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In ChamberReserved

Case :- APPLICATION U/S 482 No. - 3171 of 2016
Applicant :- Anil Kumar Agarwal
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Hare Krishna Tripathi
Counsel for Opposite Party :- G.A.

Connected with

Case :- APPLICATION U/S 482 No. - 7792 of 2017
Applicant :- Usman Khan
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Sushil Shukla
Counsel for Opposite Party :- G.A.

Connected with

Case :- APPLICATION U/S 482 No. - 7793 of 2017
Applicant :- Usman Khan
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Sushil Shukla
Counsel for Opposite Party :- G.A.

Connected with

Case :- APPLICATION U/S 482 No. - 7790 of 2017
Applicant :- Usman Khan
Opposite Party :- State Of U.P. And Another
Counsel for Applicant :- Sushil Shukla
Counsel for Opposite Party :- G.A.

Connected with

Case :- APPLICATION U/S 482 No. - 7795 of 2017
Applicant :- Usman Khan
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Sushil Shukla
Counsel for Opposite Party :- G.A.

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Hon'ble Shashi Kant Gupta,J.
Hon'ble Saurabh Shyam Shamsbery,J.

(Delivered by Hon'ble Shashi Kant Gupta, J.)

1. The questions referred to this Bench for opinion are as follows:

(i) Whether against acquittal order in a criminal complaint case under Section 138 Negotiable Instruments Act, the victim, who is complainant also, may prefer appeal before the Sessions Judge taking recourse to the proviso to Section 372 Cr.P.C. or the said appeal shall lie before the High Court under the said provisions.

(ii) Whether against the same judgment and order of acquittal in a complaint case, in a situation when victim and complainant both are different persons, victim may file appeal under the proviso to Section 372 CrPC before the Sessions Judge or such appeal shall lie before the High Court ?

2. Since the learned Single Judge could not subscribe to the views expressed by the learned Single Judges of this Court in Criminal Misc. Application (Under Section 482 Cr.P.C) No. 5934 of 2012, Ashok Kumar Srivastava and others vs. State of UP and another, (decided on 30.03.2012) and Criminal Revision No. 3539 of 2015, Ved Prakash Yadav and 2 others Vs. State of UP and 2 others, (decided on 24.09.2015), referred the matter to a larger bench for resolving the conflict, the Chief Justice thereupon has referred the matter to us for our opinion.

3. Since the legal controversy raised in all the criminal Misc. Applications are similar, they are decided by a common order by treating the Criminal Misc. Application No. 3171 of 2016 (U/S 482 CrPC) Anil Kumar Agrawal Vs. State of UP as a leading case. For the purpose of deciding the matter, it would be appropriate to have a quick glance to the fact of the Criminal Misc. Application No. 3171

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of 2016 (U/s 482 Cr.P.C) Anil Kumar Agarwal Vs. State of U. P. and another. The complainant therein had filed an application under section 138 of Negotiable Instruments Act before the the court of Chief Judicial Magistrate Jhansi. The accused were acquitted by the concerned Magistrate after dismissal of the complaint.

4. Against the order of acquittal the complainant preferred an appeal, being appeal no. 145 of 2013, Anil Kumar Agrawal Vs. Braj Bhushan Lahariya and another before the Sessions Court , Jhansi under section 372 Cr.P.C. The said appeal was dismissed by the sessions court, Jhansi as not maintainable under section 372 Cr.P.C. Hence, the application under section 482 Cr.P.C. was filed with a prayer to quash the order dated 16.11.2015 passed by the Additional District and Sessions Judge, Fast Track Court, Jhansi in Criminal Appeal No. 145 of 2013 (Anil Kumar Agarwal vs. Braj Bhushan Lahariya and another) .

5. Learned counsel for the applicant Sri Sushil Shukla has submitted that the victim or the complainant has been given unfettered right of appeal in terms of proviso to Section 372 Cr.P.C to challenge the acquittal of an accused by preferring an appeal before the Court of Session if the order of acquittal is passed by the Court of Magistrate or before the High Court if order of acquittal is passed by the Court of Session and for preferring such appeal there is no need to obtain leave/special leave from such Courts after insertion of the proviso to Section 372 Cr.P.C by Act 5 of 2009 w.e.f. 31.12.2009. He further submitted that appeal against the order of acquittal would lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court irrespective of the fact whether the acquittal order is passed in a case instituted upon a complaint case

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or police report. While placing reliance upon the decision **Malikarjun Kodagali (Dead) Represented through Legal Representatives Vs. State of Karnataka and others-(2019) 2 SCC 752**, he has submitted that the victim for challenging the order of acquittal in an appeal need not to obtain leave of the Court and that his appeal has to be dealt as a regular appeal.

6. Per contra, learned Standing Counsel Mr. Syed Ali Murtaza appearing on behalf of the State has submitted that the complainant in a compliant case, who is a victim also is entitled to prefer appeal before the High Court against the order of acquittal whether it is passed by a Magistrate or Sessions Judge and appeal would lie again before the High Court even when the victim and complainant both are different persons in a case arising from the same judgment and order of acquittal in a complaint case.

7. Learned AGA in support of his contention has placed reliance upon the following decisions of the High Court as well as of the Apex Court:

- i. **Mallikarjun Kodagali (Dead) Represented Through Legal Representative Vs. State of Karnataka & others, (2019) 2 SCC 752**
- ii. **Subhas Chand Vs. State Delhi Administration, (2013) 2 SCC 17**
- iii. **M/s Tata Steel Ltd. Vs. M/s Atma Tube Products Ltd. & others, 2013 (1) ILR 719 (P&H)**
- iv. **Damodar S. Prabhu Vs. Sayed Babalal H. 2010 CrLJ 2860,**
- v. **Dharmveer Singh Tomar Vs. Ramraj Singh Tomar, 2011, Law Suit (MP) 55,**
- vi. **Top Notch Infotronix (I) Pvt. Ltd. Vs. Infosoft Systems & Ors, 2011 Law Suit (Bom) 711.**

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8. Before we proceed further, it would be relevant to note certain provisions of CrPC, which are relevant for our purpose, to address the questions. The word 'complaint' and the word 'victim' have been defined by clauses (d) and (wa) of Section 2 of CrPC, which read as under :

"(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant; (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".

9. We are referring to above definitions, 'complainant and victim' as they are referred to in Section 372 and Section 378 of CrPC respectively around which the whole web of arguments has been woven by learned counsel for the parties. Chapter XXIX CrPC deals with appeal. The heading of section 372 CrPC is "No appeal to lie unless otherwise provided". Unamended Section 372 CrPC prior to 31.12.2009 stood as follows:

"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 by any other law for the time being in force:

10. Section 372 CrPC was amended by Act 5 of 2009 with effect from 31.12.2009, whereby a proviso was added. It would be advantageous at this stage to reproduce the amended Section 372 CrPC, which reads as under:

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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."

11. A bare reading of the proviso inserted to Section 372 CrPC, it is evident that there are following three circumstances in which the victim shall have the right to prefer an appeal against any order:

- (a) acquitting the accused;
- (b) convicting for lesser offence;
- (c) imposing inadequate compensation.

12. Similarly, we are also concerned with Section 378, which provides for appeal in case of acquittal. The provisions contained in Section 378, read as follows:

"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 an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.

(2) 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

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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)."

13. Prior to the amendment in section 372 Cr.P.C. there was no specific provision for the victim. By way of amendment in section 372 Cr.P.C. the proviso was added to enable the victim to file a statutory appeal against any order passed by the court acquitting or convicting the accused for a lesser offence or imposing inadequate compensations and further providing that that 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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14. At this stage, it would also be appropriate to refer to the statements and reasons to achieve the objectives for which the amendment of Code of Criminal Procedure by Act No.5 of 2009 was enforced. It reads as follows:

"(1) The Law Commission has undertaken a comprehensive review of the Code of Criminal Procedure in its 154th report and its recommendations have been found very appropriate, particularly those relating to provisions concerning arrest, custody, and remand, procedure for summons and warrant-cases, compounding of offences, victimology, special protection in respect of women and injury and trial of persons of unsound mind. Also, as per the Law Commission's 177th report relating to arrest, it has been found necessary to revise the law to maintain a balance between the liberty of the citizens and the society's interest in maintenance of peace as well as law and order.

(2) The need has also been felt to include measures for preventing the growing tendency of witnesses being induced or threatened to turn hostile by the accused parties who are influential, rich and powerful. At present, 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. The application of technology in investigation, inquiry and trial is expected to reduce delays, help in gathering credible evidences, minimize the risk of escape of the remand prisoners during transit and also facilitate utilization of police personnel for other duties. There is an urgent need to provide relief to women, particularly victims of sexual offences, and provide fair-trial to persons of unsound mind who are not able to defend themselves. To expedite the trial of minor offences, definition of warrant-case and summons-case are to be changed so that more cases can be disposed of in a summary manner."

15. While creating a substantive right to the victim to prefer an appeal against an order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, no limitation was provided under Section 372 CrPC.

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16. Full Bench of this court in the case of **Mast Ram Tiwari Vs. State of U.P. and others passed in Criminal Misc. Application u/s 372 Cr.P.C. (Leave to Appeal) No. 351 of 2017 decided on 19.1.2018** held that the limitation for preferring an appeal against the order of acquittal by the victim would be 90 days in all cases other than the cases instituted upon complaint, and six months where the complainant is Public Servant and 60 days in every other case instituted upon complaint against the order of acquittal after the High Court grants special leave to appeal. Meaning thereby the aforesaid Full Bench of this Court in **Mast Ram Tiwari (supra)** acknowledged the fact that an appeal filed against the order of acquittal by the victim instituted upon complaint would be maintainable before the high court subject to limitation as provided under the said section 378(5) Cr.P.C.

17. The word 'victim' as defined under Section 2(wa) does not make any distinction between the victim in a complaint case and the victim in a police case (State prosecution) and if, for taking recourse to proviso to Section 372, the victim in a complaint case opts to file appeal against the order of acquittal, he would be governed by sub-section (5) of Section 378 CrPC. Section 378, does not use the word 'victim'. Sub-sections (4) and (5) of Section 378 thereof, deal with a right of appeal against the order of acquittal in any case instituted upon complaint on behalf of the complainant and, that too, on an application made to the High Court seeking special leave to appeal and once the leave is granted, the complainant can present the appeal to the High Court.

18. It may be noted that the Code of Criminal Procedure when originally enacted in the year 1861 did not provide for any right to

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appeal against acquittal to anyone including the State. It was in the Code of Criminal Procedure of 1898 that Section 417 was inserted enabling the Government to 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. The Code of Criminal Procedure, 1973 came into being on January 25, 1974 repealing the Code of Criminal Procedure, 1898. The recommendations made by the Law Commission of India, referred to above, was more or less adopted by the Parliament when it imposed a restriction in sub-Section (3) to Section 378 against entertainment of an appeal against acquittal "except with the leave of the High Court". Sub- section (4) of Section 378 retained the condition of maintainability of an appeal at the instance of a complainant against an order of acquittal passed in a complaint-case only if special leave to appeal was granted by the High Court.

19. The only significant amendment brought into force was in Section 378 whereby the appeals against acquittal in certain cases are now maintainable in the Court of Session without any leave to appeal to check arbitrary exercise of power and to curb reckless acquittal. Amending Act 5 of 2009 came into force conferring the 'right to a victim and further adding a new Section 2(wa) which defines "victim". The concept of 'Victim Compensation Scheme' has also been brought on the Statute Book by the same Amendment Act through a newly-added Section 357A which inter alia provides that "every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to them victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation".

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20. The principal controversy before us is whether against acquittal order in a criminal complaint case under Section 138 Negotiable Instruments Act, the victim, who is a complainant also, may prefer appeal against the order passed by the Magistrate before the Sessions Judge taking recourse to the proviso to Section 372 Cr.P.C. or the said appeal shall lie before the High Court under the said provisions and secondly whether against the same judgment and order of acquittal in a complaint case, in a situation when victim and complainant both are different persons, victim may file appeal under the proviso to Section 372 CrPC before the Sessions Judge or such appeal shall lie before the High Court ?

21. The Full Bench of this Court in the case of Manoj Kumar Singh Vs. State of U.P. & 3 Others in Criminal Misc. Application Defective U/s 372 CrPC (Leave to Appeal) No. 67 of 2013 while referring to the definition of Section 2 (wa) of Cr.P.C has held that the victim means the actual sufferer of offence (receiver of harm caused by the alleged offence) and no person other than actual receiver of harm can be treated as victim of offence, so as to provide him /her right to prefer appeal under the proviso of section 372, though, in his or her absence or disability, his "legal heir" or "guardian" would qualify as victim and have a right to appeal. A person who claims himself to be 'guardian' or 'legal heir' of actual victim (direct sufferer), would be able to maintain appeal provided he establishes his claim as such before the court in his application by disclosing his particulars; relationship with the direct sufferer; and the grounds on which such claim of being "legal heir" or "guardian" is based. It was further held that the expression "Legal Heir" has to be understood in its ordinary or natural sense. That is if any person is able to establish his status as "heir" recognized by law, he can be termed as "Legal Heir" and

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the preferences/restrictions / categories provided under any statute / personal law governing succession/ inheritance will have no consequence. It was further held that the word "Guardian" includes a Judicial Guardian (appointed by law), a legal Guardian, a Natural Guardian.

22. It may be noted that the Legislature has prescribed different conditions for the maintainability of appeal against order of acquittal passed in a 'police-case' vis-à-vis a 'complaint-case' i.e. a case instituted upon a private complaint. No appeal against acquittal in a complaint-case is maintainable to the Court of Session and for an appeal to High Court, the State or Central Government are required to obtain 'leave' of the High Court as mandated by Section 378(3) and if such an appeal is presented by the complainant, he/she is required to seek 'special leave' of the High Court under Section 378(4) of the Code.

23. In this context, it is notable to refer to the decision of the Apex Court in the case of Subhash Chand Vs. State (Delhi Administration)- (2013) 2 SCC 17 wherein it has been held that Sub-Section (4) of Section 378 makes provision for appeal against an order of acquittal passed in case instituted upon complaint. It states that in such case if the complainant makes an application to the High Court and the High Court grants special leave to appeal, the complainant may present such an appeal to the High Court. This sub-section speaks of 'special leave' as against sub-section (3) relating to other appeals which speaks of 'leave'. **Thus, complainant's appeal against an order of acquittal is a category by itself.** The complainant could be a private person or a public servant. This is evident from sub-section (5) which refers to

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application filed for 'special leave' by the complainant. It grants six months period of limitation to a complainant who is a public servant and sixty days in every other case for filing application. Sub-Section (6) is important. It states that if in any case complainant's application for 'special leave' under sub-Section (4) is refused no appeal from order of acquittal shall lie under sub-section (1) or under sub-section (2). Thus, if 'special leave' is not granted to the complainant to appeal against an order of acquittal the matter must end there. Neither the District Magistrate nor the State Government can appeal against that order of acquittal.

24. The question arose before the Full Bench of High Court of Punjab and Haryana in the case of **M/s Tata Steel Ltd Vs. M/S Atma Tube Products Ltd (Supra)** that What will happen if the 'victim' in a complaint-case is different from the 'complainant' or where such 'victim' cannot otherwise be a 'complainant' due to statutory embargo against the filing of the complaint by some one other than the designated authority of State? Would he/she be entitled to file an appeal under proviso to Section 372 Cr.P.C and it was held by the Full Bench of the said Court inter alia as follows:-

(i) the 'complainant' in a complaint-case who is a 'victim' also, shall continue to avail the remedy of appeal against acquittal under Section 378(4) only except where he/she succeeds in establishing the guilt of an accused but is aggrieved at the conviction for a lesser offence or imposition of an inadequate compensation, for which he/she shall be entitled to avail the remedy of appeal under proviso to Section 372;

(ii) the 'victim', who is not the complainant in a private complaint-case, is not entitled to prefer appeal against acquittal under proviso to Section 372 and his/her right to appeal, if any, continues to be governed by the un-amended provisions read with Section 378 (4) of the Code;

(iii) the Legislature has given no separate entity to a 'victim' in the complaint-case filed by a public servant under a special Statute and the appeal against acquittal in such a case can also be availed by the 'complainant' of that case under Section 378(4) of the Code only.

(iv) those 'victims' of complaint-cases whose right to appeal have been recognized under proviso to Section 372, are not required to seek 'leave' or 'special leave' to appeal from the High Court in the manner contemplated under Section 378(3) & (4), for the Legislature while enacting proviso to Section 372 has prescribed no such fetter nor has it applied the same language used for appeals against acquittals while enacting sub-Section (3) & (4) of Section 378 of the Code.

25. Thus, the Full Bench of the Punjab and Haryana High Court in the case *M/S Tata Steels Ltd. (Supra)* has categorically held that the complainant in a complaint case who is a victim shall continue to avail the remedy of appeal against acquittal order under Section 378 (4) and when the 'victim' who is not the complainant in a private complaint-case, is not entitled to prefer appeal against acquittal under proviso to Section 372 and his/her right to appeal, if any, continues to be governed by the un-amended provisions read with Section 378 (4) of the Code. However, if the appeal is being filed by the victim in his own right or where the complainant is also a victim, he or she is not required to take leave to appeal or special leave to appeal under Section 378(3)(4) of the Code. The decision of Full Bench of Punjab and Haryana High Court in *Tata Steel Ltd. (supra)* with regard to taking special leave to appeal or leave to appeal under Section 378(3)(4) of the Code has been affirmed by the Apex Court in the case of *Malikarjun Kodagali (Supra)* wherein it has been held in paragraph 93 of the judgment that the right(s) of a 'victim' under the amended Code are substantive and not mere *brutam fulmen* hence these are not accessory or auxiliary to those of the State and are totally incomparable as both the sets of rights or duties operate in different

and their respective fields. It was further held that a 'victim' is not obligated to seek 'leave' or 'special leave' of the High Court for presentation of appeal under proviso to Section 372 of the Code."

26. It may be worthwhile to note that the Full Bench of the Punjab and Haryana High Court in the case of M/S Tata Steel Ltd. (Supra) has further held that where a 'victim' is competent to institute a private complaint but permits or consents expressly or implicitly to the filing of such complaint by his family-members, near and dears or an acquaintance, the 'victim' and 'complainant' in such a case cannot be seen differently and would be inseparable, hence the 'victim' will also fall back on Section 378(4) **only which specifically refers to filing of appeals against acquittal at the instance of complainant and not under proviso to Section 372 of the Code which has been pre-dominantly incorporated to provide right to appeal to the 'victims' in police-case who are not permitted to participate or have any say during trial.** For ready reference Para 81 of the judgment rendered in the Tata Steel Ltd.'s case (supra) is quoted hereinbelow :

*“What will happen if the 'victim' in a complaint-case is different from the 'complainant' or where such 'victim' cannot otherwise be a 'complainant' due to statutory embargo against the filing of the complaint by some one other than the designated authority of State? Would he/she be entitled to file an appeal under proviso to Section 372 or should he/she be clubbed together with the complainant under **Section 378(4)** of the Code? We are of the view that the 'victim' in complaint-cases cannot have a remedy superior to that of the complainant of such case and since the Apex Court in the latest decision in Subhash Chand's case (supra) has held that the complainant's remedy, whether he is a private person or a public servant, to question the acquittal lies only in **Section 378(4)** of the Code, hence the 'victim' will also have to be relegated to that conditional remedy only. Similarly, where a 'victim' is competent to institute a private complaint but permits or consents expressly or implicitly to the filing of such complaint by his family-members,*

near and dears or an acquaintance, the 'victim' and 'complainant' in such a case cannot be seen differently and would be inseparable, hence the 'victim' will also fall back on [Section 378\(4\)](#) only which specifically refers to filing of appeals against acquittal at the instance of complainant and not under proviso to [Section 372](#) of the Code which has been pre-dominantly incorporated to provide right to appeal to the 'victims' in police-case who are not permitted to participate or have any say during trial.”

27. At this stage, it would also be apposite to refer to the decision of the three Judges Bench of the Apex Court in the case of Mallikarjun Kodagali (Supra). In the aforesaid case, the basic question arose before the Apex Court that whether the appeal filed by the appellant before the High Court under the proviso to Section 372 CrPC was maintainable or not against the order dated 28.10.2013 passed by the District and Sessions Judge, Bagalkot (Karnataka) acquitting the accused by a judgment wherein the alleged offence was committed prior to 31.12.2009 i.e. 06.02.2009 although the judgment was passed after 31.12.2009 i.e. on 28.10.2013. The Apex Court held that right to appeal is available even if alleged offence took place prior to 31.12.2009 (Act 5 of 2009 was enacted) but the order of acquittal was passed by Trial Court after 31.12.2009. The Apex Court for the reasons mentioned in the judgment allowed the appeals setting aside the judgment passed by the High Court holding that the victim as defined in Section 2(wa) of the Cr.P.C. would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction, as such, the appeal filed by Kodagali was found maintainable. **Facts of the aforementioned case (Mallikarjun) clearly indicates that judgment was passed therein by the Sessions Judge in a case instituted upon a Police Report and not upon complaint.** Thus, the Apex Court was dealing with a situation as to whether right of

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appeal is available if the alleged offence was committed prior to 31.12.2009 (before enactment of Act 5 of 2019) but the judgement was passed by the Sessions Judge after 31.12.2009.

28. A close look to para 76 of the judgment in the case of **Mallikarjun Kodagali (supra)** would reveal that the apex court in the said para was engaged in a controversy as to whether the 'victim' as defined in Section 2 (wa) CrPC was required leave to appeal for preferring appeal against the order of acquittal. It was further observed by the Apex Court in paragraph 76 of aforementioned case **Mallikarjun Kodagali (supra)** that 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, which confines to an order of acquittal passed in a case instituted upon a complaint, and the word 'complaint' has been defined in Section 2(d) of the Cr.P.C. and refers to any allegation made orally or in writing to a Magistrate and this has nothing to do with the lodging or the registration of an FIR, and therefore, according to the Apex Court, it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 of the Cr.P.C. is concerned. Thus, the Apex Court was also of the opinion that Section 378(4) CrPC deals with the appeal arising against the acquittal in any case instituted upon the complaint. It has nothing to do with the case arising out of the police report. For ready reference para 76 of Mallikarjun Kodagali (Supra) is quoted here under:

“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 of the Cr.P.C. is quite clear, particularly when it is contrasted with the language of Section 378(4) of the Cr.P.C. 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) of the Cr.P.C. 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 of the Cr.P.C. is concerned."

29. Section 378(4) & 378(5) specifically provides remedy to the complainant to file an appeal against the acquittal in any case instituted upon complaint. Section 378(4)(5) Cr.PC provides the forum to file an appeal, period of limitation and leave to appeal.

30. Before amendment in 372 CrPC there was no provision for the victim to file an appeal against acquittal either in a police case, or complaint case. However, proviso to 372 Cr.P.C gives substantive right to the victim to file appeal without leave to appeal. Section 378(1) (2) & (3) CrPC has been predominantly incorporated to deal with the appeal against acquittal arising out of police case.

31. The Full Bench of this Court in the case of **Mast Ram Tiwari Vs. State of UP (Supra)** has held that the word 'victim' as defined under Section 2(wa) does not make any distinction between the victim in a complaint case and the victim in a police case (State prosecution) and if, for taking recourse to proviso to Section 372, if the victim in a complaint case opts to file appeal against the order of acquittal, he would be governed by sub-section (5) insofar as the limitation is concerned. In other words, a limitation for filing an appeal by the victim in a complaint case against the order of acquittal would be 60 days as provided for under sub-section (5) by seeking leave to appeal from the High Court.

32. The apex court in **Subhash Chand Vs. State (Delhi Admn.) (supra)** has held that once it is a case instituted on a complaint and

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an order of acquittal is passed, whether the offence is bailable or non-bailable, cognizable or non-cognizable, the complainant can file an application under Section 378 (4) for special leave to appeal against it in the High Court. So far as the State is concerned, as per [Section 378 \(1\) \(b\)](#), it can in any case, that is even in a case instituted on a complaint, direct the Public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any court other than High Court. The apex court in the aforesaid case **Subhash Chand** finally concluded at paragraph 23 of the judgment that a complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court. He cannot file such appeal in the Sessions Court. For ready reference para 20 of the judgment in **Subhash Chand (supra)** is quoted hereinbelow :-

“Since the words ‘police report’ are dropped from Section 378(1) (a) despite the Law Commission’s recommendation, it is not necessary to dwell on it. A police report is defined under Section 2(r) of the Code to mean a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173 of the Code. It is a culmination of investigation by the police into an offence after receiving information of a cognizable or a non- cognizable offence. Section 2(d) defines a complaint to mean any allegation made orally or in writing to a Magistrate with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence, but does not include a police report. Explanation to Section 2(d) states that a report made by a police officer in a case which discloses after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complainant. Sometimes investigation into cognizable offence conducted under Section 154 of the Code may culminate into a complaint case (cases under the Drugs & Cosmetics Act, 1940). Under the PFA Act, cases are instituted on filing of a complaint before the Court of Metropolitan Magistrate as specified in Section 20 of the PFA Act and offences under the PFA Act are both cognizable and non-cognizable. Thus, whether a case is a case instituted on a complaint depends on the legal provisions relating to the offence involved therein. But once it is a case instituted on a complaint and an order of acquittal is passed, whether the offence be bailable or non- bailable, cognizable or non-

cognizable, the complainant can file an application under Section 378(4) for special leave to appeal against it in the High Court. Section 378(4) places no restriction on the complainant. So far as the State is concerned, as per Section 378(1)(b), it can in any case, that is even in a case instituted on a complaint, direct the Public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any court other than High Court. But there is, as stated by us hereinabove, an important inbuilt and categorical restriction on the State's power. It cannot direct the Public Prosecutor to present an appeal from an order of acquittal passed by a Magistrate in respect of a cognizable and non-cognizable offence. In such a case the District Magistrate may under Section 378(1)(a) direct the Public Prosecutor to file an appeal to the Session Court. This appears to be the right approach and correct interpretation of Section 378 of the Code.”

33. Section 378 (4) (5) CrPC specifically provides for an appeal against the acquittal in any case instituted upon complaint. Therefore, as corollary thereto, it can be safely inferred that dichotomy has been created by the legislature with respect to appeals against acquittal in any case instituted on police report/case and appeals against acquittal in any case instituted upon complaint. Section 372 does not provide mode or procedure or limitation. It is merely an enabling provision conferring right to the victim to file an appeal against the orders detailed in the proviso to Section 372 CrPC. If the appeal is filed against acquittal in a case instituted upon '**police case/report**', the victim for lesser offence or imposing adequate compensation, then such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such count. Meaning thereby that in a police case if the acquittal order is passed by the Magistrate then the appeal would lie before the Sessions Judge and in case order of acquittal is passed by the Sessions Judge in its original jurisdiction or as a appellate court, then the appeal would lie before the High Court but if the order of acquittal is passed in any case instituted upon complainant then the appeal on behalf of the victim as well as the complainant of the case

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would lie only and only before the High Court under Section 378 (4)(5) CrPC. Proviso to Section 372 is only a enabling provision conferring right on the victim to file an appeal but if the appeal is filed against the acquittal in a complaint case then the procedure and conditions as provided under Section 378 (4)(5) CrPC would be applicable. Meaning thereby that the appeal would be only in High Court against the order of Magistrate as well as Sessions Court acquitting the accused in a complaint case. However, in view of the decision in the case of **Tata Steel Ltd. (supra)** and **Mallikarjun Kodagali (supra)** victim or when victim is a complainant also would not require to seek special leave or leave to appeal from an order of acquittal in a complaint case

34. The interpretation of the Proviso to Section 372 CrPC was also considered by the Full Bench of the Gujarat High Court in the case of **Bhavuben Dineshbhai Makwana Vs. State of Gujarat, 2013 Cri LJ 4225** where one of the questions framed for consideration in the case was as follows :-

“(iii) If the victim prefers an appeal before this Court, challenging the acquittal, invoking his right under proviso to Sec. 372 of Cr.P.C., whether that appellant is required to first seek leave of the Court, as is required in case of appeal being preferred by the State?”

35. The aforesaid question was answered in the following words by the Full Bench of Gujarat High Court in the case of **Bhavuben Dineshbhai Makwana (supra):-**

“36. If the victim also happens to be the complainant and the appeal is against acquittal, he is required to take leave as provided in Sec. 378 of the Criminal Procedure Code but if he is not the complainant, he is not required to apply for or obtain any leave. For the appeal against inadequacy of compensation or punishment on a lesser

offence, no leave is necessary at the instance of a victim, whether he is the complainant or not.”

36. The decision in the case of **Bhavuben Dineshbhai Makwana** came into consideration before the Apex Court in the case of **Mallikarjun Kodagali (supra)**. The apex court in paragraph 35 of the judgment while referring to the aforesaid decision of the Full Bench of the High Court of Gujarat has held as follows : -

“In our opinion, the Gujarat High Court made an artificial and unnecessary distinction between a victim as a victim and a victim as a complainant in respect of filing an appeal against an order of acquittal. The proviso to Section 372 of the Cr.P.C. does not introduce or incorporate any such distinction.”

37. Thus, the apex court was of the opinion that the Full Bench of the Gujarat High Court made an artificial and unnecessary distinction between a victim as a victim and a victim as a complainant in respect of filing an appeal against the order of acquittal under Section 372 CrPC.

38. The learned Single Judge while referring the matter to the larger Bench has very rightly observed that in **Ashok Kumar Srivastava's case (supra)**, the learned Single Judge has not dealt with the Situation/contingency which may arise if the victim and complainant both are different persons and the victim prefers to file an appeal against the acquittal before the Sessions Judge taking recourse to the proviso to Section 372 CrPC and the complainant being different person files an application for leave before the High Court for filing appeal under Section 378 (4) CrPC against the same judgment and order. In other words, if the leave is granted to the complainant by the High Court to file an appeal under Section 378 (4) CrPC and the appeal is admitted and the criminal appeal

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preferred by the victim before the Sessions Judge against the order of acquittal in a case instituted on a complaint is also admitted, there is further chance of conflict of opinion against the same judgment and order of acquittal. If the law laid down by the Single Judge of this Court in **Ashok Kumar Srivastava's case (supra)** and **Ved Prakash Yadav (supra)** is sustained, it would lead to absurdity and inconsistency. It will be seen that neither this aspect has been considered in the said judgment nor any solution in this regard has been given.

39. It is significant to note that proviso to 372 CrPC, inter alia, provides that appeal filed by the victim shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court, however, under Section 378 (4) & (5), the legislature confers right to the complainant to file an appeal against the order of acquittal in a case instituted upon complaint before the High Court. Thus, anomaly has been apparently created with respect to forum to which appeal on behalf of the victim and complainant would lie against the order of acquittal in a case instituted upon complaint. In cases, where the language used in a statute is capable of bearing more than one construction, the court in its attempt to find out the true meaning shall have due regard to the consequences of alternative constructions so as to avoid the resultant hardship, serious inconvenience, injustice, absurdity, inconsistency or straight clash between two sections of the same act. In that situation, rule of harmonious construction may be applied so that aim and object of the legislature inserting new provisions can be achieved harmonizing both the provisions in order to avoid any absurdity and inconsistency. In this context it would be useful to refer to the observation by the Full Bench of the

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Calcutta High Court in the case of **Tata Steel Ltd. (supra)** that the proviso to Section 378 of the Code has been pre-dominantly incorporated to provide right to appeal to the victim in a 'police case' who are not permitted to participate or have any say during trial. Proviso to Section 372 CrPC does not speak about the 'complaint case' or 'police case'/report. In case, proviso to Section 372 and Section 378 (4) & (5) are harmonized in order to give true meaning and intention of the legislature, it can be safely be held that under the proviso to Section 372 appeal against acquittal in a case instituted on police report/state prosecution shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. The aforesaid interpretation is consonance with the scheme of the Chapter XXIX of CrPC dealing with the Criminal Appeal and would give effect to both the provision i.e. Section 372 and Section 378 (4) (5) CrPC. It will result in harmonizing the two provisions.

40. The appeal by the victim against the order of acquittal in any case instituted on the complaint requires to be dealt with in the same manner as appeal filed by the complainant. Section 378 (4) & (5) CrPC is required to be read with the Section 372 CrPC when the appeal is filed by the victim. However, the victim or when the victim is a complainant also, would not require to seek leave or special leave to appeal. Chapter XXIX of the CrPC deals with appeals. Proviso to Section 372 CrPC cannot be read into isolation. It does not lay down the procedure as to how and in what manner and within what time, the appeal has to be filed. The appeal being the creation of statute, it is also necessary to prescribe the limitation and procedure for filing an appeal, therefore, when the victim or when the victim is also a complainant chose to file an appeal

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against acquittal in a case instituted upon complaint, it would be under proviso to Section 372 CrPC read with 378 (4) & 378 (5) CrPC. Proviso to 372 CrPC gives right to the victim to file an appeal and Section 378 (4) & (5) provides procedure, limitation and forum to file an appeal in a case instituted upon complaint.

41. Thus, in view of the aforesaid discussion, our answers to the questions referred to us are as follows :-

(a). We are of the firm opinion that the appeal by a 'victim' who is a complainant also against the order of acquittal in a criminal complaint case under 138 of Negotiable Instrument Act would lie to the High Court under proviso to Section 372 read with Sub-section (4) & (5) of Section 378 CrPC.

(b). Against the same judgment and order of acquittal in a complaint case, in a situation where victim and complainant both are different persons, appeal by a victim would lie under the proviso to 372 CrPC read with Section 378 (4) (5) CrPC only before the High Court.

42. The reference is answered accordingly.

Per– Hon'ble Saurabh Shyam Shamsbery, J. :- (concurring)

43. I have privilege of going through well-reasoned and eloquently written judgment by my brother Justice Shashi Kant Gupta. I am in agreement with reasoning and conclusion arrived at by my Learned

brother. In my supplementary judgment, I am dealing with the issue of statutory interpretation only.

44. In the present reference, submissions on behalf of applicants is that the proviso to section 372 CrPC shall also give right to a 'victim' irrespective of the fact that whether he is a complainant or not, to prefer an appeal against acquittal of the accused, even in a case arising out of a complaint also. Such appeal shall lie to the court before which an appeal ordinarily lies against the order of conviction of such Court. Further submission is that, such appeal shall lie without special leave to appeal.

45. Countering the submissions, counsel for the State has submitted that any interpretation which may lead to provide two different forum of appeal on the basis of appellant being 'victim' (whether complainant or not) or being complainant (who is not a victim), before the court to which an appeal ordinarily lies against the order of conviction of such Court under the proviso to section 372 CrPC as well as before the High Court with special leave to appeal under section 378 (4) and (5) CrPC respectively in case of filling appeal against the order of acquittal in any case instituted upon complaint, will only lead to a situation of uncertainty, anomalies, injustice and absurdities. Further submission is that this Court has to give such interpretation to proviso of section 372 and section 378 (4) and (5) CrPC, which is not only harmonious and purposive but also advances the purpose and object of the enactment.

46. Jurisprudence of statutory interpretation has moved from literal interpretation to purposive interpretation, which advances the purpose and object of a legislation. The Supreme Court in catena of judgments has dealt with the issue of literal interpretation vis-a-vis

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purposive interpretation. Following references to this respect from the Supreme Court are some of them. :-

(I) The Apex Court in *The Central India Spinning and Weaving Manufacturing Comp. versus The Municipal Committee, Wardha*); AIR 1958 SC 341 has held that :-

“It is also a recognised principle of construction that general words and phrases however wide and comprehensive they may be in their literal sense must usually be construed as being limited to the actual objects of the Act.”

(II) The Apex Court in *Girdhari Lal & Sons versus Balbir Nath Mathur*); 1986(2) SCC 237 has held that :-

“9. So we see that the primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose, where necessary the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary.”

“16. Our own court has generally taken the view that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices, or absurdities, vide K.P. Varghese V. ITO (1981) 4 SCC 173 , State Bank of Travancore v. Mohd. M. Khan, (1981) 4 SCC 82, Som Prakash Rekhi V. Union of India, (1981) 1 SCC 449, Ravula

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Subba Rao V. CIT, AIR 1956 SC 604, Govindlal v. Agricultural Produce Market Committee, (1975) 2 SCC 482 and Babaji Kondaji v. Nasik Merchants Co-op Bank Ltd. (1984) 2 SCC 50.”

(III) The Supreme Court in *Utkal Contractors & Joinery Pvt. Ltd. versus State of Orissa; 1987 (3) SCC 279* has held that :-

“...A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the Preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again while the Words of an enactment are important, the context is no less important. For instance, “the fact that general words are used in a statute is not in itself a conclusive reason why every case falling literally within them should be governed by that statute, and the context of any act may well indicate that wide or general words should be given a restrictive meaning.” (See Halsbury, 4th Edn. Vol. 44 Para 874).”

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(IV) The Supreme Court in *Eera (through Dr. Manjula Krippendorf) v. State (NCT of Delhi) and Anr.*; 2017(15) SCC 133 has held that :-

“I have referred to the aforesaid authorities to highlight that legislative intention and the purpose of the legislation regard being had to the fact that context has to be appositely appreciated. It is the foremost duty of the Court while construing a provision to ascertain the intention of the legislature, for it is an accepted principle that the legislature expresses itself with use of correct words and in the absence of any ambiguity or the resultant consequence does not lead to any absurdity, there is no room to look for any other aid in the name of creativity. There is no quarrel over the proposition that the method of purposive construction has been adopted keeping in view the text and the context of the legislation, the mischief it intends to obliterate and the fundamental intention of the legislature when it comes to social welfare legislations. If the purpose is defeated, absurd result is arrived at. The Court need not be miserly and should have the broad attitude to take recourse to in supplying a word wherever necessary. Authorities referred to hereinabove encompass various legislations wherein the legislature intended to cover various fields and address the issues. 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 Lilliputtian 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.”

47. Upon conscientious analysis of the above-mentioned judgments, following are the points which a court should consider while interpreting any enactment :-

(I) ascertain legislative intent (actual or imputed) of the enactment

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(II) interpret the enactment as to promote and advance its object and purpose.

(III) to avoid patent injustice, the court may depart even from golden rule of interpretation.

(IV) for purposive interpretation, the court must give complete interpretation to the purpose, object, text and context of the enactment.

(V) any construction which leads to anomalies, injustice or absurdities should not be adopted.

(VI) court should move towards such interpretation which serves the soul of the legislative intent.

48. On the basis of arguments advanced and judgments cited before this bench, following position of law on the issue emerges :-

(a) Statements and reasons of the Act No. 5 of 2009 wherein by proviso to section 372 of CrPC was inserted, mainly states that the 'victims' are the worst sufferers in a crime, they don't have much role in court proceedings. Therefore they need to be armoured with special rights. Rights of a 'victim' as defined under section 2 (wa) CrPC are kept on a higher pedestal and that must be given its full meaning.

(b) Supreme Court in Mallikarjun Kodagali (Dead) Represented through Legal Representative Vs State of Karnataka and Others : (2019) 2 SCC 752, has held that :- "the proviso to Section 372 of the Cr.P.C. must also be given a meaning that is realistic, liberal, progressive and beneficial to the victim of an offence". The Court further held that it is not mandatory for victim to obtain special leave to appeal from High Court to file appeal under the said proviso.

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(c) Section 378 (4) and (5) CrPC provides that an order of acquittal passed in a case instituted upon complaint can be challenged before High Court on grant of an application for special leave to appeal and no such application 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.

49. Applying the points emerged from the judgment cited for interpretation of the enactment, first point to be ascertained is the legislative intent of insertion of proviso to section 372 CrPC. As mentioned earlier, the object of amendment is to give a 'victim' certain privileges during the court proceedings. Therefore victim, whether complainant or not, has right to file appeal against the acquittal in a case constituted upon complaint also.

50. Second point is to give such interpretation which promotes and advances the object and purpose of the enactment. The object and purpose of insertion of proviso is to strengthen the give rights to victim. In Mallikarjun Kodagali (supra) the Court held that :-

“Putting the Declaration to practice, it is quite obvious that the victim of an offence is entitled to a variety of rights. Access to mechanisms of justice and redress through formal procedures as provided for in national legislation, must include the right to file an appeal against an order of acquittal in a case such as the one that we are presently concerned with. Considered in this light, there is no doubt that the proviso to Section 372 of the Cr.P.C. must be given life, to benefit the victim of an offence”. Therefore even filling appeal against acquittal in a case instituted upon a complaint, the victim does not require leave to appeal.

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51. Next point is to give purposive interpretation to the enactment which may not result in anomalies, injustices or absurdities. It is to be determined that, whether a victim has a right to file appeal to the court to which an appeal ordinarily lies against the order of conviction of such Court as provided under proviso to section 372 CrPC or before High Court as provided under section 378 (4) CrPC. Section 378 (4) and (5) CrPC, provides procedure to file appeal by complainant against acquittal in a case instituted upon the complaint. Upon conjoint reading, the sole interpretation is that, an appeal in both the situations have to be filed before one forum only as any other interpretation will lead into a situation of uncertainty and anomalies. The forum that is prescribed under section 378(4) CrPC is High Court to file appeal by the complainant, therefore considering the principles of statutory interpretation even victim has to file appeal against acquittal in a case constituted upon complaint, before High Court only. This will not only avoid uncertainty but will also serve the purpose of the enactment.

52. Registrar General of this Court is directed to ensure the circulation of this order amongst all the judicial officers in the State for their guidance.

53. Let a copy of this order be also sent to the Chief Secretary, Principal Secretary (Law) & Legal Remembrancer, Government of U.P. Lucknow and Stamp Reporter of this Court for taking necessary follow up action.

54. Let the records of these cases be accordingly placed before the respective Single Judge as per roster for final disposal.

Order Dated: 25.2.2020

MLK/vinay/arun/SB