IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE RAJESH RAI K

CRIMINAL APPEAL NO. 200162 OF 2022

(372(Cr.PC)/413(BNSS)

BETWEEN:

SUBHASH S/O ANTHAPPA GANAGA
AGED ABOUT 52 YEARS, OCC: BUSINESS,
R/O AMBRE LAYOUT, HUMANABAD,
DIST. BIDAR – 585330.

…APPELLANT

(BY SRI ASADULLA AMANULLA, ADVOCATE)

AND:

1. THE STATE THROUGH
   TRAFFIC P.S. HUMANABAD,
   DIST. BIDAR
   (REPRESENTING BY LEARNED
   ADDL STATE PUBLIC PROSECUTOR
   HIGH COURT OF KARNATAKA
   AT KALABURAGI – 585105)

2. VAIJINATH S/O RAMANNA MATHPATI,
   AGE: 38 YEARS, OCC: DRIVER,
   R/O SINDHANAKERA, TQ. HUMNABAD,
   DIST. BIDAR – 585330.

…RESPONDENTS

(BY SRI SIDDALING PATIL, ADDL. SPP FOR R1;
SRI ANILKUMAR NAVADAGI, ADV. FOR R2)

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

THIS CRIMINAL APPEAL IS FILED U/S.372 OF CR.P.C, PRAYING TO SET ASIDE THE JUDGMENT AND ORDER PASSED BY THE LEARNED SENIOR CIVIL JUDGE AND JMFC AT HUMNABAD IN C.C NO. 6/2016, ORDER DATED 20.07.2022

ACQUITTING THE ACCUSED FOR THE OFFENCE P/U/SEC. 279, 304(A) OF IPC, AND CONVICT THE ACCUSED.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE RAJESH RAI K

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE RAJESH RAI K)

This appeal by the victim/complainant directed against the acquittal judgment passed in C.C.No.06/2016 dated 20.07.2022 by the Senior Civil Judge and JMFC, Humnabad, wherein the accused/respondent No.2 acquitted for the offences punishable under Sections 279 and 304-A of IPC.

2. It is the contention of the learned counsel for the respondent No.2/accused that, as per the provision of Section 372 of Cr.P.C, the victim shall prefer the appeal against the acquittal order where the appeal ordinarily lies against the order of conviction of such Court. In the case on hand, the acquittal order passed by the learned Magistrate and against the said order appeal ordinarily lies before the Sessions Court, as such this appeal is not maintainable before this Court.

On careful perusal of Section 372 of Cr.P.C, the same reads 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 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.]

3. The Hon'ble Apex Court in the case of ***Mahabir And Ors. vs. State Of Haryana*** in ***Criminal Appeal Nos.5560-5561/2024***, held in paragraph No.67 as under:

> *"**67**. In the present context, given the text of Section 372 and the scheme of the Act, it is clear that the proviso establishes an independent right, and must be interpreted within that framework. Section 372 forbids appeals unless otherwise authorized by the Code, or by another law. The proviso, however, states that the victim shall have the right to appeal under certain circumstances. Given the rule enacted in Section 372, it cannot be said that the proviso to that provision carves out an exception to the rule. According to the rule in Section 372, appeals must be in accordance with the Code; according to the proviso - which is itself part of the Code - victims have the right to appeal under certain circumstances. At various other places in the CrPC, appeal procedures are specified.*

> *For instance, Section 378 stipulates the procedure in case of appeals from acquittal, and Section 378(3) specifies that "no appeal under sub-section (1) or sub-section (2) shall be entertained except with leave of the High Court." The proviso to Section 372 dispenses with the requirement of leave in case it is the victim who is appealing. From the scheme of the Act, therefore, it seems clear that the proviso is better understood to be one of the many provisions governing appeals under Chapter 29 of the CrPC. While Section 372 enacts that no appeal shall lie except as provided for by the Code, it refers to the various provisions of Chapter 29, including the proviso, each of which prescribe the requirements and procedures for appeals under different circumstances. The Page 27 of 45 proviso, therefore, is not an exception to Section 372, but a stand-alone legal provision."*

4. As per the findings of the Hon'ble Apex Court in the above case it is clear that the victim would be entitle to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction and therefore the present appeal is not maintainable before this Court.

5. Accordingly, the appeal is ***dismissed*** by reserving liberty to appellant to approach appropriate forum.

Sd/-
(RAJESH RAI K)
JUDGE

HKV
List No.: 1 Sl No.: 9
CT: PS