

A.F.R.

Court No. - 42

**Case :-** CRIMINAL MISC. APPLICATION DEFECTIVE U/S 372  
CR.P.C (LEAVE TO APPEAL) No. - 1 of 2014

**Applicant :-** Archana Devi

**Opposite Party :-** State Of U.P. And 5 Others

**Counsel for Applicant :-** P.K. Singh

**Counsel for Opposite Party :-** Govt. Advocate, Apul  
Mishra, Rakesh Dubey

Hon'ble Vivek Kumar Birla, J.

Hon'ble Vikas Budhwar, J.

List revised. None is present to present this appeal on behalf of the applicant. Sri Rakesh Dubey, learned counsel for the accused-respondents is present.

The present appeal has been filed with delay condonation application.

Office has reported a delay of 122 days.

Sri Rakesh Dubey, learned counsel for the accused-respondent while drawing attention to the prayer clause has submitted that the present appeal has been filed for enhancement of the sentence. The prayer so made in the memo of appeal is quoted as under:-

*"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to enhance the sentence of accused respondents No. 2 & 3 and convict the accused respondent No. 3 to 6 who have been acquitted from the charges ignoring the evidence And /or pass such other and further order which this Hon'ble court may deem fit and proper in the circumstances of the case."*

By placing reliance on the judgment of Hon'ble Apex Court in the case of **Parvinder Kansal Vs. The State of NCT of Delhi and Anr. reported in 2020 (113) ACC 676**, Sri Rakesh Dubey submitted that the appeal for enhancement of punishment u/s 372, Cr.P.C. is not maintainable, paragraph no. 9 which is quoted as under:-

*"9. Chapter XXIX of the Code of Criminal Procedure, 1973 deals with 'Appeals' and Section 372 makes it clear that no appeal to lie unless otherwise provided by the Code or any other law for the time being in force. It is not in dispute that in the instant case appellant has preferred appeal only under Section 372, Cr.P.C. The proviso is inserted to Section 372, Cr.P.C. by Act 5 of 2009. Section 372 and the proviso which is subsequently inserted read as under:*

*"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.” A reading of the proviso makes it clear that so far as victim’s right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate .A.@S.L.P.(CrI.)No.3928 of 2020 compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377, Cr.P.C. gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.P.C. but similarly no appeal can be maintained by victim under Section 372, Cr.P.C. on the ground of inadequate sentence. It is fairly well settled 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 we are of the view that the High Court while referring to the judgment of this Court in the case of National Commission for Women v. State of Delhi & Anr. (2010) 12 SCC 599 has rightly relied on the same and dismissed the appeal, as not maintainable.”*

The appeal stands **dismissed** as not maintainable in the light of the judgment of Hon'ble Apex Court in the case of **Parvinder Kansal Vs. The State of NCT of Delhi and Anr.** reported in **2020 (113) ACC 676.**

Since this appeal itself is not maintainable therefore there is no question of consideration on delay condonation application, accordingly, the delay condonation application stands rejected. At present, there is no requirement to file leave to appeal.

The connected criminal appeal are of the year 2013, accordingly, office is directed to list the connected criminal appeals in the next cause list before appropriate bench.

**Order Date :- 19.7.2022**

Nisha