvel committed the case to the Court of Sessions Judge, Raigad - Alibag; the charge was framed on 11.04.2011 against the accused for the offences punishable under Sections 328, 382, 417, 448, 504, 506, 509, 467 and 471 IPC; the contents of charge were read over to the accused and explained to him in vernacular language;

the accused pleaded not guilty and claimed to be tried; his defence being that of total denial and false implication; that according to the accused the complainant in collusion with her ex-husband Kaushal Sharma planned to trap and deceive the accused; that the complainant herself in the first instance contacted the accused, visited him and meet him at several hotels, spent a lot of time with him to dupe him.

7. To substantiate the case of the prosecution and bring home the guilt of the accused the prosecution examined in all total 11 witnesses and tendered documentary evidence. The brief gist of the witnessed examined by the prosecution is as follows:

Sr.No.	Name	Description of Witness
PW 1	Rajesh Bharat Chavan	Employee of Hall Mark Honda City Car, Showroom at Nerul.
PW 2	[redacted]	Complainant.
PW 3	Rajkumar Munshiram Middha	Landlord who allotted to the accused representing himself as Niraj with his family.
PW 4	Akhtarali Abdul Rauf Mandal	Goldsmith.
PW 5	Ronald Ignetious Farnandes	Manager of Hotel Garden.
PW 6	Sanjay Chandrakant Kadam	Panch witness on seizure of electronic articles spy pen camera, digital camera, memory card so also saw the demonstration in the laptop, ultimately on C.D.
PW 7	Narendra Vasant Purulekar	Panch witness on seizure of the documents like National Savings

		Certificates etc. in the Hotel Garden, before the concern Manager, in room No. 116 from the person of the accused and bag, in his custody.
PW 8	Rakeshkumar Pal	Panch witness of disclosure memorandum and discovery panchanama under Section 27 of the Indian Evidence Act, as to gold and silver lagad (melted from gold and silver ornaments) converted by PW-4.
PW 9	Dr. Swati Bharat Naik	Medical Officer, expert witness gave an opinion of sedative effect of the tablets.
PW 10	Rajesh Gangadhar Shetty	Manager, Hotel Shubham.
PW 11	Girish Shripat Gode	Police Inspector.

8. As seen the entire case of the prosecution is based upon the evidence of the complainant - PW-2. The entire sequence of events beginning from the meeting of the complainant with the accused is deposed by PW-2. To round of the completeness of the sequence of events is the incident of the accused booking the Honda City Car in the showroom at Neral and gave an advance booking cheque for the same in the presence of the complainant. The copy of the cheque (Exhibit '21') has been retrieved. The employee of the said car showroom Rajesh Bharat Chavan as PW-1 has deposed about accepting the cheque from the accused for the entire amount of the car; PW-1 had issued a receipt to the accused as the sales executive as also the sales

contract and obtained the signature of the accused on the counter part of the receipt; however on encashment of the cheque by the car dealer, the cheque came to be dishonored and thereafter the accused was not traceable or contactable on his mobile phone.

9. The entire sequence of events alongwith the deposition of PW-2 clearly shows that the accused attempted to win the confidence of the complainant during his meeting with the probable intention of deceit which is revealed by his acts of stealing the contents of the purse and subsequently the articles from her cupboard at Panvel. Further evidence of the complainant - PW-2 reveals that the *modus operandi* used by the accused to convince her to remove her gold ornaments in hotel Celebration as they did not suit her and look old also proves the intention and motive of the accused; thereafter the demeanor of the accused in taking the complainant to the jeweler for selecting a diamond set and disappearing from there and not meeting the complainant again on that date, clearly establishes the motive of the accused since he vanished from the jeweler's shop on the pretext of buying medicine for his mother. He had taken alongwith him the debit cards, credit card, pan card and driving license from the purse of the complainant without her knowledge and only disclosed it to her after she established contact with him on the next day. Thereafter the third and most important incident of winning the confidence of the

complainant, entering her house and drugging her, and thereafter stealing the entirety of her gold and silver ornaments, passports etc. without her knowledge, keeping her drugged at all times for the next three days until they reached Agra and thereafter leaving her on her own in the auto rickshaw and once again doing the vanishing act alongwith her stolen articles clearly shows the indictment of the accused.

10. It is seen that in the present case the Appellant / accused has completed the sentence awarded by the impugned judgment and stand released from prison on 21.07.2016. The Superintendent, Kolhapur Central Prison has furnished a report dated 16.03.2022 to this Court in respect of the above. In view thereof the Criminal Appeal filed by the Appellant being Cr. Appeal No. 467 of 2012 has become infructuous.

11. The only Appeal which now remains for consideration is Criminal Appeal No. 669 of 2015 filed by the complainant. The complainant is aggrieved and has filed this Appeal on the following grounds:-

(i) That the Appellant / accused has committed a heinous crime by impersonation, sedating the complainant and thereafter stealing her entire jewellary, gold, silver and diamonds as also her important

documents like passport, national saving certificates, bank passbook, cheque books, fixed deposit receipts and other documents;

(ii) that the Appellant accused proposed to marry the complainant by misrepresenting and hiding the fact that he was previously married and had two children;

(iii) that he used a false prescription of a medical doctor to buy the sedative medicines;

(iv) that the medical evidence produced on record through PW 9 Dr. Swati Bharat Naik proves that the sedatives bought and administered by the Appellant / accused would not be available without a doctor's prescription and if administered could make a person feel drowsy and unconscious;

(v) that the Appellant / accused impersonated himself by posing as Anand Singh and Neeraj Gupta at different times and different places; that he obtained forged and fake driving licenses; that he had sexual relationship with other women which is proved on recovery of the video clips from the spy pen camera and digital camera by the I.O. leading to believe that the Appellant / accused is a habitual offender;

(vi) that the offences committed by the Appellant / accused required him to be convicted for a longer sentence than what has been awarded by the learned trial court.

11. As alluded to herein above, in order to consider the Appeal filed by the complainant this Court is at the outset faced with the question of maintainability of the present Appeal in view of the statutory provisions of section 372 of Cr. P.C. Section 372 Cr.P.C. is contained in Chapter XXIX dealing with Appeals and reads thus:-

> "**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.]"

12. In the present case, the sentences awarded to the Appellant / accused by the impugned judgment and the maximum sentence the trial court could have awarded under the relevant provisions are summarized in the following table:-

Sr. No.	Sentence awarded under Section	Sentence awarded by Trial Court	Maximum sentence
1	328	7 Years	10 Years
2	382	7 Years	10 Years
3	417	6 Months	1 Year
4	448	6 Months	1 Year
5	506	6 Months	2 Years

13. It is seen that the complainant in the present appeal is aggrieved on two counts :- (i) that the Appellant / accused has been awarded a lesser sentence than the maximum punishment that could

have been awarded under the relevant provisions stated herein above and (ii) equally the complainant is also aggrieved about the trial court acquitting the appellant / accused from the offences punishable under sections 504, 509, 467 and 471 IPC.

14. In the present case the complainant has filed Appeal 669 of 2015 on 27.04.2015. By order dated 22.11.2021 this court appointed Mr. Mihir Joshi as Advocate to espouse the cause of the accused.

15. Order dated 28.08.2020 passed by the Supreme Court in Criminal Appeal No. 555 of 2020 arising out of SLP (Cri) No. 3928 of 2020 in the case of **Parvinder Kansal Vs. The State of NCT of Delhi & Anr.** (Non-Reportable order) is placed before us. In this case the facts are that Criminal Appeal No. 1284 of 2019 was filed by the Appellant aggrieved by the order dated 27.11.2019 passed by the High Court of Delhi. By the aforesaid order, the High Court has dismissed the Appeal filed by the Appellant seeking enhancement of sentence imposed in Sessions Case No. 742 of 2007 vide order dated 17.08.2019. In this case the second Respondent came to be convicted for the offenses punishable under sections 364A, 302 and 201 IPC and by a subsequent order dated 17.08.2019 he was sentenced for offence

under sections 302, 364A and 201 IPC with imprisonment for life in respect of the first two offenses and rigorous imprisonment for seven years in respect of the third offence and in default also subjected to fine. The complainant therein being the father of the deceased victim filed the Appeal challenging the order of sentence dated 17.08.2019 passed by the trial court and sought enhancement of sentence to death penalty. In the appeal filed before the High Court under section 372 of the Cr.P.C., the complainant pleaded that the sentence of life imprisonment imposed on the accused was inadequate and needed to be enhanced to death penalty. The High Court of Delhi dismissed the Appeal as not maintainable under the provisions of section 372 of the Cr.P.C. When the matter travelled to the Supreme court it was held that under the provisions of section 372 it was open for the State Government to prefer Appeal for inadequate sentence under section 377 of the Cr.P.C. but there is no provision for appeal available to the victim under section 372 of the Cr.P.C. on the ground of inadequate sentence. Paragraph No. 9 of the aforesaid decision is relevant and reads thus:-

> "9. Chapter XXIX of the Code of Criminal Procedure, 1973 deals with 'Appeals' and Section 372 makes it clear that no appeal to lie unless otherwise provided by the Code or any other law for the time being in force. It is not in dispute that in the instant case appellant has preferred appeal only under Section 372, Cr.P.C. The proviso is inserted to Section 372, Cr.PC by Act 5 of 2009. Section 372 and the proviso which is subsequently inserted read as under:
>
> > "**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.]"

A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377, Cr.P.C gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.P.C but similarly no appeal can be maintained by victim under Section 372, Cr.P.C on the ground of inadequate sentence. It is fairly well settled that the remedy of appeal is creature of the Statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further we are of the view that the High Court while referring to the judgment of this Court in the case of **National Commission for Women v. State of Delhi & Anr.** (2010) 12 SCC 599 has rightly relied on the same and dismissed the appeal, as not maintainable.

16. In the present case it seen that Criminal Appeal 669 of 2015 has been filed by the complainant / victim for seeking enhancement of the sentence under the provisions of the proviso to section 372 of the Cr.P.C.

17. We have heard Mr. Joshi, learned Advocate appointed for the Appellant in Criminal Appeal No. 669 of 2015 and also the learned APP appearing for the State. Submissions made by the learned counsel are on pleaded lines.

18. Mr. Joshi in support of the Appellant's case in Criminal Appeal No. 661 of 2015 has made the following submissions:-

(i) that though the reliefs sought by the Appellant in the present Appeal only seek enhancement of the sentence awarded to the accused however the grounds stated in the Memorandum of Appeal clearly impugn the acquittal of the accused and the Appellant is within her right to approach this Court for seeking enhancement of the sentence awarded by the learned trial court;

(ii) that in light of the observation of the Supreme Court in the matter of **Mallikarjun Kodagali v. State of Karnataka** reported in **(2019) 2 SCC 752,** it is clear that the proviso to section 372 is in the nature of a social welfare legislation as the same seeks to empower a victim of the crime to challenge an adverse order of the trial court; that in light of the aforesaid it is important that the proviso to Section 372 Cr.P.C. be given a meaning that is realistic, liberal, progressive and beneficial to the victim of an offence; that it would be pertinent to note that the Hon'ble Supreme Court in ***Eera v. State (NCT of Delhi), (2017) 15 SCC 133,*** has laid the marker for how social welfare legislations and provisions are to be interpreted in para 64 of the said judgment which reads thus:-

> "64. ... While interpreting a social welfare or beneficent legislation one has to be guided by the "colour", "content" and the "context of statutes" and if it involves human rights, the conceptions of Procrustean justice and Lilliputian hollowness approach should be abandoned. The Judge has to

> release himself from the chains of strict linguistic interpretation and pave the path that serves the soul of the legislative intention and in that event, he becomes a real creative constructionist Judge."

(iii) that the Supreme Court in the mater of **Mallikarjun Kodagali (supra)** had an opportunity to relook at the proviso to section 372; that in the said matter after recognizing the plight of the victims of crime, the Hon'ble Supreme Court also recognized the need to provide meaningful rights to the victims of an offence and the need to consider giving a hearing to the victim while awarding the sentence to a convict; that a victim impact statement or a victim impact assessment must be given due recognition so that an appropriate punishment is awarded to the convict; that the Supreme Court also recognized that the proviso to Section 372 Cr.P.C. must be given a meaning that is realistic, liberal, progressive and beneficial to the victim of an offence. It is in light of these findings that the Hon'ble Supreme Court in **Mallikarjun Kodagali (supra)** held as under:-

> "d. That the decision of the Supreme Court was not directed towards the proviso to Section 372 Cr.P.C. It is only in passing that it was observed that on the facts of the case, the proviso to Section 372 Cr.P.C. might not be applicable since it came into the statute book after the incident;
>
> e. It recognized the need to interpret the proviso to Section 372 Cr.P.C. so that it is given a meaning that is realistic, liberal, progressive and beneficial to the victim of an offence;
>
> f. Overturned the decision *Satya Pal Singh v. State of M.P. (Supra)* to the extent that it required obtaining the leave of the High Court as required under sub-section (3) of Section 378 Cr.P.C.

(iv) that the Supreme Court in the matter of **Satya Pal Singh Vs. State of M.P.** reported in **(2015) 15 SCC 613** once again examined

the proviso of Section 372, albeit from a different angle as the issue before the Hon'ble Supreme Court was an appeal preferred against acquittal and by a legal heir of the victim. In the said case the Hon'ble Supreme Court held that the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2(wa) Cr.P.C., under the proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-section (3) of Section 378 Cr.P.C.;

(v) that soon after Section 372 was amended to include the aforesaid proviso, the Supreme Court in **National Commission for Women vs. State of Delhi & Ors., (2010) 12 SCC 599** while dealing with an appeal filed by National Commission for Women against an order of the Delhi High Court whereby the accused was acquitted under Section 306 of IPC, while maintaining his conviction under Section 376 of IPC had reduced the accused's sentence to time served: It is pertinent to note that the Appellant therein had approached the Supreme Court under Article 136, and the crux of the decision in the said case is on the maintainability of a Special Leave Petition under Article 136 by a third party. Though it would be opportune to note that while deciding the said issue the Hon'ble Supreme Court in paragraph no. 8 of the said judgment observes as follows:

> "8. *Chapter XXIX of the Code of Criminal Procedure deals with "Appeal(s)" . Section 372 specifically provides that no appeal shall lie from a judgment or order of a criminal court except as provided by the Code or by any other law which authorises an appeal. The proviso inserted by Section 372 (Act 5 of 2009) with effect from 31.12.2009, gives a limited right to the victim to file an appeal in the High Court against any order of a criminal court acquitting the accused or convicting him for a lesser offence or the imposition of inadequate compensation. The proviso may not thus be applicable as it came in the year 2009 (long after the present incident) and, in any case, would confer a right only on a victim and* ***also does not envisage an appeal against an inadequate sentence. An appeal would thus be maintainable only under Section 377 to the High Court as it is effectively challenging the quantum of sentence."***

(vi) that the Code of Criminal Procedure (Amendment) Bill, 2006

The code of Criminal Procedure (Amendment) Bill, 2006 was introduced in the Rajya Sabha on 23.08.2006. Clause 38 of the said bill read as follows:-

> "38. In Section 372 of the principal Act, the following proviso shall be inserted, namely:-
> "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."

It is pertinent to note that the said clause deviates from the recommendation of the Report of the Justice Malimath Committee to the extent that appeal from an order imposing inadequate sentence is omitted from the said clause. But, interestingly, the notes on clause of the said bill states the following:

> "Clause 38 amends section 372 of the Code relating to appeals from judgment or order of a Criminal Court. It gives to the victim the right to prefer an appeal against **any adverse order** passed by the trial court.

(vii) that thus, the Supreme Court without adverting to the purpose, object, and context of the proviso to Section 372 and adopted a strictly literal rule of interpretation to come to the conclusion that until and unless the statute expressly provides for it no appeal against an order of inadequate sentence would lie;

(viii) that the Supreme Court in the matter of **Eera v. State (NCT of Delhi) (supra)** having painstakingly traced the history of interpretation of statute in Anglo-Saxon Jurisprudence concluded that the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro provato commodo,* and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico,* as was so succinctly laid down in *Heydon case.* Paragraph no. 127 of **Eera v. State (NCT of Delhi) (Supra)** reads as follows:

> "127. It is thus clear on a reading of English, US, Australian and our own Supreme Court judgments that the "Lakshaman Rekha" has in fact been extended to move away from the strictly literal rule of interpretation back to the rule of the old English case of Heydon, where the Court must have recourse to the purpose, object, text and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle. It started out by the rule as stated in 1584 in Heydon case, which was then waylaid by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid-1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in Heydon case."

(ix) that in the light of the aforesaid, any interpretation of the proviso to section 372 of Cr.P.C. should necessitate the consideration

of the following:

g. What was the law before the making of the Act (amending act in the present case)?

h. What was the mischief and defeat for which the unamended act did not provide?

i. What remedy was sought to be provided by the Parliament cure the said mischief?

j. And whether an interpretation of the law effectively curbs the mischief or not?

(x) that in the context of the proviso to section 372 of Cr.P.C. the law prior to the amendment did not allow victims of a crime any say in the criminal justice system; that by way of the proviso the victims of a crime were sought to be given a right to prefer an Appeal against any order passed by the Court, the mischief sought to be cured is set out in the objects and reasons of the amendment bill i.e., at present, the victims are the worst sufferers in a crime and they don't have much role in the court proceedings; that they need to be given certain rights and compensation, so that there is no distortion of the criminal justice system; that the intent of the legislature in introducing the proviso can be deciphered from the notes on clauses of the bill and the report of the Standing Committee, wherein the intent of the legislature to grant the victims the right to prefer an appeal against

any adverse order passed by the court is abundantly clear;

(xi) that it is submitted that if the intent of the legislature as borne out by the notes on clauses of the bill and the report of the Standing Committee was to grant the victims the right to prefer an appeal against any adverse order passed by the court and owing the nature of the statute itself, it would be incumbent upon this Hon'ble Court to take that intent of the legislature to its logical conclusion and to interpret the proviso to provide the remedy of appeal to a victim even against an order of inadequate sentence, as the said order is part of the mischief that is sought to curbed by the proviso;

(xii) that if this Hon'ble Court comes to the conclusion that in the present case strict linguistic interpretation needs to be departed from, then the scope of this Hon'ble Court to interpret the proviso to section 372 would include a victim's right to appeal from an order of inadequate sentence would be governed by the following authorities of the Hon'ble Supreme Court:

(a) In **CIT V/s B.N. Bhattacharjee, (1979) 4 SCC 121,** the Hon'ble Supreme Court read into section 245-M(7) of the Income Tax Act the right of the Department to file an appeal de novo on receipt of notice of the revival of the assessee's appeal, while holding thus the Hon'ble Supreme Court states the following:

"47. We are mindful that a strictly grammatical construction is departed from in this process and a mildly legislative flavour is imparted by this interpretation. The judicial process does not stand helpless with folded hands but engineers its way to discern meaning when a new construction with a view to rationalisation is needed. Lord Denning, in his recent book "The Discipline of Law" p. 12 made a seminal observation on "Ironing out the creases" by quoting a passage from Seaford Court Estates Ltd. v. Asher (1949) 2 K.B. 481:

Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which give rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydon's case, and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden.... Put into homely metaphor it is this A judge should ask himself the question: If the makers of the Act bad themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases."

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58. The soul of estoppel is equity, not facility for inequity. Nor is estoppel against statute permissible because public policy animating a statutory provision may then become the casualty."

l. In V.C. Rangadurai v. D. Gopalan, (1979) 1 SCC 308 while dealing with the interpretation of section 35(3) of the Advocates Act, 1961, the Supreme Court recognised that purposive interpretation of a statute may take on a colour of legislation, but such an act when necessary was within the Court's purview:

"8. Speaking frankly, section 35(3) has a mechanistic texture, a set of punitive pigeon holes, but we may note that words grow in content with time and circumstance, that phrases are flexible in semantics, that the printed text is a set of vessels into which the court may pour appropriate judicial meaning. That statute is sick which is allergic to change in sense which the times demand and the text does not countermand. That court is superficial which stops with the cognitive and declines the creative function of construction. So, we take the view that "quarrying" more meaning is

permissible out of section 35(3) and the appeal provisions, in the brooding background of social justice sanctified by Article 38, and of free legal aid enshrined by Article 39-A of the Constitution.

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11. ...Judicial "Legisputation" to borrow a telling phrase of J. Cohen, is not legislation but application of a given legislation to new or unforeseen needs and situations broadly falling within the statutory provision. In that sense, "interpretation is inescapably a kind of legislation". This is not legislation stricto sensu but application, and is within the court's province."

(b) that while reading into the proviso the victim's right to appeal from an order of inadequate sentence, this Court should hold that such a right is subsumed under one of the other heads under which a victim's right to appeal is recognized, namely :

m. Order acquitting the accused;
n. Order convicting for a lesser offence;
o. Order imposing inadequate compensation.

(c) that in the case of **Parvinder Kansal (supra)** it was contended that in view of proviso to section 372 Cr.P.C. which gives right to prefer appeal to the victim, when the accused is convicted for lesser offence, there is no reason to restrict the scope of appeal only for a lesser offence but not for lesser sentence; that the said interpretation was repelled by the Hon'ble Supreme Court by holding that the remedy of appeal being a creatures of the Statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force, no appeal would lie. Even if for a moment,

the strictly literal rule of interpretation as adopted by their lordships in **Parvinder Kansal (supra)** is departed from, it would be difficult to read the right to appeal against an inadequate sentence into the right to appeal for a lesser offence as the said adverse orders qua the victim find their genesis different aspects and stages of a criminal trial. While an order of lesser offence necessarily implies that the trial court has come to the conclusion that all the elements or ingredients of the charged offence are not made out and hence the accused could not be held guilty of the same, but ingredients of a lesser offence are made out; an adverse order of inadequate sentence would be passed only after the accused has been held guilty of the charged offence and would be passed at the stage of section 235(2) and 248(2) of Cr.P.C.

19. Learned APP appearing on behalf of the State has made the following submissions: -

(i) Whether under the provisions of Section 372 of Cr.P.C. it would be open for the victim to seek enhancement of the punishment imposed by the Trial court?

(ii) that as a fundamental proposition of law, whether the "right of appeal" is purely and simply "a statutory right" and is not at all a common law right, natural right or a constitutional right; that if

such right is provided by a statute, then it may or may not be made conditional;

(iii) that the unamended Section 372 of the Cr.P.C. did not provide any right to file an appeal to the victim and it was only under Section 378(4) of the Cr.P.C. that the complainant had the right to file the appeal with the leave of the Hon'ble High Court;

(iv) that though in the year 2003, the Malimath Committee submitted its report on reforms of the Criminal Justice System, 2003 wherein it was recommended that the victim should have certain rights, the parliament in its wisdom carried out an amendment to the relevant provisions of the Cr.P.C. and added a proviso to Section 372 conferring right to the victim to file an appeal only in three situations namely in the case of an order acquitting the accused, order convicting for a lesser offence and order imposing inadequate compensation.

20. Though we are conscious of the fact that the remedy of Appeal is the creation of statute under the provisions of the Cr.P.C. and as interpreted by the Supreme Court that unless the same is provided no Appeal would lie. However in the same breath though under Article 141 of the Constitution of India we are completely bound by the decision of the Supreme Court, we would like to however place our considered opinion in this respect in the present

case. We have perused the report presented to the Parliament of India / Rajya Sabha Secretariat and the Lok Sabha Secretariat, this report is the 128th report prepared by the Parliamentary Standing Committee on home affairs to suggest amendment to the Code of Criminal Procedure and which was tabled before both the houses of the Parliament on 16.08.2007. In the said report Clause VII is relevant and is reproduced herein under:-

> "7. VICTIMOLOGY :
>
> (i) Victim may be permitted to engage an advocate in a case (Clause 3)
>
> (ii) A comprehensive scheme to be prepared for compensating the victim or his dependents who have suffered loss or injury, as a result of crime and who require rehabilitation (Clause 37).
>
> (iii) Victim shall have a right to prefer an appeal against any adverse order passed by the court (Clause 38)."

21. As seen the proposal tabelled before both the houses of the Parliament was with respect to the victim having a right to prefer an appeal against any adverse order passed by the Court. The vista of this proposal was very wide in as much as enabling the victim to file an Appeal against any adverse order and not pertaining the right of the victim / complainant as being noticed under the proviso to section 372 of the Cr.P.C. We are also equally conscious of the fact that the Supreme Court in the case of **Bachan Singh Vs. State of Punjab, (1979) 4 SCC 754** while interpreting the powers of the High Court under

section 397 of the Cr.P.C. has in paragraph 11 held as under:-

> "11. There is another reason for this view. It was permissible for the High Court under Section 397 Cr.P.C. to call for and examine the record of the proceeding before the trial court for the purpose of satisfying itself as to the correctness, legality or "propriety" of any finding, "sentence" or order, recorded or passed by that inferior court. The High Court's power of revision in the case of any proceeding the record of which has been called for by it or which otherwise comes to its knowledge, has been stated in Section 401 Cr.P.C. to which reference has been made above. That includes the power conferred on a Court of Appeal under Section 386 to enhance or reduce the sentence. So when the record of the case was before the High Court in connection with the two appeals and the revision petition referred to above, there was nothing to prevent the High Court from invoking its powers under Section 397 read with Section 401 Cr.P.C. and to make an order for the enhancement of the sentence."

22. In addition to the above we have seen that the Bombay High Court Appellate Side Rules 1960 and more specially Rule 2(II)(a) which pertains to Appeal against conviction reads as under:-

> "(a) Appeals against convictions [except in which the sentence of death or imprisonment for life has been passed] appeals against acquittals wherein the offence with which the accused was charged is one punishable on conviction with a sentence of fine only or with a sentence of imprisonment not exceeding ten years] or with such imprisonment and fine, and appeals under section 377 of the Code of Criminal Procedure, revision applications and Court notices for enhancement for offences punishable on conviction with sentence of fine only or with sentence of imprisonment not exceeding [ten years] or with such imprisonment and fine."
>
> Thus, a revision application for enhancement of sentence at the behest of the victim would be maintainable and the same is recognized by the Bombay High Court Appellate Side Rules, 1960."

23. From the above, it is seen that undoubtedly a revision application for enhancement of sentence at the instance of the victim / complainant would be maintainable. The Appellant has also in the alternative in her written submissions prayed for converting this

appeal into an application under Section 401 of the Cr.P.C.

24. However in view of the specific observations of the Supreme Court in the case of **Parvinder Kansal (supra)** and **Mallikarjun Kodagali (supra),** it is seen that the right to appeal against the sentence will not be available to the Appellant in view of the specific provisions of the statute.

25. Hence we are constrained hold that Criminal Appeal No. 669 of 2015 shall stands dismissed with the above observations.

26. In view of dismissal of the above Appeals, pending Interim Application, if any, does not survive and is accordingly disposed of.

27. Mr. Mihir Joshi, Advocate appointed to espouse the cause of the Appellant in Criminal Appeal No. 669 of 2015 is entitled for professional fees of Rs.15,000/- to be paid by the Legal Aid Services Authority / Committee as per rules.

[MILIND N. JADHAV, J.] **[SMT. SADHANA S. JADHAV, J.]**