

**Court No. - 12**

**Case :-** APPLICATION U/S 378 No. - 142 of 2017

**Applicant :-** Smt. Shireen

**Opposite Party :-** State Of U.P. And Ors.

**Counsel for Applicant :-** P.K. Mishra

**Counsel for Opposite Party :-** Govt. Advocate, Anil Kumar  
Singh, D.P. Dutt Tiwari

**Hon'ble Mohd. Faiz Alam Khan, J.**

1. No one is present either for the applicant or for respondents no. 2 to 6 when this case is taken up for hearing. Learned A.G.A. is however present for the State.
2. Instant appeal has been filed by the victim under Section 372 Cr.P.C. against the judgment and order dated 07.03.2013 passed by the Judicial Magistrate, Ambedkar Nagar whereby the trial Court has convicted the private respondents under Sections 323, 498-A, 506 I.P.C. and Section 3/4 D.P. Act, however, the accused persons/private respondents instead of sentencing to undergo imprisonment were given the benefit of Probation of Offenders Act, 1958 and released on probation and also against the judgment and order dated 30.09.2016 passed by the Appellate Court i.e. Additional Sessions Judge (Fast Track Court-II), Ambedkar Nagar, whereby the appeal preferred by the state against sentence was dismissed.
3. Perusal of the record would reveal that the instant appeal has been listed after a long time as it was on 04.12.2017 this appeal was last listed and vide order dated 20.11.2017 the delay, which had occurred in preferring the appeal has been condoned by a co-ordinate Bench of this Court and the appeal was directed to be listed for admission.

4. Section 372 of the Cr.P.C., under which the instant appeal has been preferred, is reproduced for ready reference 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."

5. Perusal of this Section would reveal that the same is starting with a Non-Obstante Clause declaring that no appeal shall lie from any judgment or order of a Criminal Court except as provided by this Code or by any other law for the time being in force. Thus, it is clear that the appeal could only be preferred in accordance with the scheme provided in the Cr.P.C. or provided by any other law for the time being in force. The proviso to Section 372 Cr.P.C. provides a right to the victim of an offence to prefer an appeal and it says that the victim (as defined under Section 2w (wa) of the Cr.P.C. may prefer an appeal against any judgment or order passed by the Court **acquitting the accused or convicting for a lesser offence or imposing inadequate compensation**. Thus, the appeal under Section 372 Cr.P.C. could only be filed on the happening of three situations namely

- (i) When the accused person(s) have been acquitted;
- (ii) When the accused person(s) have been convicted for a lesser offence;
- (iii) Where inadequate compensation has been imposed by the Court (s).

6. The instant appeal has been preferred by the victim against the order of the trial court as well as of the first Appellate Court and it is

evident that though the accused persons were convicted by the trial Court for the offence committed under Sections 323, 498-A, 506 I.P.C. and Section 3/4 D.P. Act, however, instead of sentencing them to undergo imprisonment the trial Court has given them benefit of Section 4 of Probation of Offenders Act, 1958 and released them on probation and the appeal preferred by the state against sentencing has also been dismissed by the appellate Court.

7. The issue as to whether a victim of the crime may prefer an appeal under section 372 Crpc against inadequacy of sentence awarded to the accused persons is now no more *res integra*. Hon'ble Supreme Court in ***National Commission For Women v. State of Delhi, (2010) 12 SCC 599*** has held as under:-

*“11. An appeal is a creature of a statute and cannot lie under any inherent power. This Court does undoubtedly grant leave to appeal under the discretionary power conferred under Article 136 of the Constitution of India at the behest of the State or an affected private individual but to permit anybody or an organisation pro bono publico to file an appeal would be a dangerous doctrine and would cause utter confusion in the criminal justice system. We are, therefore, of the opinion that the special leave petition itself was not maintainable.*

*12. In Pritam Singh v. State [AIR 1950 SC 169 : (1950) 51 Cri LJ 1270] this Court while dealing with a criminal matter (after the grant of leave under Article 136 of the Constitution) considered the scope and ambit of this article and observed: (AIR pp. 171-72, para 9)*

*“9. On a careful examination of Article 136 along with the preceding article, it seems clear that the wide discretionary power with which this Court is invested under it is to be exercised sparingly and in exceptional cases only, and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this article. By virtue of this article, we can grant special leave in civil cases, in criminal cases, in income tax cases, in cases which come up before different kinds of tribunals and in a variety of other cases. The only uniform standard which in our opinion can be laid down in the circumstances is that Court should grant special leave to appeal only in those cases where special circumstances are shown to exist. ... It is sufficient for our purpose to say that though we are not bound to follow*

*them too rigidly since the reasons, constitutional and administrative, which sometimes weighed with the Privy Council, need not weigh with us, yet some of those principles are useful as furnishing in many cases a sound basis for invoking the discretion of this Court in granting special leave. Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.”*

*13. In P.S.R. Sadhanantham v. Arunachalam [(1980) 3 SCC 141 : 1980 SCC (Cri) 649] this Court was dealing with the locus standi of a private person, in this case the victim's brother, who was neither a complainant nor a first informant in the criminal case but had filed a petition under Article 136 of the Constitution of India. This Court observed that the strictest vigilance was required to be maintained to prevent the abuse of the process of court, more particularly, in criminal matters, and ordinarily a private party other than the complainant, should not be permitted to file an appeal under Article 136, though the broad scope of the article postulated an exception in suitable cases. It was spelt out as under: (SCC p. 145, para 7)*

*“7. Specificity being essential to legality, let us see if the broad spectrum spread out of Article 136 fills the bill from the point of view of ‘procedure established by law’. In express terms, Article 136 does not confer a right of appeal on a party as such but it confers a wide discretionary power on the Supreme Court to interfere in suitable cases. The discretionary dimension is considerable but that relates to the power of the court. The question is whether it spells by implication, a fair procedure as contemplated by Article 21. In our view, it does. Article 136 is a special jurisdiction. It is residuary power; it is extraordinary in its amplitude, its limit, when it chases injustice, is the sky itself. This Court functionally fulfils itself by reaching out to injustice wherever it is and this power is largely derived in the common run of cases from Article 136. Is it merely a power in the court to be exercised in any manner it fancies? Is there no procedural limitation in the manner of exercise and the occasion for exercise? Is there no duty to act fairly while hearing a case under Article 136, either in the matter of grant of leave or, after such grant, in the final disposal of the appeal? We have hardly any doubt that there is a procedure necessarily implicit in the power vested in the summit court. It must be remembered that Article 136 confers jurisdiction on the highest court. The Founding Fathers unarguably intended in the very terms of Article 136 that it shall be exercised by the highest judges of the land with scrupulous adherence to*

*judicial principles well established by precedents in our jurisprudence. Judicial discretion is canalised authority, not arbitrary eccentricity.”*

*14. The Court then examined the implications of completely shutting out a private party from filing a petition under Article 136 on the locus standi and observed thus: (Arunachalam case [(1980) 3 SCC 141 : 1980 SCC (Cri) 649] , SCC p. 147, para 14)*

*“14. Having said this, we must emphasise that we are living in times when many societal pollutants create new problems of unredressed grievance when the State becomes the sole repository for initiation of criminal action. Sometimes, pachydermic indifference of bureaucratic officials, at other times politicisation of higher functionaries may result in refusal to take a case to this Court under Article 136 even though the justice of the lis may well justify it. While ‘the criminal law should not be used as a weapon in personal vendettas between private individuals’, as Lord Shawcross once wrote, in the absence of an independent prosecution authority easily accessible to every citizen, a wider connotation of the expression ‘standing’ is necessary for Article 136 to further its mission.”*

*15. A reading of the aforesaid excerpts from the two judgments would reveal that while an appeal by a private individual can be entertained but it should be done sparingly and after due vigilance and particularly in a case where the remedy has been shut out for the victims due to mala fides on the part of the State functionaries or due to inability of the victims to approach the Court. In the present matter, we find that neither the State which is the complainant nor the heirs of the deceased have chosen to file a petition in the High Court. As this responsibility has been taken up by the Commission at its own volition this is clearly not permissible in the light of the aforesaid judgments.”*

8. In ***Parvinder Kansal v. State (NCT of Delhi)***, (2020) 19 SCC 496 Hon’ble Supreme Court has also held as under:-

*“8. 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 CrPC. The proviso is inserted to Section 372 CrPC 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 CrPC 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 CrPC but similarly no appeal can be maintained by victim under Section 372 CrPC 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 **National Commission for Women v. State (NCT of Delhi) [National Commission for Women v. State (NCT of Delhi), (2010) 12 SCC 599 : (2011) 1 SCC (Cri) 774]** has rightly relied on the same and dismissed the appeal, as not maintainable.”*

9. Above placed case laws makes it clear that no appeal can be maintained by the victim under Section 372 CrPC on the ground of inadequacy of sentence. Thus the appeal preferred by the victim of the crime against inadequacy of sentence is not maintainable and is **dismissed** as such.

**Order Date :- 12.7.2022**

Praveen