

Court No. - 21

**Criminal Misc. Application Defective
U/S 372 CR.P.C (Leave to Appeal) No. - 67 of 2013**

Applicant :- Manoj Kumar Singh
Opposite Party :- State Of U.P. & 3 Others
Counsel for Applicant :- Sri Satish Chandra Sinha
Counsel for Opposite Party :- Government Advocate

Hon'ble V.K. Shukla, J.
Hon'ble Manoj Misra, J.
Hon'ble Ramesh Sinha, J.

“Law should not sit limply, while those who defy it go free and those who seek its protection lose hope.”

[Jennison V. Baker (1972) 1 All ER 997]

Crime affects not only the individual victim and his family but the society at large therefore the fundamental purpose and end of political society is defence against external enemies, and the maintenance of peaceable and orderly relations within the community. Salmond in his treatise “Jurisprudence” (Eight Edition Chapter V) while discussing the nature and essential functions of the State wrote: *“A State, then, or political society, may be conceived of as an association of human beings established for the attainment of certain ends by certain means. It is the most important of all the various kinds of society in which men unite, being indeed the necessary basis and condition of peace, order, and civilisation. What then is the essential difference between this and other forms of association?The difference is clearly one of function. The State must be defined by reference to such of its activities and purposes as are essential and characteristic. It is possible, however, to distinguish among the multitudinous operations of government, two which it is suggested may be set apart as primary and essential. These two are war and the administration of justice.....Every society which perform these two functions is a political society or State, and none is such which does not perform them.* It is the fundamental duty of a State to ensure administration of justice within its territory. The objectives of criminal justice are prevention and control of crime; maintenance of public order and peace; protection of the rights of victims; trial and punishment of those who are in

conflict with law; and reformation of those adjudged guilty of committing crimes. All these had been recognized as State's obligations and, therefore, till the amendment brought in the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) by Act No.5 of 2009, the right to file an appeal against an order of acquittal, except in a case instituted upon a complaint, was the sole prerogative of the State. By Act No.5 of 2009 a Proviso to section 372 of the Code was added which 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 would lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. To define the word *victim*, clause (wa) was inserted in section 2 of the Code.

The case in hand engages our attention to answer the pivotal question as to who will fall within the definition of *victim* as contemplated by Section 2 (wa) of the Code, inserted by the Act No. 5 of 2009.

Before we proceed to address the question referred to us, it would be useful to give a brief background of the case. This is a case where on death of a married lady Mamta Singh; her mother-in-law Smt. Shakuntala, her jeth Ajay Kumar Singh and her husband Pawan Kumar Singh were put to trial for offences punishable under Section 304-B/34 IPC with alternative charge of Section 302/34 IPC; and Section 498-A IPC read with Section 3/4 of Dowry Prohibition Act. The trial court acquitted them vide judgment and order dated 26.10.2012. It appears that the father (PW-1) and mother (PW-2) of the deceased turned hostile and did not support the prosecution version. The prosecution evidence even failed to substantiate the prosecution case of dowry demand or cruelty or that the deceased committed suicide as a consequence thereof. Under the circumstances, neither the parents of the deceased nor the State preferred appeal against the order of acquittal. However, the brother-in-law (Jija) of the deceased has come forward to prefer

this appeal against acquittal by claiming himself to be a “victim”.

The Division Bench seized of the matter, while dealing with the locus of the appellant to maintain the appeal, came across a judgment dated 10.4.2014 of a coordinate Bench of this Court in the case of Edal Singh vs. State of U.P. & 3 others in Criminal Misc. Application U/S 372 Cr.P.C. (Leave to Appeal) No. 172 of 2014; and judgments of other High Courts i.e. **Full Bench Decision of Punjab & Haryana High Court** in ‘M/s. Tata Steel Ltd. Vs. M/s. ,Atma Tube Products Ltd. And others’ reported in (2014) 1 PLR 1.; and **Division Bench Decision of Patna High Court** in Criminal Appeal (DB) No. 1078 of 2012 ”Parmeshwar Mandal vs. State of Bihar & others, on the issue as to who could be considered a *victim* therefore, in its wisdom, thought it appropriate to formulate and refer two questions for authoritative pronouncement by a Larger Bench, vide its order dated 13.1.2015, which are as follows:

1. *“Whether the definition of the word “victim” as used in Section 2 (wa) would mean any person other than a “guardian” or “legal heir” also for the purpose of maintaining an appeal under Section 372 Cr.P.C.?*

2. *Whether the ratio of the decision of the Division Bench of this Court in the case of Edal Singh Vs. State (Supra) states the law correctly keeping in view the conflicting ratios of the Full Bench decision of the Punjab & Haryana High Court in the case of M/s. Tata Steel Ltd. (Supra) and that of the Patna High Court in the case of Parmeshwar Mandal (Supra)?.*

While the reference remained pending, a Full Bench of Delhi High Court had the occasion to consider the issue and pronounce its judgment on 28.5.2015 in **Criminal Appeal No. 1415 of 2012 (Ramphal vs. State)**. The Apex Court, in the meantime had occasion to examine and consider the judgment of the Full Bench of Delhi High Court in **Satya Pal Singh vs. State of M.P. & others, reported in 2015 CrLJ 4929**, though, on the aspect of **“Requirement of Leave to Appeal”**. In this backdrop, the reference in question is before us for adjudication.

Considering the importance of the issue we requested Sri Daya

Shankar Mishra, an eminent counsel of this Court, to assist the Court, upon which, he has rendered full assistance to the Court. He submitted before us that there was no occasion for making a reference as the proviso of Section 372 read with section 2(wa) of the Code, which has been introduced by Act No.5 of 2009, carries no ambiguity and, therefore, the scope of the said proviso cannot be enlarged by judicial dicta though, according to him, the question as to who is a victim has to be determined on the facts of each case for ascertaining whether he/she has a right to prefer appeal. He had submitted that appeal is a creation of statute and what is not otherwise provided for cannot be indirectly introduced by liberal / wider interpretation of the word *victim* and, as such, the reference in question should be answered in negative by clarifying the legal position that the word '*victim*' as defined in Section 2 (wa) of the Code of Criminal Procedure would remain confined to a person who falls within the categories specified therein and, in his or her absence or disability, as the case may be, it would include his or her legal heir or guardian and nothing beyond the same.

Sri Manish Singh, Advocate, has supported the reference in question by submitting that the word '*victim*' should not be limited to a person, who has suffered loss or injury, rather it should include even those who have faced or suffered any sort of harm including emotional harm or injury so that the object of the amendment that a person guilty does not go unpunished is fully served and a wider base of persons is created who could appeal against an erroneous judgment of the lower court. He has also suggested that keeping in mind the object of the amendment, the word *victim* should not be confined to specific individuals but needs to be interpreted on the facts of each case.

Sri Akhilesh Singh, learned Government Advocate, has contended that the definition of victim cannot be enlarged and right to appeal cannot be created by judicial pronouncement and the reference in question, in the facts of the case, should be answered in negative.

Sri Vimlendu Tripathi, learned Additional Government

Advocate-I, has supplemented the arguments raised by Government Advocate by submitting that right to prefer appeal is a statutory right having its own limitation, hence liberal/wide interpretation as regards locus to file appeal is not permissible therefore the person entitled to prefer an appeal against acquittal will have to fall within the term *victim*, as defined i.e. a person who suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and would include his or her guardian or legal heir. It has been submitted that word *injury* is not defined in the Code, therefore by virtue of Section 2 (y) of the Code the definition of *injury* as provided by Section 44 of the Indian Penal Code, 1860 would have to be adopted which provides that *injury* denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. It has been submitted that the offences under the Indian Penal Code are of different types specified in different Chapters, therefore, the word *victim* would have to be interpreted contextually in reference to the nature of the offence; and it would mean the contextual sufferer of the offence and no one else and, as such, the reference in question should be answered in negative. He further added that the words "Guardian" and "Legal Heir" should be given their natural meaning and they should not be expanded by judicial interpretation.

In order to answer the reference, the requisite necessary legislative development as well as the statutory provisions in the field concerned need to be looked into.

For the first time in the year 1985 in the General Assembly of United Nations, a declaration was made on basic principles of Justice for Victims of Crime. After the aforementioned declaration, necessity to address the rights of victim was felt as it was found that the victim, the initiator of criminal justice system, was losing confidence and interest in the process of adjudication inasmuch as the criminal justice system on the one hand showed all enthusiasm to protect the interest of accused but, on the other hand, ignored the victim by treating him as a hapless sufferer of the crime having no right to challenge the verdict acquitting the accused.

The Punjab & Haryana High Court in paragraphs 24 to 26 of its judgment in the case of *M/s. Tata Steel (supra)* proceeded to consider the legislative development qua the evolution of right to appeal against judgment of acquittal as follows:

“Evolution of Right to Appeal:

(24). The Code of Criminal Procedure when originally enacted in the year 1861 did not provide for any right to 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 Law Commission of India in its 41st Report given in September, 1969 as also in 48th Report pertaining to the Criminal Procedure Bill, 1970, however, recommended to restrict the right of appeal given to the State Government against an order of acquittal by introducing the concept of 'leave to appeal' and that all appeals against acquittal should come to the High Court though it rejected the right to appeal to "the victim of a crime or his relatives".

(25). 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, largely found favour with the Parliament when it inserted an embargo 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. Save in the manner as permitted by Section 378, no appeal could lie against an order of acquittal in view of the express embargo created by Section 372 according to which "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". The Code of Criminal Procedure (Amendment) Act, 2005:

(26). Hon'ble Supreme Court in a string of decisions a few of which are already cited, has recognized time and again one or the other right of the 'victim' including locus standi of his/her family members to appeal against acquittal in the broadest sense. Notwithstanding these

decisions or the chorus of such like rights being heard in all civic societies, the Legislature in its wisdom did not deem it necessary to permit a 'victim' to appeal against the acquittal of his wrong-doer even while carrying out sweeping amendments in the Code in the year 2005. 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. The afore-stated amendment has been brought to guard against arbitrary exercise of power and to curb reckless 'acquittals'. Section 377 was also suitably amended enabling an appeal on the ground of inadequacy of sentence to the Court of Session, if the sentence is passed by a Magistrate.”

The Committee on reforms of Criminal Justice System was constituted by Government of India, Ministry of Home Affairs by its order dated 24.11.2000 to consider measures for revamping the Criminal Justice System. In this connection, for providing justice to victims of crime, Committee made its recommendation as follows:

“i) The victim, and if he is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with 7 years imprisonment or more.

ii) In select cases notified by the appropriate government, with the permission of the court an approved voluntary organization shall also have the right to implead in court proceedings.

iii) The victim has a right to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer.

iv) The victim's right to participate in criminal trials shall, inter alia, include:

a) To produce evidence, oral or documentary, with leave of the Court and/or to seek directions for production of such evidence

b) To ask questions to the witnesses or to suggest to the court questions which may be put to witnesses

c) To know the status of investigation and to move the court to issue directions for

further investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in the search for truth.

d) To be heard in respect of the grant or cancellation of bail

e) To be heard whenever prosecution seeks to withdraw or offer to withdraw and not continue the prosecution

f) To advance arguments after the prosecutor has submitted arguments

g) To participate in negotiations leading to settlement of compoundable offences.

v) The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.

vi) Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization.

vii) Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organized in a separate legislation by Parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration.

viii) The Victim Compensation law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the Court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn.”

In this long journey it was found that victim's right comprises of the following ingredients:

a) Access to justice & fair treatment,

- b) Restitution,
- c) Compensation &
- d) Assistance.

Based on said recommendations amendments were made in the Code showing sensitivity to the rights of a victim, by incorporating the following provisions:

“i) Section 2(wa) was incorporated in the Code defining a victim and making it inclusive of his or her guardian or legal heir;

ii) Proviso to sub section (8) of Section 24(8) of the Code which provided that the Court may permit the victim to engage advocate of his choice to assist the public prosecutor.

iii) Proviso to clause (a) of Section 26 of the Code, which provided that offenses under section 376 and 376 (A) to 376 (D) of the Indian Penal Code shall be tried as far as practicable by a court presided over by a woman.

iv) Proviso 2nd to sub section (1) of Section 157 of the Code by which it was provided that the statement of a rape victim will be recorded at the residence of the victim or in the place of her choice as far as practicable by a woman police officer in the presence of her parent or guardian or near relative or a social worker of the locality.

v) Sub section (1-A) of Section 173(1-A) of the Code by which it was provided that in relation to rape of a child investigation would be completed within three months from the date of receipt of information.

vi) Section 357-A of the Code so as to provide for the “Victim compensation scheme” for the purpose of compensation to the victim or his dependents who suffered loss or injury as a result of the crime.

vii) Proviso to Section 372 of the Code conferring right on a victim to file appeal”

Section 372 falls in Chapter XXIX of the Code titled 'Appeals'. Post amendment, vide Act No.5 of 2009, Section 372 proceeds to provide: *“No Appeal shall lie from any judgment or order of a criminal court except as provided for by this Code or 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.”

Prior to 31.12.2009, that is before the enforcement of amending Act No.5 of 2009, Section 372 was as follows:

“No Appeal shall lie from any judgment or order of a criminal court except as provided for by this Code or any other law for the time being in force”.

The aforesaid amendment is based upon the 154th report of Law Commission.

The statement of object and reasons of Act 5 of 2009 mentioned, is as follows:

“..... 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.....”.

With such statement of object and reasons, the proviso of Section 372 has been inserted, which reads as follows:

"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."

Prior to insertion of the proviso, appeal against inadequacy of sentence lay under section 377 of the Code and against acquittal lay under section 378 of the Code but in neither case the victim had a right to appeal though in a case instituted upon a complaint, the complainant had a right to present an appeal under sub section (4) of section 378 of the Code. Thus, by insertion of the proviso an exception to the general rule was carved out by providing victim a

right to prefer an appeal against an order of acquittal or of convicting for a lesser offence or imposing inadequate compensation. The term "victim" has been defined in section 2 (wa), inserted in the Code by Act No. 5 of 2009, and the same provides as follows:

"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.

The discussion of the term 'victim' has been subject matter of interpretation by a Division Bench of this Court in Criminal Misc. Application U/S 372 Cr.P.C. (Leave to Appeal) No. 172 of 2014, Edal Singh Vs. State of U.P. & 3 others, which was decided by order dated 10.4.2014. The operative portion of the said order provides as follows:

"We also have some doubts where the appellant, who is not the grand father, but grand uncle of the deceased Babloo has any locus standi to file this appeal, as the right of filing the appeal, which has been conferred under section 372 Cr. P. C. has been given to a victim who has been defined under section 2(wa) to mean a person who has suffered any loss or injury caused by reason of the act or omission for which the accused persons have been charged and the expression "victim" includes his or her guardian or legal heir. It cannot be said that the grand uncle i.e. the brother of the grand father would be any person, who could be considered to have suffered any loss or injury. Also the grand uncle not being a lineal ascendant or descendant would not be his legitimate legal heir and we doubt that such an enlarged meaning as has been suggested by the learned counsel for the appellant has been given to any person to file an appeal. We, therefore, do not find any perversity or illegality in the judgement of the Trial Court calling for interference in the order of acquittal recorded by the Trial Court. The application for leave to appeal is rejected and the appeal is, consequently, dismissed."

The Punjab & Haryana High Court in ***M/s. Tata Steel Ltd. Vs. M/s. Atma Tube Products Ltd. & others*** reported in **2014 (1) PLR 1**, has extensively considered the issue to find out as to what is the true meaning of victim and has drawn its conclusions, as follows:

"138. For the reasons assigned above, we sum up our

conclusions and answer the questions as formulated in para 6 of this order, in the following terms:-

Question - (A) (i) The expression "victim" as defined in Section 2(wa) includes all categories of his/her legal heirs for the purpose of engaging an advocate under Section 24(8) or to prefer an appeal under proviso to Section 372 of the Code.

(ii) However, legal heirs comprising only the wife, husband, parent and child of a deceased victim are entitled to payment of compensation under Section 357(1)(c) of the Code. Similarly, only those dependents of a deceased victim who have suffered loss or injury as a result of the crime and require rehabilitation, are eligible to seek compensation as per the Scheme formulated under Section 357-A of the Code.

Question - (B) (iii) The 'complainant' in a complaint-case who is also a 'victim' and the 'victim' other than a 'complainant' in such case, shall have 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 of the Code.

(iv) 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.

(v) 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) of the Code.

Questions - (C) & (D) (vi) The right conferred on a 'victim' to present appeal under proviso to Section 372 is a substantive and independent right which is neither inferior to nor contingent upon the filing of appeal by the State in that case. Resultantly, the condition of seeking 'leave to appeal' or 'special leave to appeal' as contained in Section 378(3) & (4) cannot be imposed for the maintainability of appeal by a 'victim' under proviso to Section 372 of the Code.

Question - (E) (vii) In view of proviso to Section 372 an

appeal preferred by a 'victim' against the order of acquittal passed by a Magistrate in respect of a cognizable offence whether bailable or non-bailable shall lie to the Court of Session, the State's appeal under Section 378(1)(a) of the Code against that very order shall also be entertained and/or transferred to the same Sessions Court.

Question - (F) (viii) The proviso to Section 372 inserted w.e.f. December 31, 2009 is prospective in application and only those orders which have been passed on or after December 31, 2009, irrespective of the date of occurrence or registration of FIR or filing of complaint, shall be appealable at the instance of a 'victim' under the afore-stated proviso. Consequently, a revision petition preferred against an order of acquittal passed prior to December 31, 2009 cannot be converted into an appeal and shall be decided accordingly.”

A Division Bench of Patna High Court in ***Criminal Appeal (DB) No. 1078 of 2012, Parmeshwar Mandal Vs. State of Bihar & others***, after considering the Full Bench judgment of Punjab & Haryana High Court in ***M/s. Tata Steel (supra)***, has held as follows:

“49. In the circumstances, after consideration of the entire matter, conclusions of this Court are as follows:-

(1) - By virtue of the Proviso, as inserted in section 372 of the Code of Criminal Procedure, 1973 by the Criminal Procedure Code (Amendment) Act, 2008 (Act 5 of 2009), a “victim” has been put at a higher pedestal, than a prosecuting agency or a complainant, in the matter of preferring an appeal against any order of a criminal court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. This Proviso gives an unqualified “right” to a “victim” to prefer an appeal in its terms, as against the enabling sections 377 and 378, which only give liberty to a District Magistrate, the State Government, the Central Government and the complainant, as the case may be, to prefer an appeal against an order of sentence on the ground of its inadequacy or against an order of acquittal.

(2) - The right of a 'victim' to prefer an appeal in terms of the said proviso to Section 372 is an unqualified right and no 'leave to appeal' or 'special leave' is required to be obtained by him/her for the purpose, as required by the State or the complainant for maintaining an appeal in terms of Section 378 of the Code.

(3) - No limitation of time has been provided by the Legislature for exercise of such a right of appeal by the 'victim' in terms of the said Proviso. Hence, in the fact and circumstances of each case, the Court has to determine as to whether the appeal was entertainable, or not, on the ground of absence of bonafide explanation for delay by the appellant. The limitation laid down by the Full Bench of Punjab and Haryana High Court is a judicial fiat and not based on interpretation of the provisions of the Code or the Limitation Act, 1963. Hence the same is applicable only within the territorial jurisdiction of that High Court and not beyond.

(4) - However, in view of the legal presumption of innocence in favour of the accused, the yardsticks laid down by judicial pronouncements for consideration of appeals under Section 378 shall be applicable in case of an appeal under the said proviso to Section 372.

(5) - The expression - long after the present incident - used under brackets by the Apex Court in paragraph 5 of its judgment in case of National Commission for Women vs. State of Delhi and another [AIR 2011 SC (sup.) 392] : [(2010) 12 SCC 599] is only an obiter dictum of the Court and it does not lay down a law in terms of Article 141 of the Constitution of India.

(6) - Proviso to section 372 of the Code came into operation w.e.f. December 31, 2009. Hence, in absence of any legislative intent to the contrary, in all cases, in which a judgment and order has been passed by a criminal court on and after that date, a right accrues to the 'victim' to prefer appeal in terms of the said Proviso, irrespective of the date of occurrence and any subsequent event in the case prior to such judgment and order.

(7) - If the subject of the crime is dead or incapacitated to the extent or suffers from such a disability that he/she cannot take steps to exercise his/her right under the Proviso to Section 372, any of his/her next of kin, who can establish before the Court, to its satisfaction, that the crime had caused 'loss' or 'injury' to him/her also, besides to the subject of the crime, can maintain an appeal under the said proviso.

(8) - The 'loss' and 'injury' to an appellant before it (if he/she is other than the de-facto sufferer) has to be assessed by the Court in each and every case in the backdrop of definition of 'injury' provided in section 44 of the Indian Penal Code, and not beyond it, before

entertaining the appeal, in terms of the proviso to Section 372 on merits.

(9) - If any person prefers an appeal in terms of the proviso to Section 372, solely on the basis of his status as a 'guardian' or a 'legal heir', he/she will have to establish the legal basis of his/her such status in reference to the law, as may be applicable in the matter, with all its limitations and qualifications, or otherwise also (e.g. judicial order).

(10) - Once an appeal preferred in terms of the said proviso to Section 372, against an order is entertained by an appellate court on merits, to whatever result, no fresh/second appeal by any party/person can/should be entertained against the same order.

(11) - No distinction can be made between a case instituted by a complainant/informant with the police and by a complainant before the Court directly, and an absolute right of a victim (a complainant or not) to file an appeal under Proviso to Section 372 does not get fettered by any other section of the Code contained in Chapter XXIX, which includes Section 378.

50. Now coming to the case at hand, in the facts and circumstances appearing from the records, this Court is not satisfied that the appellant, who happens to be the cousin father-in-law of the deceased, has suffered any 'loss' or 'injury' as a result of the crime complained of, so as to qualify as a 'victim' to maintain this appeal.

51. This appeal is accordingly dismissed as not maintainable.”

The judgments, quoted above, would go to show that while analysing the definition of victim various High Courts have taken note of various sources to find out as to what is the true meaning of 'victim'. In the meantime, after passing of reference order, a Full Bench of Delhi High Court has also pronounced its judgment on the above aspect on 28.5.2015 in Criminal Appeal No. 1415 of 2012 (Ramphal Vs. State), and, in respect of different approaches which could be adopted for interpreting the term *victim*, the Court observed as follows:

“Para 13. A survey of these High Court decisions thus reveals four possible approaches to the question of the victim’s locus standi to maintain an appeal under the proviso to Section 372:

(a) A narrow reading of the word “victim” (limiting it to direct and proximate physical harm), and a narrow reading of the term “legal heir” (limiting it to lines of succession under personal law). This is the approach of the Division Bench of this Court in Chattar Singh (supra) and of the Andhra Pradesh High Court.

(b) A broad reading of the word “victim” (expanding it to emotional harm caused by the direct harm to someone that one is close to), and a narrow reading of the term “legal heir” (limiting it to lines of succession under personal law). This is the approach of the Patna High Court. The Guwahati High Court has also favoured a broad reading of the word “victim”, while returning no finding on the meaning of “legal heir”

(c) A narrow reading of the word “victim” and a broad reading of the term “legal heir”.

(d) A broad reading of the term “victim” and of the term “legal heir”: This appears to be the view of the Punjab & Haryana High Court, which favours a broad reading of “legal heir”, although it does not appear to have returned a conclusive finding on the reading of the word “victim”.

The Full Bench of Delhi High Court, the Division Bench of Patna High Court and the Full Bench of Punjab & Haryana High Court are unanimous in their conclusion that the proviso of section 372 is not an exception but confers an independent statutory right of appeal to a 'victim', hence, no leave to appeal is required as provided under section 378 of the Code. This particular conclusion, that has been arrived at, has been specifically overruled by the Apex Court in the case of **Satya Pal Singh vs. State of M.P. & others** reported in **2015 CrLJ 4929 SC** by holding that the proviso to Section 372 of Cr.P.C. must be read along with its main enactment i.e. Section 372 and together with sub-section (3) of Section 378 of the Code otherwise the substantive provision of Section 372 of the Code would be rendered nugatory, as it clearly provides that no appeal shall lie from any judgment or order of a Criminal Court except as provided by the Code. Consequently, in view of dictum of Apex Court in **Satya Pal Singh (supra)**, the legal position stands clarified that proviso of Section 372 is an exception to its main

provision and cannot be construed as an independent statutory right in complete detachment with main statutory arrangement. In the said case the deceased's father had preferred appeal. The Apex Court in that context observed as follows:

“9. We have carefully examined the above mentioned provisions of Cr.P.C. and the Full Bench decision of Delhi High Court referred to supra upon which strong reliance is placed by the learned counsel for the appellant. There is no doubt that the appellant, being the father of the deceased, has locus standi to prefer an appeal before the High Court under proviso to Section 372 of Cr.P.C. as he falls within the definition of victim as defined under Section 2(wa) of Cr.P.C. to question the correctness of the judgment and order of acquittal passed by the trial court in favour of respondent nos. 2 to 6 in Sessions Case No. 293/2010.”

In the said case the Apex Court at no point of time has proceeded to deal with the term 'victim' to find out, and to be specific, under which expression the father of deceased would fall though the Apex Court in no uncertain terms observed that father of deceased falls within the definition of victim and has *locus standi* to prefer appeal against acquittal. The fact of the matter is that in the said case the Apex Court analysed the matter only to find out the effect of proviso to the section 372 of the Code and discussed several case-laws relating to the rules of interpretation while interpreting the true import of a proviso of any main provision and finally concluded as follows:

“Thus, from a reading of the above said legal position laid down by this Court in the cases referred to supra, it is abundantly clear that the proviso to Section 372 of Cr.P.C. must be read along with its main enactment i.e., Section 372 itself and together with sub-Section (3) to Section 378 of Cr.P.C. otherwise the substantive provision of Section 372 of Cr.P.C. will be rendered nugatory, as it clearly states that no appeal shall lie from any judgment or order of a Criminal Court except as provided by Cr.P.C.”

The judgment of the Apex Court has settled so far as one particular aspect of the matter is concerned that is, the proviso of Section 372 is an exception to its main provision and cannot be

construed as an independent statutory right in complete detachment with main statutory arrangement. What we find from a reading of the judgments of various High Courts is that while interpreting the word 'victim' the High Courts have given elaborate meaning to the word 'victim'. In this background as to whether the term 'victim' has rightly been understood is an issue to be answered by us.

What we find from a reading of the judgments of various High Courts is that all the judgments deal with definition of 'victim' in respect of an offence of murder without considering the impact of the nature of an offence of which one is a victim. There are various forms of offences provided under Indian Penal Code as well as other Special Laws. An offence may be against body, mind, property, etc. In that context injury caused by the offence would vary. Further, there may be crime against society, which can be termed as a victim less crime because there is no victim in particular. None of these judgments consider the above aspect. In this background, we proceed to consider the case in hand. Before we do that let us remind ourselves that it is trite law that an appeal is a creature of statute and there can be no inherent right of appeal unless expressly provided for by the law itself. Apex Court in the case of ***Durga Shankar Mehta Vs. Raghuraj Singh, AIR 1954 SC 520*** as well as in the case of ***National Commission for Women Vs. State of Delhi and another*** reported in **2010 (12) SCC 599**, has held 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 authorizes an appeal. **The proviso inserted by Section 372 (Act 5 of 2009) w.e.f. 31st December, 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. Section 377 is reproduced below:

.....
.....

10. Section 377 specifically provides that it is the State Government or the Central Government which can issue a direction to the Public Prosecutor to present an appeal before the Court of Session or the High Court on the ground of inadequacy of the sentence. This Section does not in any manner authorize an appeal to the Supreme Court. We are, therefore, unable to comprehend as to how the Commission was entitled to maintain an appeal in the Supreme Court against the order of the High Court.

11. **An appeal is a creature of a Statute and cannot lie under any inherent power.** This Court does undoubtedly grant leave to the 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 organization 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.”

Having regard to the legal position, it is clear that a right to appeal is a statutory right and can be availed by any person only under the statutory arrangement made by the legislation for that purpose. The statutory arrangement providing remedy of appeal under the Code makes it implicit that the remedy of appeal is restricted to only such person and that too only in such manner as provided in section 372. Chapter XXIX of the Code, provides for appeals. The appeal against conviction is an unrestricted right given to the accused (Section 374), whereas the appeal against acquittal is a restricted right given initially to the Government and complainant of the case (Section 378) and now to the victim also under the proviso of Section 372. The right of an accused to prefer appeal against conviction has been subject matter of consideration by the Apex Court in ***M. H. Hoskot vs. State of Maharashtra*** reported in **1978 (3) SCC 544**, wherein following observation has been made:

“11. One component of fair procedure is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction

is fraught with long loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure, natural justice and normative universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis. In short, a first appeal from the Sessions Court to the High Court, as provided in the Cr. P. C., manifests this value upheld in Art. 21.”

In a criminal appeal against conviction, a duty is cast upon the appellate forum to reappraise the evidence itself and it cannot proceed to dispose of the appeal according to the appraisal of evidence by the trial court alone, particularly when appeal has already been admitted and placed for final hearing as per the view of the Apex Court in the case of **Rama vs. State** reported in **2002 CrLJ 2533 SC**. In other words, the Appellate Court has liberty to take a different view than the trial court and, if two views are possible, it may lean towards the view, which is in favour of accused whereas in an appeal against acquittal, if the view taken by the trial court is a reasonably possible view though not the only view that could be taken, the judgment of acquittal cannot be reversed by the Appellate Court. There is a qualitative distinction between acquittal and conviction and appeal against acquittal is generally not allowed in the same unrestricted manner as appeal against conviction. The reason is that when a competent court, manned by trained judicial officer, holds a person to be innocent, the basic principle of criminal jurisprudence regarding “presumption of innocence of accused till he is held guilty by a competent court of law” is further strengthened by a judicial verdict and the matter should ordinarily end there and, as such, interference with such verdict requires special reasons. That is why, the scope of appeal against acquittal is a little-bit narrow in comparison to the appeal against conviction.

In this respect, the position of law explained by the Apex Court in **Chandrappa v. State of Karnataka**, reported in **2007 (4) SCC 415**, may be usefully quoted:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) *An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.*

(2) *The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

(3) *Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

(4) *An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

(5) *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

In view of such context and in the light of **Satya Pal Singh's case (supra)** decided by Apex Court, it is clear that the proviso of Section 372 is an exception to the general provision i.e., **No appeal shall lie.....** and as such, the definition of the word 'victim' is required to be construed in a manner that it sub-serve the purpose of the main enactment and, in any case, does not defeat the same.

The question of interpretation of any term given and defined in the statute has been dealt with by Apex Court in several judgments. In **Jagir Singh: Goel Roadways vs. State of Bihar** reported in **1976 (2) SCC 942: AIR 1976 (SC) 997**, Apex Court has laid down

the requirement to look at the context, in which the word is being used.

Apex Court in the case of ***United Bank of India, Calcutta Vs. Abhijit Tea Company Ltd. and others***, AIR 2000 SC 2957, has quoted with approval following text:

"Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose."

In **2003 (2) All ER 113, Lord Bingham in R. Vs. Secretary for State for Health** mentioned as follows;

"Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

As per the statutory arrangement under the Code, the 'victim' has been conferred right to prefer Appeal against acquittal with the leave of the court.

At this stage, it would be apposite to notice that for setting the Criminal Justice system into motion the concept of locus standi is foreign to Criminal Jurisprudence unless contra-indicated by a statutory provision. In this context, a Constitutional Bench of the apex court in **A.R. Antulay v. Ramdas Srinivas Nayak and Anr.** reported in **1984 (2) SCC 500 (Constitutional Bench)**, has held as follows:

"While Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfill to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199

CrPC. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force ... is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straitjacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the court would require an unambiguous statutory provision and a tangled web of argument for drawing a far-fetched implication, cannot be a substitute for an express statutory provision."

These principles have been reiterated in **Subramanian Swamy Vs. Manmohan Singh, (2012) 3 SCC 64**, in following words:

"The right of private citizen to file a complaint against a corrupt public servant must be equated with his right to access the court in order to set the criminal law in motion against a corrupt public official. The right of access, a constitutional right should not be burdened with unreasonable fetters. When a private citizen approaches a court of law against a corrupt public servant who is highly placed, what is at stake is not only a vindication of personal grievance of that citizen but also the question of bringing orderliness in society and maintaining equal balance in the Rule of law."

In the case of **Subramanian Swamy Vs. Raju, (2013) 10**

SCC 465, the petitioner, in a public interest litigation had sought an authoritative pronouncement on the true purport and effect of different provisions of the JJ Act so as to take a juvenile out of the purview of the said Act. The High Court had declined to answer the question raised on the ground that the petitioner had an alternative remedy under the JJ Act against the order as may have been passed by the Board. In SLP filed before the Apex Court, an objection was raised as regards its maintainability on the ground that it suffers from the vice of absence of locus on the part of the petitioner. While considering this objection the Apex Court has observed thus:

" The administration of criminal justice in India can be divided into two broad stages at which the machinery operates. The first is the investigation of an alleged offence leading to prosecution and the second is the actual prosecution of the offender in a court of law. The jurisprudence that has evolved over the decades as assigned the primary role and responsibility at both stages to the State though we must hasten to add that in certain exceptional situations there is a recognition of limited right in a victim or his family members to take part in the process, particularly, at the stage of the trial. The law, however, frowns upon and prohibits any abdication by the State of its role in the matter at each of the stages and, in fact, does not recognize the right of a third party/stranger to participate or even to come to the aid of the State at any of the stages."

On merits the SLP was held to be maintainable as the adjudication that the Petitioner was seeking had implications beyond the case /proceedings. It was held that the interpretations of the provisions of Juvenile Justice Act would have effect on all juveniles, who may come in conflict with law- both in the immediate and near future.

Having examined various authorities, the inevitable conclusion is that remedy of appeal is a statutory remedy and powers of Appellate Court under Code of Criminal Procedure is an ordinary appellate power, which is regulated by the provisions meant for appeal against acquittal/conviction under Chapter XXIX (Section 372 to 394) of the Code.

Now, we proceed to deal with the word 'victim' as used in Section 2 (wa) for the purpose of maintenance of appeal under Section 372 of the Code.

The definition given in section 2(wa) say ***“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.***

No doubt, the definition clause (Section 2. Definitions) starts with ***“In this code, unless the context otherwise requires,-”***. The contexts in which the word “victim” has been used in the Code are as follows:

- the right to engage an advocate to assist the prosecution with permission of court (Section 24);
- the right to prefer Appeal against acquittal (Proviso of Section 372);
- the statutory arrangement to compensate “victim or his dependents” through victims compensation scheme (Section 357-A, 357-B, 357-C);
- the manner in which statement of a “victim” in relation to an offence of rape is to be recorded during investigation that is by giving facility of recording of statement at residence or at a place of her choice by a woman police officer in presence of parents or guardian, etc (Section 157).

If we examine the Code as it existed since prior to the amendment brought by Act No. 5 of 2009, we may see that Section 357 (3) though does not use the word victim but it uses almost similar language as used in section 2(wa) for the purpose of Compensation to a victim in the eventuality of non-imposition of fine upon accused person while convicting and sentencing him. The language is as follows:

“Section 357:

(1)

(2)

(3) *When a Court imposes a sentence, of which fine does not form a part, **the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so 'sentenced'.***

It may be seen that all the judgments which we have noticed discuss the definition of "victim" as "Means X and includes Y" and while interpreting the phrase "Means X", the term "any loss or injury" has been discussed elaborately and for this purpose, the provisions of section 2 (y) of the Code along with sections 23 (wrongful loss) and 44 (injury) of the Indian Penal Code have been taken into consideration. Like-wise for the phrase "Includes Y", the meaning of term "legal heir" has been analyzed taking aid of the law dealing with principles of inheritance and succession which are used to determine civil rights.

The Apex Court in the case of ***Punjab Land Development & Reclamation Corporation Ltd. Vs. Presiding Officer, 1990 (3) SCC 682***, has mentioned that when a statute says that a word or phrase shall "mean" - not merely that it shall 'include' certain things or acts - "the definition is a hard and fast definition, and no other meaning can be assigned to the expression than is put down in definition." A definition is an explicit statement of full connotation of term. Apex Court in the case of ***Black Diamond Beverages Vs. CTO, 1998 (1) SCC 458***, in context of use of words "means" and "includes" has discussed in detail about the synthesis of phrase "Means X and includes Y" as has been used in various enactments and has held that the 1st part of the phrase "Means X" usually refers to the ordinary and natural meaning but with an extension of the 2nd part i. e., "Includes Y". The first part of the definition should be given its ordinary, popular or natural meaning and second part which "includes" certain others will not prevent the main provision from receiving its meaning.

What is “Loss or Injury” under Section 2 (wa):

If we take up all the said terminology one by one, we may see that the terms “loss or injury”, have been used as synonyms to each other. Neither the term “Injury” nor “Loss” has been defined in the Code. Section 2 (y) of the Code provides that: -

“words and expressions used herein and not defined but defined in the Indian Penal Code have the meanings respectively assigned to them in that code.(emphasis)”

Section 44 of the Indian Penal Code postulates as follows:

“Section 44: The word “Injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.”

Now, if the meaning of term “injury” is to be examined, it may be seen that there are four types of harm, which may be illegally caused to any person as per the definition. That is harm in respect of **(a) body, (b) mind, (c) reputation and (d) property**. Though an offence may inflict upon a person a combination of one or more types of harm specified above.

The term “injury” has been used at different places in IPC in respect of an offence and has to be contextually understood. The injury caused becomes one of the necessary ingredients to constitute a specified offence. If that is so, the injury relevant for the purpose of a particular offence could either be a ***harm, whatever illegally caused to any person, in body or mind or reputation or property*** or a combination of one or more types of harm and it has to be one of the facts in issue before the trial court to be determined for holding the accused guilty. Such fact in issue would be a relevant ingredient to prove the guilt of accused. Hence, such fact in issue is the test to find out the actual victim of the crime that is the direct sufferer of the injury / harm caused to him **by reason of the act or omission for which the accused person has been charged** {section 2(wa)}.

Any emotional harm or injury, howsoever grave it may be, caused to any person not being the direct sufferer especially when such emotional harm or injury is neither ingredient of the offence nor

is the fact in issue in the trial of the accused, cannot grant status of “victim” to such other person not being the direct sufferer.

In nutshell, it can be concluded that 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 a right to prefer appeal under the proviso of section 372. In absence of the direct sufferer or in a case where the direct sufferer suffers a disability his or her legal heir or guardian would qualify as a victim.

Who is “Legal heir” of actual Victim under Section 2 (wa):

So far as this expression “legal heir” is concerned, the Apex Court in **Satya Pal Singh’s case** has held that father of the deceased has *locus standi* to prefer an appeal before the High Court under proviso to Section 372 of Cr.P.C. as he falls within the definition of victim as defined under Section 2(wa) of Cr.P.C.

Although the Apex Court has not elaborately discussed in the aforesaid judgment as to whether father would qualify as a victim because he himself had suffered loss or injury/ or as Legal Heir or Guardian of such person i.e. the deceased. But nonetheless father of the deceased has been held by the Apex Court a victim, within the meaning of section 2(wa) of the Code.

At this stage, it would be appropriate to consider the reasoning and conclusions drawn by the Full Benches of Delhi High Court and Punjab & Haryana High Court. Both the judgments observe that the expression “legal heir” is required to be read in a sense different from what it is for the purpose of civil rights, wherein the degree of legal heirs have been categorized as class-I, Class-II and so on. Both the decisions accord liberal interpretation to the term “Victim” by observing that the victim would have an unqualified right of appeal. However, the Apex Court in **Satya Pal Singh’s Case (supra)** took the view that the victim's right to file an appeal would be subject to the other provisions of the Code and as such the appeal would be subject to the grant of leave.

Accordingly, a fresh look at the expression “legal heir”, as it occurs in section 2 (wa), in the context of the proviso to section 372,

is necessary. At this stage, it would be useful to examine various definitions of the expression “legal heir”, which are as follows:

Merriam-Webster's Dictionary

- One who inherits or is entitled to inherit property.
- One who inherits or is entitled to succeed to the possession of property after the death of its owner.

Cambridge Dictionary

- A person who will legally receive money, property, or a title from another person, especially an older member of the same family, when that other person dies.

Oxford Dictionary

- A person legally entitled to the property or rank of another on that person's death.

Macmillan Dictionary

- Someone who will receive money, property, or a title when another person dies.

Collins Dictionary

- The person legally succeeding to all property of a deceased person, irrespective of whether such person died testate or intestate, and upon whom devolves as well as the rights the duties and liabilities attached to the estate.

In all the above definitions, the common thread is that the person, who is entitled to receive property of any person when such person dies, is termed as “Heir”. The use of the word “Legal” as a prefix to the word “Heir” denotes that the status of such person as “heir” must be recognized by law. It is only then he can be termed as “Legal Heir”.

Succession and Inheritance can be of two kinds – Testamentary or intestate. Testamentary means where succession is as per the Will of the deceased and intestate succession is where the deceased dies without making a Will.

The law on intestate succession for different communities in India is governed by different succession laws applicable for that particular community. Broadly speaking, succession is either under the Hindu Succession Act or the Indian Succession Act or the Muslim

Shariat laws.

With the exception of Muslims, the Indian Succession Act, 1925 has a common set of rules for persons of all religions. Even the Muslims are governed by certain provisions of the Indian Succession Act, 1925 in respect of testamentary disposition, if the will relates to immovable property situated within the State of West Bengal and within the jurisdiction of the Madras and Bombay High Courts.

In Civil law pertaining to Hindu Community, according to the law of Succession, the legal heir of class-I category though, in terms of preference, would oust the legal heir of class-II category, but class-II legal heirs are nevertheless legal heirs. This preferential right have been recognized under civil law by way of statutory arrangements. But in the Code of Criminal Procedure no such statutory arrangement is available to provide for classes of legal heirs or for a preferential order amongst them. Hence in the context of Code of Criminal Procedure, the expression legal heir cannot be construed to create categories of heirs, unless it requires determination of civil rights of the persons claiming to be legal heir of deceased. Such position is across various communities.

We are therefore of the view 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 the preferences / restrictions / categories provided under any statute / personal law governing succession/ inheritance will have no consequence. This interpretation of expression "Legal Heir" would not be a result of liberal construction but would be a consequence of ordinary or natural meaning of the expression "Legal Heir".

Who is Guardian of Actual Victim under Section 2 (wa):

So far as the expression "Guardian" is concerned, a plain meaning commonly known to us may be seen as follows:

"A guardian is one appointed by the wisdom and policy of law to take care of a person and his/her affairs, who by reason of his/her imbecility and want of understanding is incapable of acting for his own interest"

(Wharton's Law Lexicon, 1976 reprinted).

"Someone who takes care of another person or of another person's property." (Merriam-Webster Dictionary)

"One who looks after, protects, or defends." (Collins English Dictionary)

"A person who has the legal right and responsibility of taking care of someone who cannot take care of himself or herself, such as a child whose parents have died." (Cambridge Dictionary)

"A person who is legally responsible for the care of someone who is unable to manage their own affairs, especially a child whose parents have died." (Oxford Dictionary)

All these meanings give clear suggestion that the word "Guardian" includes a Judicial Guardian (appointed by law), a legal Guardian, a Natural Guardian.

Note for the expression "Guardian" and "Legal heir":

The locus standi of a person claiming right to prefer appeal against acquittal as a "Guardian" or "Legal heir" of "victim" would depend upon the facts of a case. The Court would have to assess such claim on the facts of each case; and such person would have to disclose his particulars, relationship with the victim and the basis for such claim. On the basis of such disclosure and the established principles of law, on case to case basis, the claim of being a "Guardian" or "Legal heir" of the victim ought to be decided by the court at the time of considering grant of leave to appeal.

There is another aspect which needs to be considered which is that claims of being "Guardian" or "Legal heir" of the victim may lead to multiplicity of Appeals against same judgment. In this regard, it may be considered that after admission of earliest Appeal against acquittal preferred by any "Guardian" or "Legal heir" of the victim, a subsequent appeal may either be disposed of by permitting the subsequent appellant to have a right to intervene in the earlier admitted appeal or by directing the subsequent appeal to be

connected with the earlier admitted appeal.

From the discussions that have been made above, it is clear that the proviso of Section 372 is an exception to the general law and same confers on a victim a right to appeal against acquittal, which is subject to the grant of leave by the Court. The first part of the definition of 'victim' as given under Section 2 (wa) (i.e. **“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**), is required to be construed in its literal sense and no liberal interpretation is required, Accordingly, only such person would be treated as 'victim', who is the subject-matter of trial being direct sufferer of crime in terms of loss or injury caused to his own body, mind, reputation and property and such loss or injury is one of the ingredient of the offence for which the accused person has been charged and, therefore, any other person cannot be accepted as victim within the first part of Section 2 (wa) for the purposes of maintaining appeal. The second part that is “includes his or her guardian and Legal Heir” would come into play when the actual sufferer is absent or suffers disability.

In other words, 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. In the light of the discussion made above, the ratio of Division Bench of this Court in the case of ***Edal Singh (supra)*** is in tune with the definition of 'victim' as provided under Section 2 (wa) of the Code of Criminal Procedure. The reference is answered accordingly.

Let the order as well as the record be placed before appropriate Bench dealing with the "Leave to Appeal" application.

(Ramesh Sinha, J.) (Manoj Misra, J.) (V.K. Shukla, J.)

Order Date :- 11.11.2016
Shekhar