

# **Mast Ram Tiwari vs State Of U.P. & 3 Others on 19 January, 2018**

**Equivalent citations: AIRONLINE 2018 ALL 49**

**Author: Shashi Kant Gupta**

**Bench: Dilip B Bhosale, Shashi Kant Gupta, Suneet Kumar**

HIGH COURT OF JUDICATURE AT ALLAHABAD RESERVED AFR Case :- CRIMINAL MISC. APPLICATION U/S 372 CR.P.C. (LEAVE TO APPEAL) No. - 351 of 2017 Applicant :- Mast Ram Tiwari Opposite Parties :- State of U.P. & 3 Ors.

Counsel for Applicant :- Rajesh Kumar Singh Counsel for Opposite Parties :- S.A. Murtaza, A.G.A.

With Case :- GOVERNMENT APPEAL No. - 6071 of 2017 Appellant :- State of U.P. Respondents :- Keshav Savita & Anr.

Counsel for Appellant :- S.A. Murtaza, A.G.A.

Hon'ble Dilip B Bhosale, Chief Justice Hon'ble Shashi Kant Gupta, J Hon'ble Suneet Kumar, J (Per Dilip B Bhosale, Chief Justice) The question referred to this Bench is, whether the limitation for filing an appeal at the instance of the victim or the first informant is 60 days from the date of acquittal as laid down under Section 378 (5) of the Code of Criminal Procedure, 1973 (for short, 'CrPC') or 90 days as reported by the Stamp Reporter pursuant to the judgment of a coordinate Bench of this Court in Nanhey Singh @ Dinesh Singh Vs. State of U.P. & Ors., Criminal Misc. Application Defective U/S 372 CrPC (Leave to Appeal) No. 83 of 2013, decided on 22.07.2013.

This question has been formulated and referred by a Division Bench, while dealing with Criminal Misc. Application U/S 372 Cr.P.C. (Leave to Appeal) No. 351 of 2017. The Criminal Misc Application has been instituted on behalf of the complainant against the judgment and order dated 01.08.2017 rendered by Additional Sessions Judge, Court No.1, Banda, whereby the respondents-accused were acquitted of the charges punishable under Sections 364/376 of Indian Penal Code (for short, 'IPC') read with Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') in Sessions Trial No. 120 of 2014 arising from Special Criminal Case No. 67 of 2014. The victim in the first case is one Km 'X' and the first informant is one Mast Ram Tiwari, son of Bachchhi Ram Tiwari, her grandfather. The alleged incident of kidnapping and rape occurred in the intervening night of 18th and 19th May 2014. The FIR was lodged by the petitioner pursuant to which a crime bearing Crime No. 120 of 2014 came to be registered at Police Station Mataundh, District Banda. The accused persons were tried before the Additional Sessions Judge, Court No.1, Banda, who, vide judgment and order dated 01.08.2017, acquitted them all of the charges punishable under Sections 364, 376 of IPC read with Sections 3 and 4 of POCSO Act. It is against this judgment and order the petitioner filed an application seeking leave of this Court to file appeal against the order of acquittal under Section 372 read with Section 378 (5) of CrPC. Since the appeal

was filed after 60 days from the date of the judgment of acquittal, the above question has been framed and referred by the Division Bench vide order dated 03.11.2017. The Division Bench, after referring to the judgment of another Division Bench of this Court in Nanhey Singh (supra), expressed its reservation about view taken therein and formulated the question by making the following observations in the order:

"Proviso to section 372 Cr.P.C. has been added by the Legislature through the Amending Act No.5 of 2009. Proviso to section 372 Cr.P.C. does not have the retrospective effect. There is no period of limitation prescribed for the filing of an appeal by a victim under the proviso to Section 372. Thus it is well established that a reasonable period would have to be inferred from the statutory provisions. If no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What shall be the reasonable period would depend upon the nature of the statute, rights and liabilities and other relevant factors. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period would depend upon the facts of each case.

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

Sub-section (3) to section 378 Cr.P.C. provides for preferring an appeal to the High Court against the order of acquittal and it is necessary to obtain its leave. It is well established that the proviso to section 372 Cr.P.C. must be limited to the subject matter of section 378 Cr.P.C.

During the course of arguments, Sri Syed Ali Murtaza, learned AGA has also cited a number of judgments of other Hon'ble High Court and the Apex Court with regard to computation of limitation in filing the appeal against acquittal. Learned AGA stressed that Legislative body has not paid heed towards the Amending Act No.5 of 2009 by virtue of which period of limitation has not been prescribed in consonance with Article 114 (a) Limitation Act which was being followed under section 417 Cr.P.C. of Old Act 1898 and has now been re-enacted as Section 378 Cr.P.C.

For the proper exposition of legal stratagem, the judgments relied by the learned counsel for the appellant and AGA are delineated as under :

1. Kareemul Hajazi Vs. State of NCT of Delhi & others (Crl. Appeal No. 740 of 2010) decided on 7.1.2011.

2. Lalu Prasad Yadav & State of Bihar & another (Criminal Appeal No. 662 of 2010) decided on 1st April 2010.

3. M/s Tata Steel Ltd. Vs. Atma Tube Products & others (FB) CRM 790 of 2010 decided on 18th March 2013.

4. State (Delhi Administration) Versus Dharampal (2001) 10 SCC 372.

In the aforesaid judgments, the issue with regard to computation of limitation in the appeal filed against the acquittal passed by any court other than a High Court by the Central Government, State and the victim has been dealt with in extenso which is totally not in consonance with section 378 (5) Cr.P.C.

Thus the period of limitation enshrined in section 378 (5) Cr.P.C. runs counter to the ratio of coordinate Bench of this Court in the matter of Nanhey Singh @ Dinesh Singh decided on 22.7.2013."

The Division Bench, while making reference, also connected another appeal filed by the Government, bearing Government Appeal No. 6071 of 2017 (State of U.P. Vs. Keshav Savita & Anr.), observing that quite similar and debatable question is raised in the said appeal also. It is in this backdrop, a larger Bench has been constituted for considering the aforementioned question quoted in the first paragraph of this judgment.

Before we deal with the question, it would be advantageous to refer to the judgment of this Court in Nanhey Singh (supra), to understand the divergent view expressed in the reference order. In that case, the appellant had challenged the correctness of the judgment of acquittal dated 11.10.2006, by which the respondents - accused were acquitted of offence under Section 302 IPC. The appellant was neither the informant nor was examined as a witness in the case. He had made a statement on affidavit that he was cousin of the deceased Jabbar Singh, the son of PW-2 in the case. While dealing with the application seeking leave to file appeal and the question of limitation, the Division Bench, after considering the provisions contained in Sections 372 and 378 of CrPC read with Article 114 of the Limitation Act, 1963 (for short, 'Limitation Act'), in paras 4 and 5 observed thus:

"4. We have already noted that provisions of Section 378 Cr P C is related to special categories of cases on account of very categorization made by that provision. Thus, we have no hesitation in saying that the provision of limitations, which are prescribed by Section 378 Cr P C, could not be attracted to an appeal, which could have been filed under Section 372 Cr P C by virtue of the Proviso, which was added by the legislature through the Amending Act No. 5 of 2009. Then, the simple question could be as to how could the courts be ascertaining as to what should be the limitation within which an appeal should be preferred by any person, who is entitled by virtue of proviso to Section 372 Cr P C to bring an appeal before any appellate court. In our opinion, the provision of Section 378 Cr P C, as we have already noted, is special in nature, which is attracted only in cases of appeals, which are likely to be preferred or

which have been filed in three different categories of cases, which we have already indicated, may be a case different from that which is spoken of by Section 378 as in that case even if the right of appeal has been created in favour of the complainant, he has to exercise that right within a particular period by virtue of Section 378 (5) Cr P C, which situation is not postulated by proviso to Section 372 Cr P C, as such, in our opinion, the general provisions of the Limitation Act have to be consulted for ascertaining the period, which could be attracted for filing an appeal under Section 372 proviso Cr P C.

5. We refer to Article 114 of the Limitation Act, which refers to Section 417 (2) of the Cr P C, that, the Cr P C of 1988 and that is equivalent to present Section 378 Cr P C. In that case the period is prescribed as 90 days, but the provisions under Section 372 Cr P C being a new one, which was brought out by virtue of Amending Act No. 5 of 2009 and on consideration of the very Article 114 of the Limitation Act, we find that it speaks of an appeal from an order of acquittal and thereafter, makes categorization of different appeals under different headings. We have to assume that the Legislature at the time of the framing Article 114 of the Limitation Act in absence of the previous proviso to Section 372 Cr P C, had nothing before it to mention that particular provision as one of such occasions on which the law of limitation shall be considered for computing the period of limitation. But, the provision speaks of appeals against acquittal and we are of the opinion that a period of 90 days should be applicable also to appeals under Section 372 proviso Cr P C."

(emphasis supplied) It is against this backdrop, we have heard learned counsel for the parties and, with their assistance, gone through the reference order, judgment in Nanhey Singh's case, judgments of the Supreme Court and this Court relied upon by them and the relevant provisions of CrPC and the Limitation Act. It is pertinent to note that both, counsel appearing for the State and counsel appearing for the applicant, submitted that the limitation for filing an appeal against the judgment of acquittal by the victim/informant under Section 372 is 90 days, as has been rightly held by the Division Bench of this Court in Nahney Singh's case. Learned counsel for the State and the applicant submitted that there is no provision prescribing the period of limitation for such an appeal filed on behalf of a victim under the proviso to Section 372 of CrPC. The period of limitation for an appeal by the State Government or the Central Government against an order of acquittal is 90 days from the date of order appealed from by virtue of Article 114(A) of the Limitation Act. It was further contended that the right of appeal against the order of acquittal by the State and the victim cannot be discriminated. Then it was submitted that, where no period of limitation is prescribed by the Statute, the Courts would have to infer a reasonable period of limitation. Since 90 days' period is provided for the appeal by the State, the period of 90 days, even for the appeal at the instance of victim, therefore, deserves to be treated as reasonable period of limitation. In support of the submission, we were taken through, by learned counsel for the parties, the relevant provisions of CrPC and the judgments of the Supreme Court in State (Delhi Administration) Vs. Dharampal, AIR 2001 SC 2924; Lalu Prasad Yadav & Anr. Vs. State of Bihar & Anr., AIR 2010 SC 1561; Satya Pal Singh Vs. State of M.P. & Ors., [2015 (91) ACC 955]; judgment of the Full Bench of this Court in Manoj Kumar Singh Vs. State of U.P. & Ors., [2016 (97) ACC 861]; judgment of the Full Bench of

Punjab and Haryana High Court in M/s. Tata Steel Ltd. Vs. M/s. Atma Tube Products Ltd. & Ors., CRM-790-MA-2010 (O&M), decided on 18.03.2013, and Parmeshwar Mandal Vs. The State of Bihar & Ors., 2014 CrLJ 1046.

None appeared on behalf of the accused.

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

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

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

(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;"

We are referring to these definitions, in view of the fact that these words are used in Section 372 and Section 378 of CrPC, around which the arguments advanced by learned counsel for the parties revolved. Section 372 in Chapter XXIX, which deals appeals, provides that no appeal to lie unless otherwise provided. This Section was amended by Act 5 of 2009 with effect from 31.12.2009, whereby a proviso was added, conferring right to the victim to prefer an appeal against an order of acquittal. It would be advantageous to reproduce Section 372, which reads thus:

"372. No appeal to lie unless otherwise provided.- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

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

"378. Appeal in case of acquittal. - (1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub- sections (3) and (5), -

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal -

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

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

(3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2)."

Though, the question that fell for consideration of the Supreme Court in *Dharampal* (supra) was not the same as falls for our consideration, the Supreme Court had an occasion to deal with Section 378 in depth. The Supreme Court in that case, considered the question whether appeals were barred by limitation as they were not filed within a period of 60 days as provided by sub-section (5) of Section

378 of CrPC. This question arose while dealing with the judgment of the Delhi High Court dismissing the appeal filed on behalf of the State (Delhi Administration) and arising from the complaint lodged by the Food Inspector under the provisions of the Prevention of Food Adulteration Act (37 of 1954). The accused were convicted against which, in appeal, the Sessions Court acquitted them all. Against the judgment of the Sessions Court, the appeal was preferred before the High Court. To understand what is the period of limitation under Section 378 of CrPC, the Supreme Court made reference to Section 417, as it stood in the Criminal Procedure Code, 1898 (for short, "old CrPC") and, after reproducing the said Section, in paragraph 20, observed thus:

"Thus it is to be seen that, under Section 417 of the Criminal Procedure Code, 1898, an appeal against acquittal could be filed by the State Government or by the Central Government. An appeal against acquittal could in cases instituted upon complaint, be filed by the complainant provided the complainant obtained special leave to appeal from the High Court. Under Section 417(4) no application for grant of special leave could be entertained by the High Court after an expiry of 60 days from the order of acquittal. Thus, under Section 417 an application for special leave to appeal had to be made only by the complainant. If the State Government or the Central Government filed an appeal then no application for special leave to appeal had to be made."

Then, the Supreme Court, after reproducing Section 378 of CrPC, in paragraphs 25 observed thus:

"25. A comparison of Section 378 with the old Section 417 shows that, whilst under the old Section no application for leave to appeal had to be made by the State Government or the Central Government, now by virtue of Section 378(3) the State Government or the Central Government have to obtain leave of the High Court before their appeal could be entertained. Sub-Section (4) of Section 378 is identical to sub-Section (3) of Section 417. Thus a complainant desirous of filing an appeal against acquittal must still obtain special leave. Thus, Section 378 makes a distinction between an appeal filed by the State Government or the Central Government, who only need to obtain "leave", and an appeal by a complainant who needs to obtain "special leave". The limitation provided in sub-section (5) is only in respect of applications under sub-section (4) i.e. application for special leave to appeal by a complainant. A complainant may be either a public servant or a private party. If the complainant is a public servant then the period of limitation for an application for special leave is 6 months. If the complainant is a private party then the period of limitation for an application for special leave is 60 days. The periods of 6 months and/or 60 days do not apply to appeals by the State Government under sub-section (1) or the Central Government under sub-section (2). Appeals by the State Government or the Central Government continue to be governed by Article 114(a) of the Limitation Act. In other words, those appeals must be filed within 90 days from the date of the order appealed from. Needless to state if there is a delay in filing an appeal by the State Government or Central Government it would be open to them to file an application under Section 5 of the Limitation Act for condonation of such delay. That period can be extended if the court is satisfied that there was sufficient

cause for not preferring the appeal within the period of 90 days. The High Court was thus wrong in concluding that the appeals had to be filed within 60 days as provided in Section 378(5)."

(emphasis supplied) In *Lalu Prasad Yadav* (supra), maintainability of the appeal against the order of acquittal, fell for consideration of the Supreme Court. To be more precise, the question that was formulated by the Supreme Court for consideration was, whether the State Government (of Bihar) had competence to file an appeal from the judgment dated 18 December 2006 passed by the Special Judge, CBI (AHD), Patna, acquitting the accused persons, when the case had been investigated by the Delhi Special Police Establishment (CBI). After considering the provisions contained in Section 417 of the Code of Criminal Procedure, 1898 and Section 378, in concluding paragraph 40 observed thus:

"40. In our opinion, the Legislature has maintained a mutually exclusive division in the matter of appeal from an order of acquittal inasmuch as the competent authority to appeal from an order of acquittal in two types of cases referred to in sub-section (2) is the Central Government and the authority of the State Government in relation to such cases has been excluded. As a necessary corollary, it has to be held, and we hold, that the State Government (of Bihar) is not competent to direct its public prosecutor to present appeal from the judgment dated December 18, 2006 passed by the Special Judge, CBI (AHD), Patna."

Section 372 of CrPC was amended by Act No. 5 of 2009, whereby a proviso was added, conferring a statutory right upon the victim, as defined under Section 2(wa), to prefer an appeal against an order passed by the trial Court, either acquitting the accused or convicting him for a lesser offence or imposing inadequate compensation. The proviso, for the first time, created right in favour of a victim as defined under Section 2(wa) to file appeal against an order of acquittal or against the order imposing lesser punishment or inadequate compensation. Prior to the introduction of the proviso to Section 372 of CrPC, the victim did not have any statutory right of appeal. Section 374 of CrPC had provided for a right of appeal against conviction to an accused. Section 377 enabled the State Government or the Central Government to file an appeal with regard to inadequacy of sentence. This provision, however, was conditional upon the fact that there could be no enhancement without an opportunity to the accused and that, in case, such an appeal was preferred, the accused had a right to plead for acquittal and/or for reduction in sentence in that very appeal. We are not concerned with the provisions contained in Sections 374 and 377 in the present case and, hence, further reference to these provisions is not necessary.

The amendment to the provisions of Section 372 of CrPC was prompted by the 154th Law Commission Report. The Parliament, on the basis of the Report of the Law Commission, which is victim-oriented in approach, amended certain provisions of CrPC and added proviso to Section 372 of CrPC, conferring statutory right upon the victim to prefer an appeal before the High Court against an order of acquittal, or an order convicting the accused for the lesser offence or against the order imposing inadequate compensation, as observed earlier. In the light of the legislative history, it appears to us that the right to prefer an appeal conferred upon the victim or relatives of the victim



by virtue of the proviso to Section 372 is an independent statutory right.

The Supreme Court in *Satya Pal Singh* (supra), in the backdrop of the legislative history and the language employed in Section 372 and Section 378 of CrPC, considered the question whether there is a need for the victim, in terms of definition under Section 2(wa), to seek the leave of the High Court, as required under sub-section (3) of Section 378 of CrPC, to prefer an appeal under the proviso to Section 372.

A Full Bench of the High Court of Delhi in *Ram Phal Vs. State & Ors*, 221 (2015) DLT 1, after examining the relevant provisions under Section 2(wa) and proviso to Section 372 of CrPC in the light of their legislative history, has held that the right to prefer an appeal conferred upon the victim or relatives of the victim by virtue of proviso to Section 372 is an independent statutory right. Therefore, it has held that there is no need for the victim, in terms of definition under Section 2(wa) to seek the leave of the High Court as required under sub-section (3) of Section 378 of CrPC to prefer an appeal under the proviso to Section 372 of CrPC. This view of the Delhi High Court in *Ram Phal* was held to be not legally correct by the Supreme Court in *Satya Pal Singh*. It would be relevant to notice the observation made by the Supreme Court in *Satya Pal Singh* while dealing with the question, which read thus:

"...the substantive provision of Section 372 of Cr.P.C. clearly provides that no appeal shall lie from any judgment and order of a Criminal Court except as provided for by Cr.P.C. Further, sub-Section (3) to Section 378 of Cr.P.C. provides that for preferring an appeal to the High Court against an order of acquittal it is necessary to obtain its leave. We have to refer to the rules of interpretation of statutes to find out what is the effect of the proviso to Section 372 of Cr.P.C., it is well established that the proviso of a statute must be given an interpretation limited to the subject-matter of the enacting provision. Reliance is placed on the decision of this Court rendered by four Judge Bench in *Dwarka Prasad v. Dwarka Das Saraf*, (1976) 1 SCC 128, the relevant para 18 of which reads thus:

"18. ... A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context" (*Thompson v. Dibdin*, 1912 AC 533). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction."

(emphasis supplied) Then, the Supreme Court, after considering its 3-Judge Bench in *S. Sundaram Pillai Vs. V.R. Pattabiraman*, (1985) 1 SCC 591; *Ishverlal Thakorelal Almaula Vs. Motibhai Nagjibhai*, AIR 1966 SC 459, and *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subhash Chandra Yograj Sinha*, AIR 1961 SC 1596, wherein the question of interpretation of the proviso was considered, observed thus:

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

(emphasis supplied) Then, the Supreme Court recorded its conclusions in paragraph 13, which read thus:

"13. Thus, to conclude on the legal issue:

"whether the appellant herein, being the father of the deceased, has statutory right to prefer an appeal to the High Court against the order of acquittal under proviso to Section 372 of Cr.P.C. without obtaining the leave of the High Court as required under sub-Section (3) to Section 378 of Cr.P.C.", this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2(wa) of Cr.P.C., under proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-Section (3) to Section 378 of Cr.P.C. The High Court of M.P. has failed to deal with this important legal aspect of the matter while passing the impugned judgment and order."

(emphasis supplied) Having regard to the observations made by the Supreme Court and the language employed in Section 372, in particular the proviso added thereto, it is clear that while creating a substantive right to the victim to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence, or imposing inadequate compensation, no limitation was provided. The opening expression in Section 372 provides that no appeal shall lie from any judgment or order of a Criminal Court except as provided for by CrPC or any other law for the time being in force. Meaning thereby, the appeal shall lie from any judgment as provided for by CrPC and, in view thereof, the Supreme Court, while considering the question regarding leave to file appeal as contemplated under sub-section (3) of Section 378 of CrPC, held that even for a victim to maintain appeal against the order of acquittal, he requires to take leave of the High Court to file appeal against the order of acquittal.

At this stage, we would like to have a close look at Section 378. Section 378 is divided into six sub-sections. Sub-section (1) provides that the State Government may direct the public prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than High Court or an order of acquittal passed by the Court of Session in revision. It opens with the words "save as otherwise provided in sub-section (2)" followed by the words "and subject to the provisions of sub-sections (3) and (5)". Sub-section (2) refers to two class of cases, namely, (i) those cases where the offence has been investigated by the Delhi Special Police Establishment constituted under 1946 Act and (ii) those cases where the offence has been investigated by any other agency empowered to make investigation into an offence under any Central Act other than 1973 Code and provides that the Central Government may also direct the public prosecutor to present an appeal to the High Court from an order of acquittal. Such an appeal by the Central Government in the aforesaid two types of cases is subject to the provisions contained in sub-section (3). Sub-section (3) provides that an appeal under sub-sections (1) and (2) shall not be entertained without leave of the High Court. Where the order of acquittal has been passed in a case instituted upon complaint, sub-section (4) provides that the complainant may apply for special leave to appeal from the order of acquittal and if such leave is granted, an appeal be presented by him to the High Court. The limitation is prescribed in sub-section (5). Insofar as the cases covered by sub-section (4) are concerned, where the complainant is a public servant, limitation prescribed is six months from the date of an order of acquittal and in all other cases, including the cases covered by sub-sections (1) and (2), a period of sixty days from the date of the order of acquittal. Sub-section (6) makes a provision that if an application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2). We have surveyed Section 378 in its entirety to have complete conspectus of the provision.

The following observations made by the Supreme Court in *Lalu Prasad Yadav*, though are not directly connected with the question for our consideration, would help us to understand the provisions of Section 378 below. The relevant observations read thus:

"The opening words - "save as otherwise provided in sub-section (2)" - are in the nature of exception intended to exclude the class of cases mentioned in sub-section (2) out of operation of the body of sub-section (1). These words have no other meaning in the context but to qualify the operation of sub-section (1) and take out of its purview two types of cases referred in sub-section (2), namely, (i) the cases in which offence has been investigated by the Delhi Special Police Establishment constituted under 1946 Act and (ii) the cases in which the offence has been investigated by any other agency empowered to make investigation into an offence under any Central Act other than 1973 Code. By construing Section 378 in a manner that permits appeal from an order of acquittal by the State Government in every case, except two class of cases mentioned in sub-section (2), full effect would be given to the exception (clause) articulated in the opening words. As noticed above, the words - "save as otherwise provided in sub-section (2)" - were added in 1973 Code; Section 417 of 1898 Code did not have these words. It is familiar rule of construction that all changes in wording and phrasing may be presumed to have been deliberate and with

the purpose to limit, qualify or enlarge the pre-existing law as the changes of the words employ. Any construction that makes exception (clause) with which section opens unnecessary and redundant should be avoided. If we give to Section 378, sub-sections (1) and (2), the interpretation which the State Government claims; we would have to say that no matter that complaint was not lodged by the State Government or its officers; that investigation was not done by its police establishment; that prosecution was neither commenced nor continued by the State Government; that public prosecutor was not appointed by the State Government; that the State Government had nothing to do with the criminal case; that all steps from launching of prosecution until its logical end were taken by the Delhi Police Special Establishment and yet the State Government may file an appeal from an order of acquittal under Section 378(1). That would be rendering the exception (clause) reflected in the opening words - "save as otherwise provided in sub-section (2)" - redundant, meaningless and unnecessary. If the Legislature had intended to give the right of appeal under Section 378 (1) to the State Government in all cases of acquittal including the class of cases referred to in sub-section (2), it would not have been necessary to incorporate the exception (clause) in the opening words. This objective could have been achieved without use of these words as erstwhile Section 417 of 1898 Code enabled the State Government to appeal from all cases of acquittal while in two types of cases mentioned in sub-section (2) thereof, appeal from the order of acquittal could be filed under the direction of Central Government as well."

It is clear from the observations made by the Supreme Court in *Lalu Prasad Yadav*, that though sub-sections (1) and (2) of Section 378 deal with appeal in case of acquittal by the State Government or the Central Government for which leave of the High Court is made mandatory under sub-section (3), having regard to the language employed in Section 372 in particular, the opening sentence, i.e. "no appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force." The Supreme Court in *Satya Pal Singh* observed that even a victim when desires to challenge the order of acquittal in exercise of his rights conferred under the proviso to Section 372, leave of the High Court as contemplated under sub-section (3) is necessary. Thus, it appears that the proviso added to Section 372 requires to be read with the provisions contained in Section 378.

Having regard thereto, we would like to further examine the word 'victim' as defined under Section 2 (wa). A bare perusal of the definition of the term 'victim' reveals that 'victim' means a person who has suffered any loss or injury caused by reason of the act or omission of the offender, and further it includes his or her guardian or legal heir. If we read the definition of 'victim' as defined under Section 2(wa) and with the definition if we read proviso added to Section 372, it appears to us that the definition of 'victim' does not make any distinction between the 'victim' in a police case and a private case. In other words, the provision does not make any distinction between a victim in the case instituted upon a complaint and a victim in a State prosecution. Therefore, while reading, the proviso added to Section 372 will have to be read to mean that the right is conferred on the victim not only in State prosecution but also in a private complaint. Though, we are not called upon, in the present case, to consider the scope of the word 'victim', what appears to us from its plain reading, is

that it is classified in two categories - (i) a person who has suffered any loss or injury caused by the reason of the act or omission attributed to the accused; and (ii) the guardian or legal heirs of such 'victim'. The expression 'guardian' or 'legal heir' used in the definition clause under Section 2 (wa), in our opinion, deserves to be construed in the broad and general sense, so as to include all those on whom the estate of the deceased dwells. In other words, every heir, who, in law, is entitled to succeed to the estate of a deceased (victim) in one or the other eventuality, shall fall within the ambit of Section 2(wa) of CrPC, even if the estate of such deceased victim is devolved upon the legal heirs as per the order of preference prescribed under the personal law of such victim. The Full Bench of Punjab & Haryana High Court in Tata Steel Ltd. (supra) considered the word 'victim' in depth and in paragraph 70, recorded its conclusion with which we do not find any reason to differ. The conclusions recorded in paragraph 70, in our opinion, would be relevant to reproduce so as to understand the purport of the word 'victim' and with which we entirely agree:

"70. It thus finally emerges that the Legislature, before and after amendment of the Code vide Act No.5 of 2009, has recognized 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) & (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) CrPC?"

Leave it at that, we now turn to the question that falls for our consideration. Section 378, does not use the word 'victim'. Sub-sections (4) and (5) thereof, deal with a right of appeal against the order of acquittal on behalf of the complainant and, that too, on an application made to the High Court seeking special leave to appeal and once the leave is granted, the complainant can present the appeal to the High Court. The application seeking leave, as provided for under sub-section (5), insofar as the complainant as defined under Section 2(d), has to be filed within a period of 60 days from the date of the order of acquittal. Sub-sections (1), (2) and (3) of Section 378, as we have seen earlier, speak only about the right of the State Government or the Central Government to file an appeal against the order of acquittal, with the leave of the High Court. Thus, it is clear that Section 378, though directly does not confer any right on the victim, the Supreme Court in Satya Pal Singh, held, in view of the peculiar language employed in Section 372, that even if the victim, when files appeal against the order of acquittal in State prosecution case, requires to make an application to seek the leave of the High Court to file an appeal. Similarly, since it is not in dispute that the State can file an appeal with the leave of the High Court against the order of acquittal within a period of 90 days, the same limitation would apply in case of appeal by the victim arising from State prosecution, obviously taking recourse to Article 114 of the Limitation Act.

Thus, from the scheme of the provisions of Section 378, it is clear that two streams of appeals against acquittals are provided. The first stream of appeals is against the order of acquittals to be preferred by the State Government/Central Government and the same would be under sub-sections (1) and (2) of Section 378 and before such an appeal is entertained, a leave of the High Court requires to be taken, as provided for under sub-section (3) of Section 378. The other stream of appeals is against the order acquittals in the complaint case, wherein, by virtue of Section 378 (4), the complainant has to seek special leave to appeal from the High Court under sub-section (5). Further, the application for grant of special leave to appeal must be filed if the complainant is a public servant within 6 months from the date of order of acquittal and in all other cases, within 60 days from the date of order of acquittal. For the first stream of appeals under sub-sections (1) and (2) read with sub-section (3) of Section 378, no limitation is provided under Section 378 or any other Section of CrPC and, hence, the period of limitation for filing the appeal under Section 378(1) and (2) of CrPC is 90 days from the date of the order appealed from, as provided for in Article 114(a) of the Limitation Act. Though it is with reference to Section 417 of the Code of Criminal Procedure, 1898, that equally applies to Section 378 (1) and (2), as has been held by the Supreme Court in Dharam Pal Singh's case. In that case, the Supreme Court observed that appeals by the State Government or the Central Government continue to be governed by Article 114 (a) of the Limitation Act. In other words, those appeals must be filed within 90 days from the date of the order appealed from. It is needless to state that if there is a delay in filing an appeal by the State Government or the Central Government, it would be open to them to file an application under Section 5 of the Limitation Act for condonation of such delay. Thus, that period can be extended if the Court is satisfied that there was sufficient cause for not preferring the appeal within a period of 90 days. In this backdrop, when we have a close look at the provisions contained in Section 372, it leaves no manner of doubt and we would not hesitate in observing that the limitation as provided for the State Government/Central Government appeals under Section 114(a) of the Limitation Act would apply for filing of an appeal by the victim. In any case, the limitation provided under sub-section (5) of Section 378 has no application when the appeal is filed by the victim being his substantive right after

the proviso came to be added to Section 372 by Act 5 of 2009 with effect from 31.12.2009. Sub-section (4) and sub-section (5) do not deal with the right of the victim in a State prosecution.

As observed earlier, the word 'victim' as defined under Section 2(wa) does not make any distinction between the victim in a complaint case and the victim in a police case ( State prosecution) and if, for taking recourse to proviso to Section 372, if the victim in a complaint case opts to file appeal against the order of acquittal, he would be governed by sub-section (5) insofar as the limitation is concerned. In other words, a limitation for filing an appeal by the victim in a complaint case against the order of acquittal would be 60 days as provided for under sub-section (5) by seeking leave to appeal from the High Court. In this connection, it would be relevant to reproduce the observations made by the Punjab & Haryana High Court in Tata Steel Ltd. The relevant observations in paragraph 126 to 130 read thus:

" (126). Since right to appeal is a substantive right and it cannot be inferred by implication unless the Statute expressly provides so, the only inescapable conclusion would be to hold that the right to appeal given to a 'victim' under proviso to Section 372 of the Code is prospective and has become enforceable w.e.f. December 31, 2009 only. A 'victim' is entitled to prefer appeal in respect of any type of order referred to in the proviso to Section 372 if such order has been passed on or after December 31, 2009 irrespective of the date of registration of FIR or the date of occurrence etc. To be more specific, it is clarified that it is the date of passing of the order to be appealed from and not any other fact situation, which shall determine the right to appeal of a 'victim'. As a corollary thereto, it is held that the remedy availed by a 'victim' including revision petition against acquittal of the accused by an order passed before December 31, 2009, cannot be converted into an appeal under proviso to Section 372 and it shall have to be dealt with in accordance with the parameters settled for exercising revisional jurisdiction by a superior Court.

(G) What would be the period of limitation for a 'victim' to prefer an appeal under proviso to Section 372 CrPC?

(127). Various High Courts have experienced difficulty in determining the period of limitation for an appeal preferable by a victim under proviso to Section 372 of the Code. A Division Bench of Patna High Court in Raghunath Yadav Vs. State of Bihar, 2011 (6) RCR (Crl.) 133, has viewed that since the period of limitation for filing an appeal against the acquittal under Section 378 is ninety days and no period of limitation has been provided for filing an appeal under Section 372 by a 'victim', the same period of limitation as provided under Article 114 of the Limitation Act will be applicable for filing an appeal under Section 372 of the Code also. The Full Bench of Gujarat High Court in Bhavuben Dineshbhai Makwana's case (supra) too, with reference to Article 114(a) of the Limitation Act, has held that the period of ninety days should be the reasonable period for a 'victim' to file an appeal as the said period is the longest period of limitation for filing an appeal against an order of acquittal prescribed by the Legislature.

(128). The Delhi High Court in Kareemul Hajazi's case (supra), however, thought differently and after referring to certain precedents laying down that 'in the absence of prescription of the limitation period, the statutory authority must exercise its jurisdiction within a reasonable period', it decided to bring the 'victim' at par with the 'accused' for the purpose of period of limitation to prefer appeal and held that since an accused is required to prefer appeal to the High Court within sixty days as prescribed under Section 374 of the Code read with Article 115(b)(i) of the Limitation Act, the period of limitation for the appeal of a 'victim' shall also be the same i.e. sixty days.

(129). One of the well-recognized principles of criminal jurisprudence is that 'crime never dies'. The maxim 'nullum tempus qut locus occurrit regi' [lapse of time is no bar to Crown in proceedings against offenders] is an age-old rule embedded in criminal justice delivery system. The public policy behind this rule is that a criminal offence is considered as a wrong committed against the State and the Society though it is committed against an individual. The aforesaid rule of prudence has been duly acknowledged by the Parliament as it has prescribed no period of limitation for filing an appeal under proviso to Section 372 of the Code against an order of acquittal.

(130). Article 114 of the Schedule to the Limitation Act, 1963, however, prescribes period of limitation for State's appeal against order of acquittal and it reads as under:-

Description of appeal Period of limitation Time from which period begins to run  
Appeal from an order of acquittal-

(a) Under sub-section (1) or sub Section (2) of Section 417 of the Code of Criminal Procedure, 1898 (5 to 1898) Ninety days The date of the order appealed from

(b) Under sub-Section (3) of Section 417 of the Code Thirty days The date of the grant of special leave.

The observations made in paragraphs 132 and 133 are also relevant for our purpose, which read thus:

"(132). From the combined reading of the above-reproduced provisions, it is clear that the State could present its appeal to the High Court within 90 days from the date of passing of the order of acquittal. Similarly, sub-Section (4) of Section 417 provided 60 days' period of limitation to apply for grant of special leave to appeal to the High Court against the order of acquittal passed in a complaint case. The appeal against acquittal in such cases can be filed within 30 days of the date of grant of special leave to appeal as provided under Clause (b) of Article 114 of the Limitation Act. The Hon'ble Supreme Court in Dharam Pal's case compared the provisions of old Code with Section 378 of the new Code and held that appeals against acquittal preferred by



the State Government or the Central Government continue to be governed by Article 114(a) of the Limitation Act. In other words, those appeals must be filed within 90 days from the date of order appealed from. A 'victim' therefore is also entitled to the said maximum period of limitation i.e. 90 days to prefer his/her appeal against an order of acquittal.

(133). Under Section 378(5) of the Code, an application for the grant of special leave to appeal from an order of acquittal moved by the complainant who is a public servant, can be entertained by the High Court within a period of six months and within sixty days in every other case, from the date of the order of acquittal. However, the State or Central Governments are not entitled to take benefit of six months' period given to the complainant-public servant for the purpose of their appeal against an order of acquittal which is required to be preferred within ninety days as per Article 114 of the Limitation Act. The grey area in this regard, if any, also stands clarified by the Supreme Court in Dharampal's case (supra)."

The Division Bench of Patna High Court in Parmeshwar Mandal (supra), has taken a contrary view to that of Punjab & Haryana High Court holding that no limitation of time has been provided by the legislature for exercise of such a right of appeal by the victim in terms of the proviso to Section 372. Hence, in the facts and circumstances, in each case, the Court has to determine as to whether the time was entertainable, or not. The right of a 'victim' to prefer an appeal in terms of the said proviso to Section 372 is an unqualified right and no 'leave to appeal' or 'special leave' is required to be obtained by him/her for the purpose, as required by the State or the complainant for maintaining an appeal in terms of Section 378 of CrPC.

View of the Patna High Court, in our respectful opinion, is not legally correct in light of the observation of the Supreme Court in Satya Pal Singh. The right to appeal conferred upon the victim by adding proviso to the substantive provision of Section 372 of CrPC, clearly provides that no appeal shall lie from any judgment and order to a Court except as provided for by the CrPC. The right of the victim, therefore, is subject to the limitation and leave of the Court provided under Section 378 against acquittal.

Thus, we are satisfied that the limitation for preferring an appeal against the order of acquittal by the victim would be 90 days in all cases, other than the cases instituted upon complaint, and 60 days for any case instituted upon complaint against the order of acquittal after the High Court grants special leave to appeal.

The question formulated in the first paragraph of the judgment, thus, stands answered in terms of this judgment.

Registry is directed to place these matters before the appropriate Bench to consider and deal with the same in the light of this judgment.

January 19, 2018 AHA (Dilip B Bhosale, CJ) (S K Gupta, J) (Suneet Kumar, J)