

**THE DECISION IN *SATYA PAL SINGH*: A  
PRESSING NEED TO RE-VISIT THE LAW  
RELATING TO VICTIM'S APPEAL**

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*Abstract*

*This article argues that that the Learned Division Bench of Hon'ble Apex Court erred in the case of Satya Pal Singh vs. State of Madhya Pradesh<sup>1</sup> where it held that a 'victim' as defined under section 2(wa) of the Code of Criminal Procedure ('the Code'), could only prefer a leave to appeal against acquittal under section 378 (3) and not prefer an appeal directly under the proviso to section 372 of the Code. It is argued that such an interpretation places an unnecessary restriction on the victim's right to appeal and has little basis to support itself. The interpretation adopted by the Hon'ble Apex Court in Satya Pal Singh is palpably at variance with the text of the Code itself, which leads to further inconsistent implications*

In the case of *Satya Pal Singh*, the Hon'ble Apex Court adjudicated upon a Special Leave Petition where the appellant/aggrieved was the father of a deceased daughter who sought to challenge the order of the

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<sup>1</sup>Criminal Appeal No. 1315 of 2015 decided on 06.10.2015.

Hon'ble High Court which upheld the order of the Learned Trial Court acquitting the accused persons of the charges under sections 498A, 304B of the Indian Penal Code 1860 and under section 4 of the Dowry Prohibition Act 1961. The Hon'ble Apex Court allowed the appeal and set aside the impugned judgement of the Hon'ble High Court for two reasons, one of which was that the Hon'ble High Court dealt with the appeal in a 'very cursory and casual manner, without advertng to the contentions and evidence on record' and 'mechanically' dismissed the appeal vide a 'cryptic' order. However, this article concerns itself with the second reason the Hon'ble Apex Court offered for upholding the appeal which is that a victim's appeal could be preferred in the High Court only with the special leave of the High Court because section 372 of the Code is necessarily conditioned and regulated by section 378 (3).<sup>2</sup>

The proviso to Section 372 which provides the victim with the right to file an appeal was inserted vide the amendments of 2009 and the section currently reads as the following:

372. 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. (*Proviso emphasized*)

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<sup>2</sup>Satya Pal states: '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 .... 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 Code of Criminal Procedure'.

From a plain reading of section 372, it is clear that the legislature intended that a victim<sup>3</sup> shall have the right to prefer an appeal against any order passed by a criminal court under three circumstances i.e. where the trial court has

1. Either acquitted the accused; or
2. Convicted the accused for a lesser offence; or
3. Awarded inadequate compensation to the victim.

The Hon'ble Apex Court primarily<sup>4</sup> relied upon *Dwarka Prasad vs. Dwarka Das Saraf (1976) 1 SCC 128* to hold that a proviso was a creature of the statute and ergo the proviso in section 372 of the Code which provided the right to a victim to provide an appeal, was itself subject to the main provision of section 372, and the main provision in section 372 provided that no appeal would lie 'except as provided for by this Code or by any other law for the time being in force'. Thus, it was held by the Hon'ble Apex Court that the Delhi High Court in *Ram Phal Singh vs. State*<sup>5</sup> was incorrect in holding that the right of the victim to prefer an appeal was an independent legal right not subject to other provisions of the Code. The Hon'ble Apex Court found that section 372's controlling provision i.e. the provision 'provided for by this Code or any other law for the time being in force' for victim's appeal was ensconced in section 378 (3)<sup>6</sup> of the Code and was not an independent right.

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<sup>3</sup>Definition provided in § 2(wa) of the Code.

<sup>4</sup>Other cases were also cited as such CIT v. Indo Mercantile Bank Ltd, Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai, Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha, S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591.

<sup>5</sup>2015 CriLJ 3220.

<sup>6</sup>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), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate

It is submitted, with respect, that the Hon'ble Apex Court erred in holding that the proviso to section 372 of the Code was conditioned by section 378 (3) of the Code for a number of reasons and further that the cases which were cited to hold that the proviso was controlled by the statute had no applicability in *Satya Pal*. This article argues that the proviso to section 372 i.e. the right of a victim to appeal is an independent legal remedy, not subject to section 378 of the Code.

It is trite that in serious offences where the police investigate the alleged crime, private prosecution<sup>7</sup> is not allowed as a matter of policy and the victim's case is prosecuted solely by state agencies. Such a scenario, although a matter of state policy, has the effect of completely excluding the victim from the entire judicial process as she is left at the mercy of the overburdened, frustratingly slow state-led prosecution. This is ironic as even though she is the injured party as per section 44 of the Code, the victim has no meaningful say over the criminal justice process. Thus, the amendments of 2009 were enacted with a view to facilitate victim's participation in an adversarial system of adjudication.<sup>8</sup> Unlike a complainant in a complaint case (under the Code), the victim has no right to conduct the prosecution herself and can only assist the state. Thus, it is only

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order of acquittal passed by any Court other than a High Court<sup>2</sup> 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 also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

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

<sup>7</sup>Refer to §§ 301 & 302 of the Code.

<sup>8</sup>This particular problem has been noted in the 154<sup>th</sup> Law Commission of India Report as well as the Justice Malimath Committee Report. However, it must be mentioned that the relevant Amendment Act of 2008 does not state the reasons behind the Amendment Act itself.

fair that the victim enjoys an untrammelled power to prefer an appeal in the three situations mentioned in the proviso whereas a complainant as per section 378 (4) is allowed to prefer a leave to appeal only in the limited scenario of an acquittal.

Importantly enough, it ought to be observed that there is also no textual basis to support the Hon'ble Apex Court's conclusion that the proviso to section 372 is regulated by section 378 (3). This is because section 378 (3) does not talk about victim's appeal at all and thus can't be said to be the controlling provision of the section 372. In other words, even though the proviso to section 372 provides for victim's appeal in three distinct scenarios and the proviso is subject to the main provision of section 372 which is declaratory in nature, however section 378 (3) is itself not concerned with victim's appeal. Section 378(3) cannot be said to regulate the proviso to section 372 because a bare reading of section 378(3) shows that it deals only with appeals by the Government or its instrumentalities in case of acquittals and it nowhere mentions the word 'victim'. Moreover, section 378 as a whole is limited in its applicability to only acquittals whereas the proviso to section 372 covers two more scenarios i.e. inadequate compensation or lesser sentence. Moreover, because Chapter XXIX of the Code dealing with appeals, as well as the Code in totality, do not talk about victims except for in the proviso to section 372, it must be deduced that the power vested in the proviso is untrammelled, unregulated and independent of the provisions in Chapter XXIX of the Code.

Another reason for arguing that the power under the proviso to section 372 is untrammelled is the Hon'ble Supreme Court's dicta in *S. Sundaram Pillai and Ors. v. R. Pattabiraman and Ors.* [(1985) 1 SCC 591]<sup>9</sup> wherein the

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<sup>9</sup>Cited in Satya Pal itself.

Learned Full Bench was pleased note that a proviso to an enactment served four purposes namely:

- 1) qualifying or excepting certain provisions from the main enactment;
- 2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
- 3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
- 4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.’

In light of the fact that there are no provisions in the Code dealing with victim’s appeal except for the proviso to section 372, it can be cogently argued that the proviso to section 372 excepts and/or qualifies section 372 and becomes a substantive provision on its own legs. The Hon’ble Court ought to have followed the golden rule of statutory interpretation i.e. the literal rule which could have ably demonstrated that there are no controlling provisions to the proviso to section 372. The Hon’ble Court ought to have adopted and followed the age old adage that ‘the safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases.’<sup>10</sup>

It is unfortunate that *Satya Pal* doesn’t distinguish between complaint case and state case as in doing so the Learned Bench would have

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<sup>10</sup>Barrel vs. Fordree, (1932) A.C. 676.

understood the legislative intention of requiring complainants filing a special leave application under section 378(4) and empowering victims to file appeals directly under the proviso to section 372. Having said that, one peculiar consequence of allowing the victim to prefer an appeal directly would be said the state would be compelled to file only a leave to appeal as it is explicitly (textually) bound by section 378. Ergo, it does seem possible the state might actively encourage appeals by the victims in light of the State's own compulsion in preferring only a leave to appeal.

It is a policy decision as to whether a victim ought to be given a right to directly file an appeal or only prefer a leave to appeal. However, on a plain reading of Chapter XXIX of the Code, it is amply clear that the Hon'ble Apex Court erred in holding that a victim has to prefer an appeal only after filing a special leave under section 378 and not directly under section 372. While it is conceded that allowing a victim to file an appeal directly without the safeguard of a special leave, might have the unintended consequence of equipping the 'victim' with a tool to wreak private vengeance on those already acquitted by the trial court, it must be borne in mind that it is unfair to expect the victim to prefer a leave to appeal when she has been excluded from the entire criminal justice system throughout, and further that she already has a high burden to discharge as no appellate court wants to unnecessarily interfere with the order of a court below it.

Before parting, it must be mentioned that the amendments of 2009 in the Code have led to many confusions and doubts amongst practitioners and adjudicating courts. It is unclear whether it is wise to place Satya Pal Singh within the larger context of courts trying to stymie the abuse of certain legislations<sup>11</sup> or if it is apposite to blame the decision on the clunky amendments of 2009 which were not

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<sup>11</sup>Example of laws often cited as prone to abuse are § 498A of the IPC, § 138 of Negotiable Instruments Act etc.

accompanied by suitable amendments in related sections. For example, there have been conflicting and varied opinions amongst different High Courts as to the period of limitation for filing a victim's appeal as well as who is qualified to qualify as a 'victim' as per section 2(wa) of the Code. Needless to state, in light of the conflicting dictas of the various High Courts,<sup>12</sup> it will be expedient if the Hon'ble Supreme Court settles these contentious issues of limitation and locus under section 2 (wa) by asking the legislature for clarifications. It is my humble opinion that the appellate courts themselves ought to be more vigilant when issuing notice to acquitted parties when entertaining victim's appeal instead of incorrectly linking section 378(3) with section 372 as there is little basis to support such a stance in light of the preceding averments.

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<sup>12</sup>Refer to the *Kareemul Hajazi vs. State of NCT of Delhi and Ors.*, 2011(1) JCC 500, *Ram Phal vs. State and Ors.*, 2015(3) JCC 1740, *Tata Steel vs. Atma Tube Products*, 2013(2) RCR(Criminal)1005, *Parmeshwar Mandal vs. State of Bihar and Others*, MANU/BH/0654/2013.