

Manoj Kumar Singh Vs. State of U.P. and Others

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SooperKanoon Citation : sooperkanoon.com/1182041

Court : Allahabad

Decided On : Jan-13-2015

Judge : Amreshwar Pratap Sahi & Om Prakash-Vii

Appeal No. : Cr. Misc. Leave Application (Defective) No. 67 of 2013

Appellant : Manoj Kumar Singh

Respondent : State of U.P. and Others

Advocate for Pet/Ap. : Sri. Satish Chandra Sinha

Judgement :

Amreshwar Pratap Sahi, J. and Om Prakash-VII, J.

1. Heard Sri Satish Chandra Sinha, learned counsel for the appellant and Sri Rajiv Sharma for the State.

2. This appeal has been preferred under Section 372 Cr. P.C. along with Delay Condonation Application. At the time of entertaining the same following order was passed by the Division Bench on 31.05.2013 :

"This application for grant of leave to appeal has been filed by Manoj Kumar Singh, who is the brother-in-law of the deceased. The informant father of the deceased has not preferred any appeal against acquittal.

The application for condonation of delay in filing the appeal has been filed supported by an affidavit.

The question arises that as to whether the applicant Manoj Kumar Singh has a right to file an appeal under section 372 Cr.P.C. or not.

Learned counsel appearing on behalf of the applicant prays for and is granted three weeks' time to prepare the case.

List this application along with appeal in the second week of July, 2013 before the appropriate Bench."

3. One of the questions that was posed at the time of entertaining the appeal, as to whether the present applicant Manoj Kumar Singh did have any right to prefer the appeal under Section 372 Cr. P.C. or not.

4. It is admitted on record that the appellant has described himself as the brother-in-law of the deceased i.e. husband of the sister of the deceased.

5. The acquittal is founded on the witnesses having become hostile including the parents of the deceased. In these circumstances, it is difficult to accept the appellant as a victim so as to entitle him to file the present appeal when his wife, who is the sister of the deceased, is alive and could have filed an appeal.

6. It would be apt to quote Section 2 (wa) of the Code of Criminal Procedure, 1973 which provision has been inserted by Act No. 5 of 2009 w.e.f. 31.12.2009. The same is extracted hereunder :

"(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;

7. Prior to the coming of the said amendment, the issue as to who would be entitled to file an Appeal under Section 372 Cr. P.C. can be gathered from the position that was explained in the case of **J. K. International v. State (Govt. of NCT of Delhi) and others reported in (2001) 3 SCC 462**. The Apex Court considered the provisions of Section 301 and 302 of the Criminal Procedure Code

and deliberated on the issue as to when a private person can be permitted to conduct a prosecution and then also relied on the decision, **Bhagwant Singh v. Commissioner of Police reported in (1985) 2 SCC 537**, to speak in favour of the informant where the Apex Court gave its opinion with reference to Section 173 (2) (i) of the Code. The Apex Court then held that the doors cannot be closed in such a situation and the complainant deserves to be heard.

8. Then comes the next decision in the case of **Puran v. Rambilas and another reported in (2001) 6 SCC 338**, where also this issue was considered, though in a different context of cancellation of a bail. That was a case where a third party had moved a bail cancellation application. It was held that the power that was vested in the High Court for cancellation under Section 439 of Criminal Procedure Code can be invoked either by the State or by any aggrieved party.

9. However, problems were being faced and consequently an amendment was brought and Section 2 (wa) was introduced.

10. The power of the court and the filing of appeal where the State was lagging behind also came up for consideration in the conduct of fair trial in the case of **Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) reported in (2010) 6 SCC 1**. It was after the media had reflected extensively on the credibility of the investigation and the trial that the matter was taken up by the Delhi High Court and suo motu directions were issued for filing of an appeal. However, the aforesaid, provision does not appear to have been considered in the said case.

11. Then comes the decision in the case of **National Commission for Women v. State of Delhi and another reported in (2010) 12 SCC 599**, where the provisions of Section 372 of the Criminal Procedure Code were considered but it was held to the contrary that since an appeal is a creature of statute, and cannot lie under an inherent power, then in that event to permit any body or an organisation to file an appeal would be dangerous and would cause utter confusion in the criminal justice system. This change was registered in the aforesaid decision and then the matter was again referred to in the case of **National Commission for Women v. Bhaskar Lal Sharma and others reported in (2014) 4 SCC 252**, where this issue of the locus standi of National Commission for Women of being heard was taken

up and referred.

12. There are three other decisions that we have come across of other High Courts namely that of the Full Bench of Punjab and Haryana High Court in the case of **M/s. Tata Steel Ltd. v. M/s. Atma Tube Products Ltd. and others reported in (2014) 1 P.L.R. 1**. The second decision is in the case of **Parmeshwar Mandal v. State of Bihar and others (Criminal Appeal (DB) No. 1078 of 2012)** by a Division Bench of the Patna High Court dated 26.11.2013 and the third decision is of the Rajasthan High Court in the case of **Dhanne Singh v. State of Rajasthan (D. B. Criminal Revision Petition No. 411 of 2012) decided on 2.12.2014**. Here also the word "victim" and the word "complainant" have been considered.

13. However, in view of the judgments of the Apex Court in the case of National Commission for Women (Supra) it would be appropriate to consider the applicability of the ratio of the aforesaid decisions in the present case.

14. At this stage a couple of definitions of the word "guardian" as used in Section 2 (6) of the U. P. Children Act, 1951 and the definition of the word "guardian" under Section 4 (2) of the Guardians and Wards Act, 1890 has to be taken into consideration. This is to be read with the definition of the word "person" as defined in Section 11 of the Indian Penal Code. This reference is necessary inasmuch as Section 2 (y) of the Criminal Procedure Code requires that words and expressions used in the Code and not defined, but defined in the Indian Penal Code will have the meaning respectively assigned to them in that Code.

15. The word "victim" has been clearly defined in the Criminal Procedure Code to mean 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 it also includes his or her guardian or legal heir.

16. With the aforesaid definitions and the judgments at hand it would be appropriate to refer to the status of the present appellant who is the husband of the sister of the deceased. He does not appear to be either the informant or the witness of the crime. There is no fact or foundation that may indicate any loss

having been suffered by the appellant. There is no authorisation by any of the family members of the deceased in favour of the appellant. The parents of the deceased Prem Singh and her mother Madhuri Singh had virtually not supported the prosecution story. The trial court did not find any evidence worth the name to prosecute the accused, but that is a different matter altogether which can be looked into when the appeal is filed by an aggrieved person or any other person who may fall within the definition of the word "victim", as aforesaid. The appellant, in our opinion, does not fall within the definition either as a guardian, legal heir or victim himself, more so when the own sister of the deceased has not come forward to file the appeal. In the aforesaid circumstances, we prima facie do not find any locus of the appellant to present this appeal.

17. This, however, does not in any way prevent any other person who may fall within such definition to file an appeal or the State which is under an obligation to file an appeal particularly in such matters. It is, therefore, open to the State to maintain its appeal and a copy of this order shall be made available to the learned Government Advocate for information.

18. We, however, find that the view that has been expressed by us herein above may require an authoritative pronouncement as we have come across another Division Bench judgment in the case of **Edal Singh v. State of U. P. and others in Criminal Misc. Application u/s 372 Cr. P.C. (Leave to Appeal) No. 172 of 2014 decided on 10.4.2014** where the learned Division Bench has made the following observations :-

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 judgment 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."

19. The aforesaid Division Bench, however, does not take notice of the judgments which have been referred to by us herein above. In particular we would refer to the judgment of the Full Bench of Punjab and Haryana High Court in the case of M/s. Tata Steel Ltd. (Supra) where the Full Bench went on to answer the question directly raised in the following terms in paras no. 64 to 69 :-

"64. It was contended and rightly so that the meaning of the term "victim" or that of his/her "legal heir" deserves to be given widest amplitude to meet with all kinds of peculiar or unforeseen situations, two of which are illustratively given below:-

(a) where a major, unmarried orphan is murdered and the accused person(s)/undertrial(s) was/were acquitted of the charges and the State does not prefer an appeal against the acquittal.

(b) where the entire family is murdered and the accused person(s)/under trial was/were acquitted of the charges and the State does not prefer an appeal against the acquittal.

In both the mis-happenings there may not be any person known as 'legal heir' or a 'guardian' to file an appeal against unwarranted acquittal and it will be against all canons of justice to say that the appellate Court in such like situations would be helpless and the offenders will go unpunished. Since the Legislature has finally granted the right to appeal to a 'victim', it is the duty of the Court to trenchantly affirm such right and provide appropriate remedy.

65. We say so also for the reason that the right to 'engage an advocate' or to 'prefer an appeal' under proviso to Section 372 does not ipso facto entitle the appellant to claim compensation as a 'legal heir' or the next of kin of a deceased

'victim'. That being so, every class or category of legal heirs of a deceased 'victim' can have locus to invoke the remedy under proviso to Section 372 of the Code, without reading into Section 2(wa) that if Class-I legal heir of a 'victim' opts out of filing any appeal, the other legal heirs would also suffer from the same disability.

66. The legislative intentment can be given its fullest effect by permitting all legal heirs, irrespective of their classification under the personal law to prefer appeal under proviso to Section 372. Such a purposive interpretation of the expression "legal heir" within the meaning of Section 2(wa) does no violence to nor does it conflict with Section 357 or 357-A of the Code. Even if a Class-II legal heir prefers an appeal say against inadequate compensation, the appellate court in the event of enhancement of compensation shall be obligated to disburse the enhanced amount to those persons only who are entitled to the same under Sections 357(1)(c) or 357-A of the Code, as the case may be. We, therefore, hold that the expression "legal heir" within the meaning of Section 2(wa) of the Code does not exclude other than the Class-I legal heirs of a deceased 'victim' nor the right to 'engage an advocate' or prefer an appeal is restricted to those persons only to whom compensation is payable under Sections 357, 357-A of the Code or under the Fatal Accidents Act, 1855.

67. The above-stated interpretation saves the Court from legislating and re-writing Section 2(wa) and is otherwise in conformity with the pro-victim jurisprudence advanced by the Supreme Court in PSR Sadhanantham; Ramakanth Rai; M/s JK International and Puran etc. cases.

68. The multiplicity of appeals by more than one legal heir should hardly be a deterrent to hold otherwise as such like procedural difficulties can be effectively streamlined by the Appellate Court through an appropriate set of rules or instructions to its Registry. For example, if the appeal is preferred by other than a Class-I legal heir, such person can be required to disclose particulars of the Class-I legal heir(s), if any, and hearing of such an appeal can be deferred till the appellate court is satisfied that the Class-I legal heirs have not chosen to prefer appeal despite informed knowledge of the order which can be appealed against under proviso to Section 372 of the Code. More than one appeal, if preferred by

different legal heirs, can also be not a cause of concern nor a serious impediment as all such appeals can be clubbed and decided together by passing one consolidated order.

69. It thus finally emerges that the Legislature, before and after amendment of the Code vide Act No.5 of 2009, has recognised and conferred one right or the other on the following categories of persons:-

(i) a 'victim' as defined in Section 2(wa) which includes his/her 'legal heirs' can be permitted by the Court under Section 24(8) to engage an Advocate of his/her choice to assist the prosecution and if he/she is aggrieved at the acquittal of an accused (except acquittal in a case instituted on a complaint), the conviction of the accused for a lesser offence or the imposition of inadequate compensation on such accused, such 'victim' (including his/her legal heirs) have got a right under proviso to Section 372 to prefer an appeal to the Court to which an appeal ordinarily lies against the order of conviction of such Court;

(ii) the legal heirs comprising the wife, husband, parent and child of a deceased 'victim' only are entitled to the payment of compensation under Section 357(1)(c) of the Code;

(iii) in the case of death of a 'victim', only those of his/her dependants who have suffered loss or injury as a result of the crime and who require rehabilitation, are eligible to seek compensation in terms of the scheme formulated under Section 357-A of the Code;

(iv) While the persons falling within the categories at Sr. No.(ii) and (iii) above shall necessarily include and form part of the persons falling in category No.(i), however, vice versa may not always be true.

(B) Whether 'complainant' in a private complaint-case, who is also the 'victim' and the 'victim' other than the 'complainant' complainant' in such cases are entitled to present appeal against the order of acquittal under proviso to Section 372 or have to seek 'special leave' to appeal from the High Court under Section 378(4) Cr.P.C.

..

20. The Full Bench in the case of any private complaint case answered the issue in para 82 as follows :

"82. The above discussion thus can be summed up to say that -

(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 recognised 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) and (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) and (4) of Section 378 of the Code.

21. The other question answered by the Full Bench in para 93 to 95 is as follows :

“(D) Whether presentation of appeal against acquittal is a 'right' or an 'obligation' of the 'State' stemming from the Constitution

93 The evolution of right to appeal against acquittal discussed in extenso in the earlier part of this order unveils that the right to appeal against acquittal has seen

roller-coaster like changes ranging from the 'no right to appeal' [1861] to 'the unconditional right to appeal' [1898] followed by a 'conditional right to appeal' [1973 Code] and again 'unconditional right to appeal' in some of the cases to be filed in the Court of Session [2005] in favour of the State. While the complainant in a case instituted on complaint got a conditional right to appeal against acquittal under Section 378(4) [1973], a 'victim' as defined or explained by us has also now got unconditional right to appeal [2009].

94. Right to live with human dignity without any fear or actual subjection to any kind of unlawful, unsocial and physical or mental abuse and be a member of the self-regulated civic society too is one of the most characterised fundamental right bestowed on every person under Article 21 of the Constitution. The protection or conferment of certain rights on a victim under the Code therefore cannot be mirrored as a favour shown to him/her by the Legislature. These are only a minuscule part of the fundamental rights of vast magnitude guaranteed under the Constitution. The State as a custodian of the power for enforcement of the rule of law owes a corresponding duty to protect these Fundamental Rights. The State also performs the duty of *parens patriae* besides making an endeavour to fulfill the promises contained in Articles 38 or 39-A of the Constitution. The right to prosecute a wrong-doer, to bring his guilt home and to compel such guilty person to undergo the awarded sentence is an essential part of the State's enormous duties. The presentation of appeal against an unmerited and reckless acquittal is also an integral duty of a welfare State, who "has an overall control over the law and order and public order of the area under its jurisdiction", even if such a duty has been assigned by the Legislature as a 'right' in the literal sense. **State of Rajasthan v. Sohan Lal and Ors. (2004) 5 SCC 573**, lends full support to us in this regard when it holds that "The State does not in pursuing or conducting a criminal case or an appeal, espouse any right of its own but really vindicates the cause of society at large, to prevent recurrence as well as punish offences and offenders respectively, in order to preserve orderliness in society and avert anarchy, by upholding the rule of law".

95. In an era of enlightened and well-informed society who justifiably demands its rights or frowns upon the belied promises, it will be too farfetched to say that the

'duty' of the State under Sections 377 or 378 is actually a 'right' exercisable at the discretion of State Executive. The fact that the Legislature has chosen to grant unconditional right to appeal to a 'victim' as compared to the conditional right given to a State under Section 378(3) implies towards the failure of the State machinery in preserving the fair balance upto the expectations of the people. The State therefore no longer enjoys any privileged status as an 'appellant' and hitherto there shall be no legal distinction between an appeal preferred by the 'State' or a 'victim'."

22. There are other questions answered but we find that there has been an extensive consideration by the Full Bench of the Punjab and Haryana High Court which may require an authoritative pronouncement even if we take our view and the view expressed in Edal Singh's case (Supra) to be correct.

23. The aforesaid decision of the Punjab and Haryana High Court has also been followed by the Rajasthan High Court in the case of **Dhanne Singh v. State of Rajasthan** (Supra). However, the Division Bench of the Patna High Court has not agreed with the view taken by the Punjab and Haryana High Court in the case of **Parmeshwar Mandal v. State of Bihar** (Supra).

24. We have taken all the three decisions on record and we find that the Patna High Court has in paragraph 38 to 44 held as under:-

"38. It may be pointed out that the definition of "victim" contained in the 154th Report of the Law Commission was too wide and sweeping, which has not been accepted by the Legislature. Instead Legislature has chosen to define the expression "victim" in much narrower terms by including only the above three category of persons in the definition who get a vested right to appeal in terms of the said proviso to section 372. In the opinion of this Court, in the first category, any person, who can establish before the Court, to its satisfaction, that he has suffered "loss" or "injury", as a result of the crime complained of, can qualify as "victim". Hence, 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 said 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, in the opinion of this Court, maintain an appeal under the said proviso. The expressions "loss" or "injury", have not been defined in the Code. Hence, by virtue of Section 2 (y) of the Code, definition of injury given in Section 44 of the Indian Penal Code has to be imported to determine the scope and limitation of the word "injury" in Section 2 (wa). Section 44 of the Indian Penal Code defines "injury" denoting 'any harm whatever illegally caused to any person in body, mind, reputation or property'. So far as the word "loss" used in the said proviso is concerned, its definition is also not available in the Code. The nearest definition is available in section 23 of the Indian Penal Code which defines "wrongful loss". But this definition is confined to loss of property only. On the other hand, dictionary meaning of "loss", and its types, runs into many pages in the Black's Law Dictionary and Oxford Advanced Learner's Dictionary. However, as held by the said Full Bench also, in the opinion of this Court, the expression "loss" used in the said proviso to Section 372, has to be understood as synonymous to the word "injury" used therein, and in the context of the definition of "injury" appearing in the Penal Code only, and not with the aid of its dictionary meaning. In this context, the following observations of the Apex Court in the case of **CCE v. Fiat India (P) Ltd. [(2012)9 SCC 332]** settles down the rule of interpretation in clear terms :

"39. It is well settled that whenever the legislature uses certain terms or expressions of well-known legal significance or connotations, the courts must interpret them as used or understood in the popular sense if they are not defined under the Act or the Rules framed thereunder. "Popular sense" means "that sense which people conversant with the subject-matter, with which the statute is dealing, would attribute to it."

(emphasis supplied)

39. Therefore, this Court is of the opinion that, it has to be ultimately left to the prudence of the Court to assess whether the appellant before it had actually suffered any 'loss' or 'injury' in the course of the crime complained of, or not, so as to be eligible to maintain his appeal in terms of the said proviso. By not providing the definitions of the expressions in the Code, or qualifying them in any manner,

the Legislature clearly intended to leave it to the Court, to arrive at a conclusion independently in respect of standing of an appellant before it, in the facts and circumstances of each case, as and when it may be called upon to do so.

40. The other two categories, included in the definition of 'victim' - guardian and legal heir - have also been given the liberty to step into the shoes of a 'victim', by virtue of the language of the said definition clause, notwithstanding the fact that they may not have suffered any 'loss' or 'injury' on account of the crime complained of. Here again the expressions 'guardian' and 'legal heir' are not explained in the clause itself nor have been defined in the Code. As against this, if we refer to Sections 198, 198(1)(a), 256 and 394 of the Code, it is clear that wherever the Legislature intended to clarify the persons eligible to take steps in a criminal proceeding under the Code, it did clarify it in clear terms. Hence, this deliberate omission by the Legislature to define 'guardian' or 'legal heir' in the Code, in the opinion of this Court, clearly depicts its intention to leave an appellant, preferring an appeal under the said proviso to Section 372 of the Code, solely on the basis of his/her status as a 'guardian' or a 'legal heir', to establish the legal heirs of his status as such, either in terms of and under the provisions of the laws governing the field, with all their limitations and qualifications, or otherwise also (e.g. a judicial order).

41. In the opinion of this Court, the wide interpretation given by the Full Bench to the expression 'legal heir' may lead to unwarranted results, in as much as, for example, if all the heirs of a Hindu, as the per the Hindu Succession Act, 1956, i.e. class I heirs, class II heirs, agnates and cognates, get simultaneous right to prefer an appeal in terms of the proviso to section 372, it may virtually open gates for 'pro bono publico' appeals, denounced by the Apex Court, and may expose the accused to perpetual risk of harassment on account of malafide litigations. This Court is also of the opinion that, if such liberal interpretation of the expression 'legal heir' is allowed to be read in clause 2(wa), the status of 'legal heir' itself may become a major and primary issue in a given case, essentially to be decided first on examination of evidence, documentary as well as oral. In this context, this Court is also of the opinion that, if once an appeal against any of the three kinds of order, mentioned in the said proviso, preferred by a person claiming to have

suffered loss or injury or a 'guardian' or a 'legal heir', is entertained on merits by the appellate court, to whatever result, no fresh/second appeal by any other party/person can/should be entertained against the same order.

42. Therefore, this Court, with all humility, is unable to accept the said conclusion of the Full Bench and respectfully agrees with the judgment of the Delhi High Court [2007(8) (AD) (Delhi) 478], and other judgments referred to in the judgment of the Full Bench, and the with the judgment of the Andhra Pradesh High Court in the case of Dr. Sudhakar (supra) on the issue, in which it has been held that, for the purposes of determining the locus standi of the legal heir of a victim to file an appeal under the said proviso to Section 372, the court has to necessarily fall back upon the line of succession to his property laid down in his/her personal law. This Court also endorses the view of Guwahati High Court Agartalla Bench) in Gaurang Deo Nath [Cr.Appeal No.13 of 2011 (C)], that in case of allegations of crime being committed was on the husband of the deceased (e.g.- u/s 304B IPC), father of the lady (or her any close relation) may also come within the definition of 'victim', on account of loss or emotional injury suffered by him, so as to maintain his appeal under the said proviso to Section 372 of the Code. The two examples, cited by the Full Bench in paragraph 65, to justify 'widest amplitude' given to the expression 'legal heir', are misconceived. In both the examples the order of succession, in terms of the personal law, still remains open and therefore the apprehension of the right of appeal granted to the victim under the said proviso to Section 372 of the Code getting frustrated, is unfounded.

43. The second question was discussed by the Full Bench from paragraphs 71 to 82 and it was summed up in paragraph 83 and answered in paragraph 139, as reproduced above. The Full Bench has tried to distinguish between a case investigated by the police on a complaint/information received and report submitted and a case of complaint filed by a complainant in the court directly and proceeded with under chapter XV of the Code, and has held that a complainant in a complaint case and a victim other than the complainant in the complaint case has the only remedy by way of an appeal under Section 378(4) of the Code against an order of acquittal, except in cases where guilt is established but conviction is for lesser offence or with imposition of inadequate compensation, in

which case only he/she will have a right to appeal under proviso to Section 372 of the Code.

44. With all reverence to the Full Bench, this Court is unable to agree with this proposition of law also. If that would have been the intention of the Legislature, instead of giving unfettered right to the victim to file appeal in the opening section of the Chapter itself, it could have added one more sub-section in Section 378 itself. It has to be presumed that when unfettered right of appeal was being conferred upon the victim in the opening section of the Chapter itself, the Legislature was conscious of the restricted right of appeal granted to the State and the complainant under Section 378 of the Code. The recommendations in the Malimath Committee Report, which has been adopted and implemented in the form of amendment in various provisions of the Criminal Procedure Code by Act 5 of 2009, would show that, by the amendment, victim was intended to be placed at much higher pedestal in criminal justice delivery system than the State (prosecuting agency) or the complainant. Therefore, instead of adding one more sub-section in Section 378, providing for a right of appeal to a victim also, at par with the complainant of a complaint case, or with State in a police case, he/she has been conferred upon the right in the opening section of the Chapter itself without any qualifications. Clearly by introducing this amendment, the Legislature has recognised the victim in his/her independent capacity in the criminal justice delivery system than the State or informant or complainant. If the interpretation of the Full Bench is accepted, it will result into the victim getting a right to file an appeal only for a lesser wrong done to him/her by a criminal court, i.e. for convicting the accused for lesser offence or for awarding lesser compensation, but will not be able to file an appeal, without a special leave, for greater wrong done to him/her by acquitting the accused altogether. Therefore, this Court is of the opinion that no distinction can/should be made between a case instituted by a complainant/informant with the police and by a complainant before the Court directly, for the purposes of determining the scope and ambit of right of a victim to file an appeal under the said proviso to Section 372. Consequently, this Court is of the opinion that, any person, covered under the definition of 'victim' as contained in clause (wa) of Section 2 of the Code, and thus getting a right to file an appeal in terms of the said proviso to Section 372, cannot be held, in any way, handicapped

in exercise of his/her said right by the provisions of Section 378 of the Code specially in the background of disadvantageous status of victim in the present criminal justice delivery system in the country. This view of the Court, on this issue, stand buttressed also by the findings of the Full Bench in respect of question (C) holding that the victim is not obligated to seek 'leave' or 'special leave' of the High Court for presentation of appeal under the said proviso to Section 372 of the Code and also by the learned Single Judge of Allahabad High Court in the case Ashok Kumar Srivastava (supra) and by a Division Bench of Delhi High Court in its judgment **dated 24.01.2011 in the case of Jagmohan Bhola v. Dilbagh Rai Bhola and Ors."**

25. Considering the aforesaid position that emerges, we find that it is necessary to refer this question of the maintainability of an appeal on behalf of a person claiming to be a "victim" for an authoritative pronouncement by a Larger Bench as in view of the decisions aforesaid it will be difficult to agree with the view expressed by the Division Bench in the case of Edal Singh (Supra) decided on 10.4.2014. Consequently, the following questions are referred for being placed before a Larger Bench to answer the aforesaid issue in the light of the observations made herein above namely :

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 v. State** (Supra) states the law correctly keeping in view the conflicting ratios of the Full Bench decision of the Punjab and 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).

26. Let the papers be placed before Hon'ble the Chief Justice for referring the aforesaid questions to be answered accordingly.

Ordered Accordingly.