Ravikumar vs B A Harish Gowda on 31 May, 2022

Author: H.P. Sandesh

Bench: H.P. Sandesh

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU R
DATED THIS THE 31ST DAY OF MAY, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL REVISION PETITION NO.175/2021
C/W.
CRIMINAL REVISION PETITION NO.550/2020
CRIMINAL REVISION PETITION NO.552/2020

IN CRIMINAL REVISION PETITION NO.175/2021:

BETWEEN:

B.A.HARISH GOWDA
AGED ABOUT 67 YEARS
RETD. IAS OFFICER,
THE THEN DIRECTOR OF
PRE UNIVERSITY EDUCATION
DEPARTMENT AND SPECIAL
OFFICER CET, CET CELL, BENGALURU
(NOW RETIRED FROM SERVICE AS
SECRETARY TO GOVT. FOOD AND
CIVIL SUPPLIES AND CONSUMER
AFFAIRS DEPARTMENT,

RESIDING AT NO.3,
JALADARSHINI LAYOUT,
NEW BEL ROAD,
BENGALURU-560054. ... PETITIONER

(BY SRI S.R.RAVI PRAKASH, ADVOCATE)
AND:

1. RAVI KUMAR
AGED ABOUT 53 YEARS

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S/O KENCHE GOWDA,
EDITOR, PUBLISHER AND PRINTER
OF PARIVALA PATHRIKE JOURNAL,
R/O. ATTIGUPPE VILLAGE,
MARALAVADI HOBLI,
KANAKAPURA TALUK,
RAMANAGARA DISTRICT-562112

2. R.K.RAVI KUMAR
AGE: MAJOR,
S/O KENCHE GOWDA,
REPORTER OF PARIVALA PATHRIKE JOURNAL,
R/O. ATTIGUPPE VILLAGE,
MARALAVADI HOBLI,
KANAKAPURA TALUK,
RAMANAGARA DISTRICT 562112. ... RESPONDENTS

(BY SRI PAVAN KUMAR G., ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W. SECTION 401 OF CR.P.C PRAYING TO ENHANCE THE SENTENCE DATED 07.07.2020, IMPOSED ON THE ACCUSED/RESPONDENT HEREIN BY LEARNED SESSION JUDGE OF THE COURT OF THE LXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE BENGALURU CITY IN CRL.A.NOs.1353/2017 AND 1660/2017 TO A REASONABLE PERIOD IN ADDITION TO SENTENCE OF FINE.

IN CRIMINAL REVISION PETITION NO.550/2020:

BETWEEN:

1. RAVI KUMAR
AGED ABOUT 50 YEARS
S/O KENCHE GOWDA,
EDITOR, PUBLISHER AND PRINTER
OF PARIVALA PATHRIKE JOURNAL,
R/O. ATTIGUPPE VILLAGE,
MARALAVADI HOBLI,

KANAKAPURA TALUK,
RAMANAGARA DISTRICT-562117

2. R.K.RAVI KUMAR
S/O LATE KENCHE GOWDA,
REPORTER OF PARIVALA PATHRIKE-JOURNAL,
R/O. ATTIGUPPE VILLAGE,
MARALAVADI HOBLI,
KANAKAPURA TALUK,

RAMANAGARA DISTRICT-562117. ... PETITIONERS

(BY SRI PAVAN KUMAR G., ADVOCATE)

AND:

B.A.HARISH GOWDA
S/O LATE B.A.GOWDA
AGED ABOUT 65 YEARS
THE THEN DIRECTOR OF
PRE UNIVERSITY EDUCATION
DEPARTMENT AND SPECIAL
OFFICER CET, CET CELL, BENGALURU
(NOW RETIRED FROM SERVICE AS
SECRETARY TO GOVERNMENT FOOD AND
CIVIL SUPPLIES AND CONSUMER
AFFAIRS DEPARTMENT,

RESIDING AT NO.3,
JALADARSHINI LAYOUT,
NEW BEL ROAD,
BENGALURU-560054. ... RESPONDENT

(BY SRI S.R.RAVI PRAKASH, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W. SECTION 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND SENTENCE PASSED BY THE V A.C.M.M., AT BENGALURU IN C.C.NO.20643/2000, DATED 30.08.2017 AND JUDGMENT DATED 07.07.2020 IN CRIMINAL APPEAL NO.1353/2017 BY THE LXVI ADDITIONAL

CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY AND ACQUIT THE PETITIONERS.

IN CRIMINAL REVISION PETITION NO.552/2020:

BETWEEN:

1. RAVI KUMAR
AGED ABOUT 50 YEARS
S/O KENCHE GOWDA,
EDITOR, PUBLISHER AND PRINTER
OF PARIVALA PATHRIKE JOURNAL,
R/O. ATTIGUPPE VILLAGE,
MARALAVADI HOBLI,
KANAKAPURA TALUK,
RAMANAGARA DISTRICT-562117

2. R.K.RAVI KUMAR
S/O LATE KENCHE GOWDA,

REPORTER OF PARIVAL PATHRIKE -JOURNAL,
R/O. ATTIGUPPE VILLAGE,
MARALAVADI HOBLI,
KANAKAPURA TALUK,
RAMANAGARA DISTRICT 562117. ... PETITIONERS

(BY SRI PAVAN KUMAR G., ADVOCATE)

AND:

B.A.HARISH GOWDA
S/O LATE B.A.GOWDA
AGED ABOUT 65 YEARS
THE THEN DIRECTOR OF
PRE UNIVERSITY EDUCATION
DEPARTMENT AND SPECIAL
OFFICER CET, CET CELL, BENGALURU
(NOW RETIRED FROM SERVICE AS
SECRETARY TO GOVERNMENT FOOD AND
CIVIL SUPPLIES AND CONSUMER
AFFAIRS DEPARTMENT),

5

RESIDENTIAL ADDRESS:
NO.3, JALADARSHINI LAYOUT,
NEW BEL ROAD,
BENGALURU-560054. ... RESPONDENT

(BY SRI S.R.RAVI PRAKASH, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W. SECTION 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND SENTENCE PASSED BY THE V A.C.M.M., AT BENGALURU IN C.C.NO.20643/2000, DATED 30.08.2017 AND JUDGMENT DATED 07.07.2020 IN CRL.A.NO.1660/2017 BY THE LXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY FOR THE OFFENCE PUNISHABLE UNDER SECTION 500 OF IPC AND ACQUIT THE PETITIONERS.

THESE CRIMINAL REVISION PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.04.2022 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Crl.R.P.No.175/2021 is filed to enhance the sentence imposed on the respondent-accused in Crl.A.Nos.1353/2017 and 1660/2017 dated 07.07.2020 passed by the LXVI Additional City Civil and Sessions Judge, Bengaluru City.

2. Crl.R.P.Nos.550/2020 and 552/2020 are filed to set aside the judgment of conviction and sentence in C.C.No.20643/2000 dated 30.08.2017 passed by the V Additional C.M.M., at Bengaluru and the judgment passed in Crl.A.Nos.1353/2017 and 1660/2017 dated 07.07.2020 passed by the LXVI Additional City Civil and Sessions Judge, Bengaluru City.

3. The parties are referred to in their original rankings as complainant and accused for the convenience of the Court, in order to avoid confusion.

4. The factual matrix of the case of the complainant before the Trial Court is that the accused committed the offences punishable under Sections 499 and 500 of IPC as he had printed and published defamatory articles in Kannada Journal "Parivala Pathrike" owned by him and also invoked the offences punishable under Sections 4, 5, 13, 14 and 15 of the Press and Registration of Books Act, 1867 for having made false declaration before the District Magistrate in the bottom of the last page of journal about the place of printing the said journal.

5. Based on the complaint and sworn statement, the Trial Court took cognizance of the offence in respect of the PCR which is numbered as C.C.No.20643/2000 and summons was issued to the accused persons and accused No.1 appeared before the Trial Court in response to the summons and in the order sheet, an indication was made on 21.04.2001 that accused Nos.1 and 2 are one and the same person and the same is not disputed. The accused, who has been secured before the Trial Court did not plead guilty and claimed to be tried for the offence punishable under Section 500 of IPC and Sections 13 and 14 of the Press and Registration of Books Act, 1867.

6. The complainant, in order to prove his case, examined himself as P.W.1 and also examined four witnesses as P.Ws.2 to 5 and got marked the documents as Exs.P1 to P29 to establish that the imputations made against him in the impugned articles were false, malicious and per-se defamatory and that the accused made false declaration before the District Magistrate with regard to the place of printing the journal. The accused, in order to prove his case, neither examined himself nor produced any documents.

7. The Trial Court, after considering the material on record, vide judgment dated 03.10.2002 convicted the accused for the offence punishable under Section 499 read with Section 500 of IPC for one year and sentenced to pay fine of Rs.1,000/-, in default, simple imprisonment for 2 months. The Trial Court also imposed fine of Rs.1000/- and simple imprisonment for two months for the offence under Section 5 read with Section 14 of Press and Registration Act. In default of payment of fine, to undergo simple imprisonment for 15 days.

8. Being aggrieved by the judgment of conviction and sentence, the accused has filed an appeal in Crl.A.No.610/2002 before the Appellate Court and the same was allowed in part, confirming the judgment of conviction for the offence under Section 500 of IPC and set aside the judgment of conviction and sentence for the other offences.

9. Being aggrieved by the judgment allowing the appeal in part, the accused had filed Crl.R.P.No.1045/2006 and the same was allowed vide order dated 15.07.2013 and set aside the

order and remanded the matter directing the Trial Court to proceed with the matter from the stage of cross-examination of P.Ws.1 and 2. After remand, inspite of sufficient opportunity being given to him by the Trial Court, the witness P.W.3 was not cross-examined but, P.W.2 was cross-examined and witness summons sent to P.W.3 could not be served on him as his whereabouts could not be traced. Hence, the complainant gave up his evidence. After the remand also, the accused did not examine any witness and also not produced any document and once again, the matter was heard and vide judgment dated 30.08.2017, the Trial Court convicted the accused and sentenced him for a period of 6 months for the offence under Section 500 of IPC and imposed fine of Rs.25,000/-. In default to pay the fine amount, the accused shall undergo simple imprisonment for a period of 3 months. Hence, both the complainant as well as the accused have filed an appeal. The complainant, in his appeal in Crl.A.No.1660/2017, sought for an order to enhance the sentence and the accused in Crl.A.No.1353/2017, questioned the conviction and sentence passed by the Trial Court.

10. The Appellate Court, dismissed the appeal filed by the accused and allowed the appeal filed by the complainant, however modified the sentence enhancing the imprisonment for a period of 9 months with a fine of Rs.10,000/- and in default of payment of fine, ordered to undergo simple imprisonment for a period of 3 months and set aside the order imposing fine of Rs.25,000/-. Being aggrieved by the order of modification of sentence, these three revision petitions are filed by the accused as well as the complainant.

11. Learned counsel appearing for the petitioner- complainant in Crl.R.P.No.175/2021 would vehemently contend that the Appellate Court has committed error in enhancing the punishment for only 9 months and Trial Court also committed error in awarding sentence of 6 months and vehemently contend that, in a case of imputation i.e., defamatory per-se, the burden shifts upon the accused to prove that imputation false within any of the exceptions to Section 499 of IPC. In the case on hand, the document Ex.P2 produced before the Trial Court is clear that the document printed and published by the accused is per-se defamatory and the same is done with an intention to defame the complainant. He would also contend that the accused resorted to very unethical practices as defence strategy to defeat the process of justice and nothing was placed before the Court that the said publication was made within the exceptions to Section 499 of IPC.

12. He would further contend that, though the Appellate Court has taken note of the conduct of the accused and he is pursuing the matter from the year 2000 when the defamatory per-se statement was made against the complainant and also not led any evidence to substantiate his defence. It is also his contention that both the Courts failed to take note of the same and ought to have imposed severe punishment and failed to take note of the gravity of the allegation made against the respondent-accused herein and the said publication is also made with an intention to defame the complainant and the said publication is also blatantly false and defamatory per-se and the same has not been taken note by the Trial Court as well as the Appellate Court, while awarding the sentence and the sentence not commensurate with the gravity of the offence. Hence, prayed this Court to enhance the sentence.

13. Learned counsel appearing for the petitioner- complainant in Crl.R.P.No.175/2021 also vehemently contend that the accused had indulged in making false imputations in the journal and

the document Ex.P2 reveals that it is defamatory per-se which fact has not been rebutted by the accused either before the Trial Court or before the Appellate Court or before this Court in these petitions or on the earlier occasions. The false and concocted imputations directed against the complainant by the accused in Ex.P2 are not only defamatory, but they are also very grave in nature meant to ensure deep impact on the minds of the reader and words will not be sufficient to describe the mental agony, humiliation and physical hardship undergone by the complainant in the past 20 years. The very nature of false imputations reproduced in the complaint is sufficient to prove that the punishment imposed upon the accused to convict is insufficient. The enhancement by the Appellate Court is therefore very well justified but, not sufficient for the reasons stated in paragraph Nos.12 to 14 of the revision petition. Hence, it requires interference of this Court to enhance the sentence.

14. The counsel also relied upon the additional memorandum of arguments, wherein also reproduced the false imputations made against the complainant which could be seen in the complaint dated 06.12.2000 which is marked as Ex.P1 and at that time, the complainant was the Director of the Pre- University Education, Special Officer of CET Cell and the complainant also held important posts like CEO of KIADB, Managing Director of Karnataka Co-Op Apex Bank Limited, Commissioner of Commercial Taxes, Commissioner of Public Instruction, Secretary to Government Food, Civil Supplies and Consumer Affairs etc. Hence, it requires interference.

15. The counsel also, in support of his argument, relied upon the judgment of the Apex Court in the case of BACHAN SINGH AND OTHERS VS. STATE OF PUNJAB reported in AIR 1980 SC 267, wherein the Apex Court held that there was nothing to prevent the High Court from invoking its powers under Section 397 read with Section 401 of Cr.P.C. and to make an order for the enhancement of the sentence. The counsel also brought to the notice of this Court paragraph No.8 of the judgment for exercising the revisional jurisdiction for enhancement of the sentence.

16. The counsel also relied upon the judgment of the Apex Court in the case of EKNATH SHANKARRAO MUKKAWAR VS. STATE OF MAHARASHTRA reported in AIR 1977 SC 1177, wherein the Apex Court held that the new Code of Criminal Procedure, 1973, has not abolished the High Court's power of enhancement of sentence by exercising revisional jurisdiction, suo motu. The provision for appeal against inadequacy of sentence by the State Government or the Central Government does not lead to such a conclusion. High Court's power of enhancement of sentence, in an appropriate case, by exercising suo motu power of revision, is still extant under Section 397 read with Section 401 Criminal Procedure Code, 1973, inasmuch as the High Court can "by itself" call for the record of proceedings of any inferior criminal Court under its jurisdiction. The provision of Section 401 (4) is a bar to a party, who does not appeal, when appeal lies, but applies in revision. Such a legal bar under Section 401 (4) does not stand in the way of the High Court's exercise of power of revision, suo motu, which continues as before in the new Code.

The counsel referring the principles laid down in these two judgments would vehemently contend that the Court can exercise revisional powers and even the High Court can exercise revisional jurisdiction, suo-motu.

17. The counsel also relied upon the judgment of the Apex Court in the case of ROCHE PRODUCTS LIMITED VS. COLLECTOR OF CUSTOMS & ANOTHER reported in 1989 SUPP (2) SCC 532 and brought to notice of this Court exercise of both the jurisdiction by referring to Section 130(2) alone is only an irregularity not affecting the order and reference of a wrong provision of statute will not affect the order when authority has power under statute to make such order.

The counsel would vehemently contend that this judgment is aptly applicable to the case on hand that the Appellate Court is having power to revisit the material available on record and even assuming that, no appeal lies and if revision lies, the judgment is very clear that wrong provision of statute will not affect the order, when the authority has power under the statute to make such an order.

18. The counsel also relied upon the judgment in the case of P.K. PALANISAMY VS. N. ARUMUGHAM AND ANOTHER reported in (2009) 9 SCC 173, wherein the Apex Court held that, Nomenclature/Form/Form of proceedings, defect in cause-title of plaint/prayer for relief in plaint, relief on a specific provision granted on a pleading based on a general provision is sustainable. The plaintiff seeking extension of time for payment of Court fees under the specific provision of Section 149 not mentioning it and wrongly mentioning Section 148. The Court granting relief of extension of time for payment of deficit fees under Section 149, the Apex Court held that the same is sustainable. The counsel also brought to the notice of this Court paragraph Nos.26 and 27, wherein discussion is made with regard to seeking of relief as sought and not the invoking of provisions.

19. The counsel also relied upon the unreported judgment of this Court passed in CRL.A.NO.52/2007 dated 11.12.2013 in the case of SRI R. PRASANNA VS. SRI H.R. SANJEEVA, wherein this Court has taken note of the fact that the accused to undergo simple imprisonment for a period of four months and pay fine of Rs.1,000/-, in default, to undergo, simple imprisonment for a period of fifteen days for the offence punishable under Section 502 of IPC. This Court also further observed that, the First Appellate Court has failed to notice presumption-requisites to invoke exception 1 or 2 to Section 499 of IPC and accused has to prove that alleged imputation is true and also taken note of exceptions and enhanced the fine amount. In default to pay the fine, ordered to undergo simple imprisonment for a period of six months and out of the fine amount, ordered to pay Rs.40,000/- in favour of the complainant as compensation for the offence under Section 500 of IPC.

20. The counsel also relied upon the judgment of the Apex Court in WRIT PETITION (CRIMINAL) NO.184 OF 2014 and connected petitions in the case of SUBRAMANIAN SWAMY VS. UNION OF INDIA, MINISTRY OF LAW & ORS, wherein the Apex Court has taken note of the offences under Sections 499 and 500 of IPC and held that, if it be for the public good that the imputation should be made or published. "Public good" has to be treated to be a fact. The onus of proving these two ingredients, namely, truth of the imputation and the publication of the imputation for the public good, is on the accused.

21. The counsel also relied upon the judgment of the Apex Court in the case of SUBRAMANIAN SWAMY VS. UNION OF INDIA, MINISTRY OF LAW AND OTHERS reported in (2016) 7 SCC 221, wherein the Apex Court has discussed in detail with regard to Sections 499 and 500 of IPC

regarding criminal defamation has its own independent identity and law relating to defamation has to be understood as it stood at the time when the Constitution came into force.

22. The counsel also relied upon the judgment of the Apex Court in the case of SUKRA MAHTO VS. BASDEO KUMAR MAHTO AND ANOTHER reported in 1971 (1) SCC 885, wherein the Apex Court discussed with regard to Section 499 of IPC, Ninth Exception and also with regard to Section 52, good faith and public good, both have to be satisfied and degree of proof that has to be offered by the accused.

The counsel referring these judgments would vehemently contend that the accused has not been examined before the Trial Court to prove either good faith or the imputations have been made for public good.

23. The counsel also relied upon the judgment of the Apex Court in the case of S.K. SUNDARAM : IN RE reported in (2001) 2 SCC 171, wherein the Apex Court has discussed with regard to Section 52, a person casting aspersions on another can claim to have acted in good faith only if before doing so, he has made a genuine and in-depth inquiry as to the facts.

24. The counsel also relied upon the judgment of the Kerala High Court in the case of KONATH MADHAVI AMMA VS. S.M. SHARIEF AND ANOTHER reported in 1985 CRI. L. J. 1496, wherein the Kerala High Court has discussed with regard to Sections 499 and 501 of IPC, Editor, Printer and Publisher of a newspaper should exercise due care and caution in publishing matter likely to defame others.

25. The counsel also relied upon the judgment of this Court in the case of M. SOMASEKHAR VS. S.A. SUBBARAJU reported in I.L.R. 1989 KAR 138 regarding production of copy of newspaper from proper custody, the complainant entitled to benefit under Section 7, although copy of declaration under Section 5 not produced. In the absence of objection to copy of newspaper produced, it was for accused to prove the same not genuine and produce certificate under Section 8A to rebut presumption under Section 7 of the Press and Registration of Books Act, 1867.

26. The petitioners/accused have filed two revision petitions i.e., Crl.R.P.Nos.550/2020 and 552/2020. Crl.R.P.No.550/2020 is filed praying this Court to set aside the judgment of conviction and sentence passed by the V Additional C.M.M. at Bengaluru in C.C.No.20643/2000 dated 30.08.2017 and the judgment dated 07.07.2020 in Crl.A.No.1353/2017 passed by the Appellate Court and prayed this Court to acquit the petitioners. The main contention urged in the grounds of the revision is that, both the Courts have gravely erred in convicting the petitioners for the offence punishable under Section 500 of IPC and sentencing which is manifestly erroneous and opposed to the facts and circumstances of the case. He would further contend that both the Courts have gravely erred in considering the evidence of P.W.3, since he did not tender himself for cross- examination. Hence, the evidence of P.W.3 ought to have been discarded.

27. It is further contended that, P.W.2 is an another witness and in his cross-examination, he has categorically admitted that he does not know about the STD booth but, denies the suggestion that he

did not have any STD booth and further he is a stranger to P.W.1 and also states that he does not know about the complainant nor his reputation. It is also contended that the entire facts does not reveal that there is no intention to damage the reputation of the respondent, the appellants did not have any intention or mensrea to commit the offence under Section 500 of IPC. This fact has not been considered by both the Courts and also not considered the cross-examination of P.Ws.1 and 2 and failed to consider the defence of the petitioner.

28. Crl.R.P.No.552/2020 is filed to set aside the judgment of conviction and the sentence passed by the V Additional C.M.M. at Bengaluru in C.C.No.20643/2000 dated 30.08.2017 and the judgment dated 07.07.2020 in Crl.A.No.1660/2017 passed by the Appellate Court and prayed this Court to acquit the petitioners. The main grounds urged in the revision is that the appeal filed by the respondent- complainant under Section 374(3) of Cr.P.C. itself is not maintainable because Section 374 of Cr.P.C. provides for an appeal against the conviction and the complainant does not have any right to file an appeal. It is also contended that the alleged defamatory statement was published in the year 2000 and 20 years have elapsed and the accused is put to great hardship. It is further contended that both the Courts have gravely erred in considering the evidence of P.W.3 and other similar grounds urged in the connected revision petitions are also urged in this revision petition. Hence, prayed this Court to set aside the order of conviction and sentence.

29. The learned counsel appearing for the accused would vehemently contend that, no revision is maintainable against the order of enhancement and hence, Crl.R.P.No.175/2021 is not maintainable. The counsel would also vehemently contend that the very appeal filed before the Appellate Court is not maintainable but, the Appellate Court enhanced the sentence erroneously even without jurisdiction. The counsel would vehemently contend that the Trial Court had earlier convicted for all the offences and the same has been set aside and there is no provision in the Cr.P.C. for enhancement in private complaint but, only State has got power to file an appeal for inadequate sentence. The appeal provision made under Section 372 of Cr.P.C. after the amendment is only against the acquittal inadequate and if punishment is for lesser offence or for imposing inadequate compensation.

30. The counsel for the accused would also vehemently contend that both the Courts have considered the evidence of P.Ws.1, 2, 4 and 5. The witness P.W.4, after the remand has not appeared and not subjected himself for cross-examination and his evidence has been considered and the Trial Court as well as the Appellate Court have committed an error. This Court, in Criminal Revision Petition No.1045/2006, while allowing the same, given an opportunity to cross-examine all the witnesses. He would also contend that the evidence of P.W.1 cannot be believed and the same is a self-serving statement and he gave evidence only with an intention to imprison the accused and his evidence may be taken away.

31. In support of his argument, he relied upon the judgment of the Apex Court passed in CRL.A.NO.555 OF 2020 dated 28.08.2020, wherein the Apex Court held that the appeal under Section 372 of Cr.P.C. by the victim is a qualified one which is maintainable in the event of acquittal of the accused or convicting for lesser offence or for imposing inadequate compensation only, whereas under Section 377 Cr.P.C. State Government is empowered to prefer appeal to the High

Court in the event of inadequate sentence by the Sessions Court, the victim cannot maintain appeal under Section 372 of Cr.P.C. for enhancement of sentence. The Apex Court also further observed that at the same time, there is no provision for appeal by the victim for questioning the order of sentence as inadequate and it is open for the State Government to prefer an appeal, but similarly, no appeal can be maintained by the victim under Section 372 Cr.P.C. on the ground of inadequate sentence. It is further observed that the remedy of appeal is creature of the statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Hence, the very filing of the appeal as well as revision before this Court is not maintainable.

32. In reply to the argument of the learned counsel for the accused, the counsel appearing for the respondent- complainant would vehemently contend that exercising of powers without power is a bar and the Appellate Court has exercised its power, though the appeal not lies but, revision lies against the sentence. He would further contend that, in order to prove the fact that publication was made for the public good and with good faith, no material is placed before the Trial Court and the accused even has not led any evidence. Further, while publishing the same, no enquiry was made prior to publishing the said publication and imputation was made with an intention to defame the respondent-complainant. Hence, prayed this Court to dismiss the appeal filed by the accused and allow the revision petitions.

33. Having heard the arguments of the respective counsel appearing for the parties and on perusal of the material available on record, the points that would arise for consideration of this Court are:

> (i) Whether the revision petition filed by the complainant requires consideration by this Court for enhancement of sentence as sought ?
>
> (ii) Whether the revision petition filed by the accused to set aside the order passed in Crl.A.No.1353/2017 enhancing the sentence from six months to nine months without any statute to file any appeal against the sentence by the victim requires interference as contended in the revision?
>
> (iii) Whether the order passed by the Trial Court in C.C.No.20643/2000 dated 30.08.2017 passed by the V Additional Chief Metropolitan Magistrate at Bengaluru and the order of confirmation of conviction for the offence punishable under Sections 499 read with Section 500 of IPC requires exercising the revisional jurisdiction?
>
> (iv) What order?

Point Nos.(i) and (ii):

34. Crl.RP.No.175/2021 is filed by the complainant to enhance the sentence contending that the sentence passed by the Trial Court as well as the Appellate Court is inadequate taking note of the gravity of the offence and the same is not commensurate with the gravity of the offence and both the Courts failed to exercise its jurisdiction to impose appropriate sentence for the Act committed by the

accused. The other revision petition is filed by the accused contending that the Appellate Court has committed an error in enhancing the sentence from six months to nine months and such an order is passed without jurisdiction and statute does not provide any such power to Appellate Court to entertain an appeal against the sentence filed by the complainant. In the absence of any such statutory powers, the Trial Court ought not to have entertained the appeal.

35. The very contention of the complainant before this Court is that the Appellate Court has committed an error in enhancing the punishment for only nine moths and the Trial Court has committed an error in awarding sentence of six months and further vehemently contend that in the case of imputation i.e., defamatory per se, the burden shifts upon the accused to prove that the imputations comes within any of the exceptions to Section 499 of IPC. The learned counsel also would vehemently contend that the document - Ex.P2 produced before the Trial Court is clear that the document printed and published by the accused is per se defamatory, the same is done with an intention to defame the complainant. The learned counsel also would vehemently contend that the accused resorted to very unethical practices viz., defense strategy to defeat the process of justice and nothing was placed before this Court to show that the said publication was made within the exception to Section 499 of IPC. The learned counsel also would vehemently contend that both the Courts have failed to take note of the gravity of the allegation made against the complainant in the said article - Ex.P2 and the said publication is also blatantly false and defamatory per se and ought to have imposed severe sentence against the accused and the said sentence is not commensurate with the gravity of the offence. The accused had indulged in making the false imputation in the article and the accused has not rebutted the case of the complainant by leading any evidence before the Trial Court. The false and concocted imputations directed against the complainant by the accused in Ex.P2 are not only defamatory, but they are also very grave in nature meant to ensure deep impact on the minds of the reader and the words will not be sufficient to describe the mental agony, humiliation and hardship. Hence, it requires enhancement.

36. Learned counsel appearing for the complainant relied upon the judgment of the Apex Court in Bachan Singh's case (supra), wherein the Apex Court held that there was nothing to prevent the High Court from invoking its powers under Section 397 read with Section 401 of Cr.P.C. and to make an order for enhancement of the sentence.

37. Learned counsel also relied upon the judgment of the Apex Court in Eknath Shankarrao Mukkawar's case (supra), wherein, the Apex Court held that even the Court can exercise the powers of suo motu.

38. Learned counsel also relied upon the judgment of the Apex Court in Roche Products Limited's case (supra), having referred to this judgment contended that the Apex Court is having revisit the material available on record and even assuming that, no appeal lies and if revision lies, the judgment is very clear that wrong provision of statute will not affect the order when authority has power under statute to make such order.

39. On the other hand, learned counsel appearing for the respondents/accused relied upon the judgment of the Apex Court passed in CRL.A.NO.555 OF 2020 dated 28.08.2020, wherein the Apex

Court held that the appeal under Section 372 of Cr.P.C., by the victim is a qualified one which is maintainable in the event of acquittal of the accused or convicting for lesser offence or for imposing inadequate compensation only, whereas under Section 377 Cr.P.C., State Government is empowered to prefer appeal to the High Court in the event of inadequate sentence by the Sessions Court, the victim cannot maintain an appeal under Section 372 of Cr.P.C. for enhancement of sentence. The Apex Court also further observed that at the same time, there is no provision for appeal by the victim for questioning the order of sentence as inadequate and it is open for the State Government to prefer an appeal, but similarly, no appeal can be maintained by the victim under Section 372 Cr.P.C., on the ground of inadequate sentence. It is further observed that the remedy of appeal is creature of the statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable.

40. Having considered the principles laid down in the judgments referred by the complainant's counsel and also the learned counsel appearing for the accused, it is very clear that the remedy of appeal is creature of the statute and on perusal of Section 372 of Cr.P.C., by the victim is qualified to file an appeal in the event of acquittal of the accused or convicting for lesser offence or for imposing inadequate compensation only. No doubt, under the Code, there is a provision under Section 377 of Cr.P.C., the State Government is empowered to prefer an appeal in the High Court. But the Apex Court categorically says that unless the remedy of appeal is created by the statute either under the Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of victim, is maintainable.

41. In the case on hand also, the appeal was filed under Section 374 of Cr.P.C., before the Trial Court and under Section 374 of Cr.P.C., no such provision is provided to file an appeal by the victim against the order of the Trial Court for enhancement of sentence. No doubt, there is a provision under Section 372 of Cr.P.C., the same is also not provided an appeal for enhancement of sentence. Hence, the Appellate Court ought not to have entertained the said appeal for enhancement of sentence and committed an error in enhancing the sentence when the statute does not provide such an appeal. No doubt, when the remedy provided to the State to file an appeal in the event of inadequate sentence, it requires consideration to suitably amend Section 372 of Cr.P.C., conferring the right to the victim also to file an appeal making necessary amendment to Section 372 of Cr.P.C., or otherwise it is a discrimination against the victim when the appeal is provided to the State. Hence, it is appropriate to direct the Central Government to make necessary amendment to provide an opportunity to the victim also to approach the Court for seeking an enhancement of sentence and the said right of anomaly under the provisions of Section 372 of Cr.P.C., requires to be set right, for insertion of a right to a victim to question the order of sentence and seek for an enhancement of sentence. The Apex Court also observed in the order that the remedy of appeal is creature of the statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further, it is observed that, when the time being no such provision is available and this Court also cannot entertain the appeal. Hence, it requires interference of the order of the Trial Court for enhancing of sentence. Hence, the revision filed by the complainant deserves to be dismissed and the appeal filed by the accused requires to be allowed by setting aside the order of

enhancement of sentence. In view of coming to the conclusion that no statutory provision is provided to the victim to file an appeal, the revision filed by the complainant against the order of the Appellate Court and the Trial Court for lesser sentence, is not maintainable. Consequently, the revision filed by the accused deserves to be allowed and the order of the Appellate Court requires to be set aside. Hence, I answer point Nos.(i) and (ii), accordingly.

Point No.(iii):

> 42. The learned counsel appearing for the accused filed an appeal challenging the judgment of conviction and sentence and also confirmation of conviction and sentence passed in Crl.A.No.1660/2017 and also the order passed in C.C.no.20643/2000 dated 30.08.2017. The case of the complainant before the Trial Court is that the accused in his article, which is marked as Ex.P2 made false imputations against the complainant, which could be seen in the complaint dated 06.12.2000 - Ex.P1. His contention is that at the time of publication of the said article, he was the Director of Pre-

University Education Department and the Special Officer of CET Cell and also held important post viz., CEO., in KIADB; Managing Director of Karnataka Co-operative Apex Bank Limited; the Commissioner of Commercial taxes; the Commissioner of Public Instructions; Secretary to Government, Food and Civil Supplies and Consumer Affairs Department etc. He had discharged his duties with utmost faith and honesty to the particular institutions and this accused made false imputations in terms of Ex.P2, are not only defamatory but they also very grave in nature meant to ensure deep impact on the minds of the reader and the words will not be sufficient to describe the mental agony, humiliation and physical hardship undergone by the complainant in the past 20 years. The complainant in order to substantiate his contention, he himself examined as P.W.1 and he got marked several documents on his behalf and particularly he relied upon the document Ex.P1 - complaint and also mainly relied upon the document - Ex.P2 under which an article is published, wherein, false imputations are made against the complainant. The complainant also relied upon the evidence of PWs.2 to 5.

43. The learned counsel for the complainant in support of his arguments, he relied upon the judgment of the Apex Court in the case of SUBRAMANIAN SWAMY VS. UNION OF INDIA, MINISTRY OF LAW AND OTHERS in W.P.(Criminal) No.184 of 2014 reported in (2016) 7 SCC 221, wherein, the Apex Court taken note of the offences punishable under Sections 499 and 500 of IPC and held that if it be for the public good that the imputation should be made or published. Public good has to be treated to be a fact. The onus of proving these two ingredients namely., truth of the imputation and the publication of the imputation for the public good is on the accused. Further, the Apex Court discussed in detail Sections 499 and 500 of IPC, regarding criminal defamation has its own independent identity and law relating to defamation has to be understood as it stood at the time when the Constitution came into force.

44. The other judgment referred by the learned counsel in Sukra Mahto's case (supra), wherein the Apex Court discussed with regard to Section 499 of IPC, Ninth Exception and also with regard to

Section 52, good faith and public good, both have to be satisfied and degree of proof that has to be offered by the accused.

45. The learned counsel also relied upon the judgment of in the case of S.K. SUNDARAM : IN RE reported in (2001) 2 SCC 171, wherein, the Apex Court discussed with regard to Section 52, a person casting aspersions on another held, can claim to have acted in good faith only if before doing so, he has made a genuine and in-depth inquiry as to the facts.

46. In keeping the principles laid down in the judgments referred supra, this Court considered the material available on record, whether such imputations made under Ex.P2 by the accused is based on the prior inquiry and whether such an act is acted in good faith and whether the accused has placed any material before the Court to substantiate his article. The fact that the said article published in the Kannada Journal "Parivala Pathrike" in terms of Ex.P2, was by the accused, is not disputed. The accused during the course of cross-examination of complainant witnesses not took any defense that the said article is not published by him and instead he had admitted the document - Ex.P2 under which the imputations are made against the complainant. The complainant also relied upon the evidence of other witnesses - PWs.2 to 5 in support of his contentions.

47. Before considering the evidence available on record, this Court would like to make it clear that, though the evidence is adduced by the complainant for the offence punishable under Section 500 of IPC and Sections 13 and 14 of the Press and Registration of Books Act, 1867, other than the offence under Section 500 of IPC, the accused has been acquitted and the same has attained its finality. Hence, the Court has to consider the evidence of P.Ws.1 to 3 and need not consider the evidence of P.Ws.4 and 5 are the Tahsildar and Revenue Inspector, who have been examined to prove the charges under Sections 13 and 14 of the Press and Registration of Books Act, 1867.

48. Now coming to the evidence of P.Ws.1 to 3 is concerned, P.W.1 is the complainant and P.Ws.2 and 3 are the witnesses, who have read the article Ex.P2-Parivala Newspaper (Magazine) and spoke about the publication. The complainant also relied upon the documents Ex.P1-complaint, Ex.P2-News Magazine, Ex.P3-Reply of the District Magistrate, Exs.P4 and P5- Registered notices, Exs.P6 and P7-Letters dated 02.10.200 and 08.11.2000. Ex.P8-Copy of Declaration of accused, Exs.P9 and P9(a) are the photograph and negative, Exs.P10 and P11-Copy of proceedings in P.S.No.6432/2000, Exs.P12 and P13-Paper publications, Ex.P14-Letter dated 04.07.1999, Exs.P15 and P16- Letters dated 05.07.1997 and 06.07.1998, Ex.P17-Editorial dated 07.07.1998, Ex.P18-Letter dated 09.07.1997, Exs.P19- News Report dated 20.07.1998, Exs.P20 and P21-Editorial dated 10.07.1997, Exs.P22- News Report in Jana Vahini, Ex.P23-Copy of proceedings of Director dated 30.01.1997, Ex.P24- Copy of W.P.No.2960/1997, Ex.P25-Copy of W.A.No.224/1997, Ex.P26- Letter, Ex.P27-Letter to Divisional Commissioner, Ex.P28- Revenue Inspector Report and Ex.P29-Mahazar conducted by the Revenue Inspector. The Appellate Court has also taken note of the documents Exs.P26 to P29 and observed that, in view of not considering the other charges against the accused, those documents are not relevant.

49. Now, coming to the material on record, Ex.P1 is the complaint and Ex.P2 is the publication made in Parivala newspaper (Magazine) making defamatory per-se statement against the complainant.

Though the Trial Court discussed in detail in the judgment regarding the exceptions are concerned, however, considering the evidence of P.Ws.1 to 3, particularly in respect of this charge is concerned, in paragraph No.23 comes to the conclusion that the accused only with an intention to harm the reputation of the complainant published the defamatory imputations and it amounts to causing harm to the reputation of the complainant and also comes to the conclusion that the contents of Ex.P2 satisfies the ingredients of offence under Section 499 read with Section 500 of IPC.

50. It is also observed by the Trial Court that the press has great power in impressing the minds of the people and it is essential that persons responsible for publishing anything in newspapers should, take care before publishing which tends to harm the reputation of a person. It is further observed that, it is unfortunate that by ignoring a basic responsibilities of a responsible publisher cum reporter made imputation by way of accusation against the accused, who is a responsible IAS Officer and the Director of P.U. Department of the State and the very contents of Ex.P2 tarnished the image of the complainant. Hence, convicted the accused.

51. It is also important to note that the petitions filed are revision petitions and the scope of revision is very limited and the Court while exercising the revisional jurisdiction has to examine whether any perverse order has been passed by the Trial Court as well as the Appellate Court ignoring the material available on record and also take note of the legality and correctness of the judgment passed by both the Courts. In that background, this Court has to consider the order of the Appellate Court.

52. The Appellate Court, while considering the material on record, taken note of Section 499 of IPC i.e., defamation and its explanations in paragraph No.17 and thereafter, considered the evidence on record. The allegations made against the complainant are also mentioned in paragraph No.18 and particularly considered the document Ex.P2 and in paragraph No.21, the Appellate Court has also taken note of the title of the questioned article Ex.P2(c) and mentioned the headlines mentioned in the said article, wherein it is specifically mentioned that the complainant is a corrupt and also titled as "Harish Gowdana Pramanika Dandegalu and Dagalbaajithanagalu" and also taken note of line of cross-examination of P.W.1, wherein the line of defence is that the said article is published with good faith and for the benefit of the public.

53. The Appellate Court also, having considered the principles laid down in the judgments referred by both the parties, observed in paragraph No.39 that the accused is a printer, publisher and writer of Parivala fortnightly newspaper magazine. But, the contention of the accused is that he did not have any intention, enmity or mensrea to commit the offence under Section 500 of IPC. It is also observed that the accused not led in any independent evidence to prove that the same is done with good faith and for the benefit of the public.

54. When the P.W.1 reiterated the averments of the complaint as well as the contents of the article which is marked as Ex.P2, nothing worthwhile is elicited in his cross-examination and the accused also not led in any evidence to substantiate his contention when he did not dispute the article Ex.P2 and the Appellate Court also taken note of the evidence of P.Ws.4 and 5 which has been considered by the Trial Court and comes to the conclusion that the Trial Court has committed mistake in

considering the same and however, observed that, it does not affect the case of the complainant and P.Ws.4 and 5 are examined only to prove the other offence and the same is not the subject matter of the petition. The Appellate Court also taken note of the admission given by P.W.2 with regard to the fact that he does not know as to whether the reputation of the complainant was damaged or not. However, considered the material that P.Ws.1 and 2 were cross-examined in length and when the complainant has substantiated that the article-Ex.P2 is per-se defamatory, the said allegation has not been substantiated by the accused and the onus of proving the same shifts on him when the complainant has substantiated as to the accusation made against the accused and imputations made in Ex.P2 is per-se defamatory and falls within the definition of Section 499 of IPC.

55. The complainant also relied upon the evidence of P.W.2 to establish the loss/injury to the reputation of the complainant and so also the evidence of P.W.3, who has not been cross-examined, inspite of sufficient opportunity being given. The Appellate Court also, on re-appreciation of evidence available on record, taken note of the contents of the complaint and allegations made in the article-Ex.P2 and particularly in paragraph No.74 taken note of the fact that the accused circulated the questioned article in the Court premises on the date of the examination of the complainant and also taken note of the fact that the said article was printed and published to the extent of 40,000 copies in paragraph No.77 and also taken note of the conduct of the accused and the fact that the complaint was filed in the year 2000 invoking the offence under Section 500 of IPC and not assisted the Court in cross-examining the witnesses and also filed unnecessary applications before the Trial Court and ultimately, he did not lead any defence evidence. The Appellate Court has also taken note of enormous hardship, suffering, mental agony and financial loss over a very long period lasting nearly 17 years caused to the complainant to establish that false utterance is made against the complainant and also taken note of the conduct of the accused in paragraph Nos.87 and 88 and considered the material available on record and passed the detailed order.

56. The very contention of the learned counsel for the accused in their petitions is that, both the Courts have committed an error in convicting him and sentencing him for a period of 6 months and to pay fine of Rs.25,000/-. The said contention cannot be accepted for the reason that, first of all, the accused has not disputed the very article and the fact that he is a printer and publisher and the same was published and the contents of Ex.P2 is also per-se defamatory. Though defence was taken in the cross-examination that the said article was published with good faith and for the benefit of the public good, in order to substantiate the same, no material is placed before the Court. Before publishing the said article, he ought to have made enquiry and he has also not placed any material as to the source from which he received such information and the article has been published on the title the complainant is a corrupt and during the said time, admittedly, the complainant was the Director of Pre-University Board. It is also important to note that the complainant also substantiated his case that, in view of the said article, his reputation was spoiled and in order to substantiate the same, he also relied upon the evidence of P.Ws.2 and 3 and nothing worthwhile is elicited from the mouth of either P.W.1 or P.Ws.2 and 3. These are the aspects which have been considered by the Trial Court as well as the Appellate Court and the Appellate Court also discussed in detail the evidence available on record while re-appreciating the material on record.

57. When such being the case and when the accused has also not led any evidence before the Trial Court to substantiate his contention that the same was made with good faith and for the public good, both the Courts have not committed any error while appreciating the material on record and have given anxious consideration to the evidence available on record.

58. It is also important to note that the complainant also fought before the Court almost from the last two decades to prove the fact that his reputation has been spoiled on account of defamatory per-se allegations made against him and these aspects are also considered by both the Trial Court as well as the Appellate Court. When the material has been considered by the Trial Court as well as the Appellate Court and given finding on the basis of the evidence available on record, it cannot be said that the order passed by both the Courts are perverse and no material on record to substantiate the same.

59. I have already pointed out that the scope of revision is very limited and in the revision, this Court can only examine whether the Trial Court and the Appellate Court have passed any perverse order and if no such perversity is found in the orders passed by both the Courts, revision cannot be entertained. With regard to legality and correctness of the order is concerned, nothing is found on record that both the Courts have committed an error.

60. In the judgment of the Apex Court in Sukra Mahto's case (supra), it is held that the accused has to prove that the imputation is made with good faith and for the benefit of the public good and the same has not been done by the accused. In S.K. Sundaram's case (supra), the Apex Court has discussed with regard to Section 52, wherein also it is observed that a person casting aspersions on another can claim to have acted with good faith only if before doing so, he has made a genuine and in-depth inquiry as to the facts. But the same has not been done and nothing is on record in the case on hand and no document is placed as to the depth enquiry made by the accused as to the facts which he narrated in Ex.P2. Hence, both the judgments are applicable to the facts of the case on hand.

61. In the judgment of Subramanian Swamy's case (supra), the Apex Court has held that the onus of proving these two ingredients, namely, truth of the imputation and the publication of the imputation for the public good, is on the accused and the same has not been discharged by the accused.

62. When such being the case, I do not find any error committed by both the Courts in considering the material on record. Hence, it is not a fit case to exercise the revisional jurisdiction to set aside the judgment of the Trial Court as well as the Appellate Court in convicting the accused for the offence punishable under Section 500 of IPC.

63. With regard to the sentence part is also concerned, I have already pointed out while answering point for consideration that no appeal lies against the inadequate sentence and no such statutory provision is available in the Code and the Trial Court has convicted and sentenced the accused for a period of 6 months. Taking note of the imputations made in the article Ex.P2 which is per-se defamatory defaming the name of the complainant which was made with an intention to defame the

complainant, the sentence imposed is actually on the lower side. Though the Appellate Court enhanced the sentence from 6 months to 9 months and in view of the fact that no such statute to file any appeal by the victim, I have already pointed out that the said order passed by the Appellate Court is erroneous and no interference is called for against the conviction for a period of six months against the accused, since article published by the accused is per-se defamatory done with an intention to defame the complainant, who is the IAS Officer and during the said time, he was also heading the Pre-University Board as a Director.

64. With regard to the sentence passed by the Appellate Court setting aside the portion of the order of the Trial Court imposing fine of Rs.25,000/-, reduced the same to Rs.10,000/- exercising the powers taking note of the fact that the Magistrate has no power to impose fine more than Rs.10,000/-. The Appellate Court also exercised its powers to set right the error committed by the Trial Court. Hence, I do not find any reason to even reduce the sentence and the complainant also, in order to protect his reputation on account of this false allegation made against him fought tooth and nail from the last two decades. Hence, no grounds are made out even to interfere with regard to the sentence is concerned. Therefore, I answer point No.(iii) as 'negative' that both the Courts have not committed any error in convicting and sentencing the accused for the offence punishable under Section 500 of IPC, except an error in enhancing the sentence from 6 months to 9 months by the Appellate Court, in view of no such statute to enhance the sentence or otherwise, no error on the part of the Appellate Court.

Point No.(iv)

65. In view of the discussions made above, I pass the following:

ORDER

(i) The revision petition filed by the complainant for enhancement of sentence in Crl.R.P.No.175/2021 is dismissed.

(ii) The revision petition filed by the accused in Crl.R.P.No.550/2020 is allowed setting aside the judgment of conviction and sentence passed by the LXVI Additional City Civil and Sessions Judge, Bengaluru in Crl.A.No.1353/2017 dated 07.07.2020 enhancing the sentence from 6 months to 9 months.

(iii) The revision filed by the accused in Crl.R.P.No.552/2020 questioning the conviction and sentence passed by the by the LXVI Additional City Civil and Sessions Judge, Bengaluru in Crl.A.No.1600/2017 dated 07.07.2020 confirming the conviction with a fine of Rs.10,000/-, in default of payment of fine amount, to undergo simple imprisonment for a period of 3 months is dismissed.

The conviction passed by the V Additional CMM at Bengaluru in C.C.No.20643/2000 dated 30.08.2017 is confirmed i.e., the accused to undergo imprisonment for a period of 6 months and to pay fine of Rs.10,000/- is confirmed which is modified by the Appellate Court.

(iv) The Registry is directed to send the Trial Court Records and Appellate Court records forthwith.

(v) The Registry is directed to send this copy of the judgment to the Ministry of justice to examine and do the needful, as observed in the judgment while answering point Nos.(i) and (ii) regarding anomaly in the statute to set right the right of appeal to the victim for necessary amendment to provide right of appeal to the victim for enhancement of sentence.

Sd/-

JUDGE ST/cp*