

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 2ND DAY OF MARCH 2022 / 11TH PHALGUNA, 1943

CRA(V) NO. 1075 OF 2017

AGAINST THE JUDGMENT IN S.C.NO.324/10 OF THE SPECIAL COURT FOR THE TRIAL OF
OFFENCES AGAINST CHILDREN (ADDITIONAL SESSIONS COURT-1) MANJERI DATED
20.07.2017

APPELLANT/INJURED:

SULAIMAN, S/O.MOIDEEN BAVA,
AGED 40 YRS, CHEKKINTEPURAKKAL HOUSE,
VELAPURAM, POST PARAVANNA,
TIRUR TALUK, MALAPPURAM DISTRICT.
BY ADVS.
SRI.C.M.MOHAMMED IQUABAL
SRI.P.C.NOUSHAD

RESPONDENTS/STATE & ACCUSED 1, 2, 6, 7 & 8:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
- 2 PALLATH ASHRAF
S/O. MUHAMMED KUTTY, PALLATH VEEDU, VELAPURAM KADAPPURAM, POST
PARAVANNA, VETOM, TIRUR TALUK, MALAPPURAM DISTRICT, PIN-676502.
- 3 DIRAR
S/O.MOIDEEN BAVA, ARAYANTEPURAKKAL, VELAPURAM, POST
PARAVANNA, TIRUR TALUK, MALAPPURAM DISTRICT, PIN-676502.
- 4 THENGIL AKBAR
S/O SAIDALIKUTTY, THENGIL HOUSE, VELAPURAM, POST PARAVANNA, TIRUR
TALUK, MALAPPURAM DISTRICT, PIN-676502.
- 5 ARAYANTE PURAKKAL SIDDIQUE,
S/O ABDULLAKUTTY, ARAYANTE PURAKKAL (H), VELAPURAM, POST
PARAVANNA, TIRUR TALUK, MALAPPURAM DISTRICT, PIN-676502.
- 6 DIRAR
S/O ABDULLAKUTTY, ARAYANTE PURAKKAL (H), VELAPURAM, POST
PARAVANNA, TIRUR TALUK, MALAPPURAM DISTRICT, PIN-676502.
BY ADV FIROZ K.M.

OTHER PRESENT:

SRI.V.S.SREEJITH - PP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02.03.2022, ALONG WITH
CRL.A.725/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R.”

K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ.

Crl.A.(V)No.1075 of 2017
&
Crl.A.No.725 of 2017

Dated this the 02nd day of March, 2022

JUDGMENT

Jayachandran, J.

Criminal Appeal first above referred is preferred under the Proviso to Section 372 of the Code of Criminal Procedure, 1973. A preliminary issue as regards the maintainability of the said appeal is raised by the learned Public Prosecutor, Sri.V.S.Sreejith, pointing out that the Proviso to Section 372 does not envisage an appeal against an Order imposing inadequate sentence. The proviso contemplates an appeal against an order, (i) acquitting the accused, (ii) convicting the accused for a lesser offence and (iii) imposing inadequate compensation. Hence, an appeal which merely challenges the inadequacy of sentence cannot be maintained at the instance of a victim. This power is statutorily vested with the State Government as per

Section 377 of the Code, contends the learned Public Prosecutor.

2. Per contra, the appellant contended that the subject appeal is well-nigh maintainable, since the Proviso to Section 372 Cr.P.C. contemplates an appeal against an Order imposing inadequate compensation, which expression takes within its sweep, an order imposing inadequate sentence as well. According to the learned counsel, the scope of an appeal, specifically engrafted in the Code by virtue of an amendment introduced by Act 5 of 2009, should not be restricted to cases where the punishment is for a lesser offence, more so when the 'Notes on Clauses' to the Code of Criminal Procedure (Amendment) Bill, 2006 stipulates, vide Clause 38, that the amendment to Section 372 gives the victim the right to prefer an appeal against any adverse order passed by the trial court.

3. The instant appeal preferred by the appellant/victim is directed against the judgment of the Special Court for Trial of Offences Against Children, Manjeri, dated 20/07/2017 in S.C.No.324/2010, as per which, the accused persons/respondents were sentenced to rigorous

imprisonment for a period of three years and a fine of Rs.3,000/- for the offence under Section 307, read with Section 149; for six months for offence under Section 143; for one year for offence under Section 147; two years for offence under Section 148; six months for offence under Section 341, read with Section 149; one year for offence under Section 329, read with Section 149; two years for offence under Section 329, read with Section 149; three years and a fine of Rs.3,000/-, for offence under Section 326, read with Section 149 of the Indian Penal Code. According to the appellant/victim, the punishment imposed is grossly inadequate, having regard to the gravity of the offences. Therefore, the appellant seeks enhancement of punishment in the present appeal.

4. Proviso to Section 372 is extracted here below:

372. "xxxxx xxxxx xxxxx
[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.]"

5. It is clear from a perusal of the Proviso that three categories of Orders have been culled out, in providing a right of appeal to the victim, that is to say,

(i) an Order acquitting the accused;

(ii) an Order convicting the accused for a lesser offence; and

(iii) an Order imposing inadequate compensation.

6. It is significant to note that no appeal is provided, from an Order, challenging the inadequacy of sentence. The right to prefer an appeal on the ground of inadequacy of sentence is conferred upon the State Government by virtue of Section 377 of the Code of Criminal Procedure. It is settled that there is no vested right to prefer an appeal, unless conferred by statute, which legal position is seen recognised in Section 372 Cr.P.C, wherein it is stipulated that no appeal shall lie from any judgment or order of a Criminal Court, except as provided for by the Code of Criminal Procedure or by any other law for the time being in force.

7. The legal position in this regard is no more *res integra*. In **Parvinder Kansal v. State of NCT of**

Delhi and Another (AIR 2020 SC 4044), the precise issue fell for consideration of the Honourable Supreme Court. The Honourable Supreme Court confirmed the Order of the Delhi High Court, which dismissed an appeal preferred by the victim, under the proviso under section 372 Cr.P.C, seeking enhancement of sentence. In **Parvinder Kansal supra**, the Honourable Supreme Court took stock of its earlier judgment in **National Commission for Women v. State of Delhi And Another [(2010)12 SCC 599]**, wherein it was *inter alia* held that the Proviso to Section 372 does not envisage an appeal directed against inadequate sentence. In view of the above authoritative pronouncements by the Apex Court, we cannot take stock of the argument of the learned counsel for the appellant, based on the 'Notes on Clauses' to the Cr.P.C (Amendment) Bill, 2006.

8. In the light of the above discussion, we find that Crl.A.No.1075/2017 is not maintainable and the same is therefore dismissed.

9. Order in Crl.A.No.725 of 2017:-

In Crl.A.No.725 of 2017 preferred by the accused persons, challenging the judgment of conviction and

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order of sentence, the maximum punishment imposed as per the impugned judgment is rigorous imprisonment for a period of three years and a fine of Rs.3,000/-. Although, the maximum punishment prescribed for offence under Section 307 is imprisonment for life, in the absence of an appeal by the State under Section 377 Cr.P.C, Crl.A.No.725/2017 is to be considered by a Single Bench as per Section 3 (13) (a) of the Kerala High Court Act, 1958.

We therefore direct Crl.A.No.725/2017 to be posted before the learned Single Judge, having jurisdiction as per roster.

Sd/-
K.VINOD CHANDRAN
JUDGE

Sd/-
C.JAYACHANDRAN
JUDGE

NR/03/03/2022