

**APPEAL BY THE VICTIM OF CRIME AGAINST ACQUITTAL**By**Sri S.M. Deka**

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Training Institute (NEJOTI)**1. PREFACE**

A recent session of training for newly recruited officers of the Cadre of District Judges threw up the question of the Sessions Judges' jurisdiction to entertain and decide an appeal against an order of acquittal of the accused passed by a subordinate criminal court. The provisions of Section 378 of the Code of Criminal Procedure, 1973 (Cr.P.C. hereinafter) as amended by the Code of Criminal Procedure (Amendment) Act, (Cr.P.C. amendment, 2005 hereinafter) easily caught the eyes and engaged the minds of the participants. However, one trainee officer referred to the proviso to Section 372 Cr.P.C. The proviso was inserted by the Code of Criminal Procedure (Amendment), Act, 2008 (Cr.P.C. amendment, 2008 hereinafter) and has been in operation from 31.12.2009. This led the writer to explore the legislative history and the object and reasons behind the proviso in particular and those behind the recent amendments in general. The materials gathered in the exercise compel the conclusion that the proviso has not been frequently resorted to by those for whom it is meant, that the lawyers and the Judges have not risen to the expectation of the Parliament and that discordance and confusion abound in the scarce case law available to the writer for the nineteen months period from 31.12.2009 to 31.07.2011. This essay is an attempt to stitch together a conspectus of the law as understood by the writer regarding the victim's right of appeal in case of acquittal of the accused in criminal cases.

**2. THE MATERIALS**

- (i) *Statutory* – Section 2(wa) Cr.P.C. defines a victim thus – “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. The text of the proviso to Section 372 Cr.P.C. is as follows :

‘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’.

***(ii) Legislative history***

Chapter XV of the One hundred and fifty fourth Report of the Law Commission of India bears the title "victimology". The chapter mentions that historically, the ancient Babylonian Code of Hammurabi (about 1775 B.C.) makes the earliest reference to Governmental compensation for crime victims. From para 6.1. to 6.5 of Chapter XV of the Report one can read an account of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly of the United Nations in its 96<sup>th</sup> plenary meeting on the 29<sup>th</sup> of November 1985. This Declaration has been described as a kind of Magna Carta of the Rights of the Victims worldwide. The Declaration amongst others emphasised the necessity of establishing and strengthening "judicial and administrative mechanisms to enable victims to obtain redress through formal or informal procedure that are expeditious, fair, inexpensive and accessible". In its anxiety to recommend measures for adequate compensation the Law Commission in its 154<sup>th</sup> Report concerned itself not so much with recommending formal procedure for redress contained in the Declaration as with the compensation component of the Declaration. This resulted in Section 357 A in the Cr.P.C. inserted by the Cr.P.C. Amendment, 2008. The Report also contained comments, observations and recommendations respectively on the Code of Criminal Procedure (Amendment) Bill, 1994, speedy Justice and Conclusions and Recommendations respectively in Chapter XX, XXI and XXII thereof. Pursuant to these amendments to Section 377 and 378 of Cr.P.C., were carried out by the Cr.P.C. amendment, 2005. Section 372 Cr.P.C. remained as it is despite all these developments until in the Cr.P.C. amendment, 2008 the draftsman and/or probably the parliamentary Committee harked back to the emphasis on the formal judicial procedure creating rights of redress in the U.N. Declaration of Basic Principles of Justice for victims of Crime and Abuse of Power, 1985

***(iii) The statement of object and reasons***

The statement of object and reasons of the Cr.P.C. amendment 2008 in para 2 amongst other contains the following: - "At present the victims are the worst sufferers in a crime and they did not have much role in the Court proceedings. They need to be given certain rights and compensation, so that there is no distortion in the criminal justice system."

***(iv) Decisions of the High Courts and the Supreme Court.***

As already indicated search for the nineteen month period from 31.12.2009 to 31.07.2011 yielded only eleven judgments from different High Courts and the Supreme Court referring to and/or discussing the provisions of the proviso to Section 372 Cr.P.C. Barring one each from the following journals

namely, Supreme Court Cases, Criminal Law Journal, AIR (NOC) Section, Andhra Law Times, Madhya Pradesh Law Journal other Judgments have been retrieved through Internet from the website of the High Courts of Andhra Pradesh, Bombay, Karnataka and Delhi and from the website [www.Indiakanoon.com](http://www.Indiakanoon.com). The Judgments are serialised as under :

Sl. No.	Date of Judgment	Name of Court	Citation
1.	03.02.2010	Karnataka High Court	FARIDHA -VS- MOHMMED RAFI, 2011 Cr.L.J. (NOC) 174 2010 (4) AIR, KAR 966
2.	01.03.2010	Karnataka High Court	Sri N.K. Mohan -Vs- State of Karnataka & Ors. CrL R.P. 291/ 2010
3.	10.05.2010	Gujrat High Court	BHIKHABHAI MOTILAL CHAVADA -VS- STATE OF GUJRAT & ORS. 2010 CrLJ 3325
4.	23.07.2010	Supreme Court	NATIONAL COMMISSION FOR WOMEN -VS- STATE OF DELHI (2010)12 SCC 599
5.	21.10.2010	Andhra Pradesh High Court	G. BASAWARAJ -VS- STATE OF A.P. & ANR. 2011 (1) ALT (CrL) 88 (A.P.)
6.	07.01.2011	Delhi High Court	CHATTAR SINGH -VS- SUBASH & ORS. CrL A. 443/ 2010
7.	07.01.2011	Delhi High Court	AGA JAFAR MIRZA & ANR. - VS- STATE & ORS. CrL M.A. No. 8517/2010 in CrL Appl. No.596/ 2010
8.	07.01.2011	Delhi High Court	KAREEMUL HAJAZI -VS- STATE OF NCT OF DELHI & ORS. CrL M.A. No. 13541/2010 in CrL Appl. No.940/ 2010
9.	17.01.2011	Madhya Pradesh High Court	DHARMVEER SINGH TOMAR-VS-SHRI RAMRAJ SINGH TOMAR 2011(2)MPLJ 643
10.	26.04.2011	Andhra Pradesh High Court	PEETHALA RAJASEKHAR - VS- STATE & ANR. Cr./ Appeal No.5020/2011
11.	16.06.2011	Bombay High Court	M/S TOP NOTCH INFROTRONIX (P) PVT. LTD. -VS- M/S INFOSOFT SYATEMS & ORS. Cr. A. No. 708/2010

### 3. AANALYSIS AND APPRAISAL OF THE DECISIONS LISTED ABOVE

#### *(i) General*

Leaving aside the 4 National Commission for Women (Supra) from the Supreme Court the other 10 (ten) decisions can be grouped into three categories. The first category comprising of (1) FARIDHA (Supra), (2) N.K. MOHAN (Supra), (3) BHIKHA BHAI (Supra), (6)CATTAR SINGH (Supra), (7) AGA JAFAR MIRZA (Supra) and (8) KAREEMUL HAJAZI (Supra) are decisions rendered in Police Report cases relating to offences under the Indian Penal Code. The second category comprising of (5) G. BASAWRAJ (Supra), (9) DHARMVEER SINGH TOMAR (Supra) and (11) M/S TOP NOTCH INFROTRONIX (Supra) are decisions arising out of cases instituted upon complaint to Magistrates. Indeed all the three cases are decision rendered in Criminal Cases under Section 138 of the Negotiable Instruments Act, 1887 (N.I. Act hereinafter). The single decision forming the third category (10) PEETHALA (Supra) does not throw any light as to whether it deserves to be placed in the first category or the second and hence has been categorised separately.

#### *(ii) The decision of the Supreme Court*

In an Appeal against conviction on charges under Section 306 and 376 I.P.C. the High Court set aside the conviction under Section 306 I.P.C. and reduced the sentence of life imprisonment of the accused to the period already undergone which was about five years and six months. The National Commission for Women filed a special leave petition under Article 136 against the reduction of sentence. Special Leave was granted on 02.04.2009. On these facts the Supreme Court while revoking the leave granted made certain observations implying that National Commission for Women is not a victim and cannot file any appeal, that the proviso to Section 372 Cr.P.C. may not be applicable as it came in the year 2009, that only the State can appeal under Section 377 Cr.P.C. against inadequacy of sentence and lastly holding that “an appeal is a creature of the Statute and cannot lie under any inherent power”. Clearly this decision can hardly be elevated to the status of an authoritative precedent on Section 372 Cr.P.C.

#### *(iii) The first category-*

In FARIDHA (Supra) the complainant meaning the first informant on acquittal of the accused in a Sessions Case under Section 307 of the Penal Code filed the revision petition before the High Court. The High Court held that Section 372 Cr.P.C. as amended with effect from 31.12.2009 provides a right of appeal to the victim. The

revision was disposed of with liberty to file an appeal under Section 372 Cr.P.C.

The same is the conclusion in SHRI N.K. MOHAN (Supra) of the same High Court but the reasons for the conclusion are more detailed and forceful. The sessions case was for the offence under “Section 143, 147, 148, 323, 324 and 302 r/w 149 of IPC” Para 9 11, 12, 13 and 14 of the Judgment contain a discussion about the nature of the right of appeal under Section 372 Cr.P.C. as also the characteristics of a victim within the definition 2(wa) of Cr.P.C. The revision filed by the first informant was held to be not maintainable but was allowed to be converted into an appeal under Section 372 Cr.P.C. The right of appeal under Section 372 Cr.P.C. has been held to be a “Statutory/indefeasible right of appeal.”

In contrast a Division Bench of the Gujrat High Court in BHIKHABHAI (Supra) makes a complete turn around and holds that the right under Section 372 Cr.P.C. is not absolute but is dependent on whether the State has appealed under Section 378 Cr.P.C. or not. The Judgment does not record what, if any, submissions were made by Counsels or even whether any counsel at all argued the matter. The High Court did not consider the Legislative history, the Magna Carta of the victim’s right in the shape of the U.N. Declaration of 1985 and the object and reasons behind the provision as indicated in para 2(ii) and 2(iii) hereinabove. The High Court seems to have departed from the primary rule of interpretation and interpreted the provision under the Shadow of Section 378 Cr.P.C. The interpretation appears to the writer to be smacking of legislation which is the province of the Parliament. “Indefeasible right of appeal” has been by such interpretation, reduced to a discretion of the Court. The master in the victim’s appeal has been reduced to a servant of the States appeal. The Judgment deserves reconsideration by a Larger Bench.

A Division Bench of the Delhi High Court went into the question who is a victim within Section 2(wa), Cr.P.C. at great length in CHATTAR SINGH (Supra). On acquittal of the accused persons on charges of conspiracy, abduction to commit murder and murder by the Sessions Court CHATTAR SINGH the father of the person murdered filed the appeal registered as Criminal Appeal No.443/2010 in the Delhi High Court under Section 372 Cr.P.C. claiming himself to be a victim. After analysing the definition of a victim in Section 2(wa), Cr.P.C. it was held that the person suffering loss or injury directly and most proximately by reason of the crime will be a victim, that the definition using the words “means and includes” is exhaustive and that the father although an heir of the person murdered but being an heir of the second class under the Hindu Succession Act 1956 in the presence of two heirs of the first class namely the widow and the son of the person

murdered is not a "legal heir" of the person murdered and as such is not a victim within Section 2(wa) Cr.P.C. capable of maintaining an appeal under Section 372 Cr.P.C. The appeal was dismissed as not maintainable.

In AGA JAFAR MIRZA (Supra) the Division Bench of the Delhi High Court considering an application being Criminal Miscellaneous Application No.18517/2010 in Criminal Appeal No.596/2010 had referred to the provisions of Section 372 Cr.P.C. A stillborn appeal, against acquittal in a case on a charge of murder filed by the son-in-law of the deceased who was not a legal heir, was given a fresh lease of life, probably by injecting a large dose of omnipresent and ever-expanding "ends of justice", by way of impleading the wife of the deceased. The application was for condonation of delay in initial filing of the stillborn appeal. The delay was condoned but the appeal was dismissed on merit by Judgment dated 26.05.2011.

In KAREEMUL HAJAZI (Supra) the Delhi High Court again considered the new law in force since 31.12.2009 namely Section 372 Cr.P.C. providing a right of appeal to the victim in a police report case for an offence under Section 498A/304 B of the Indian Penal Code. The decision reiterates the enunciation of the law as to who can be called a victim within Section 2(wa) Cr.P.C. as in CHATTAR SINGH (Supra) on the basis of Muslim Personal Law. Additionally the decision holds the limitation for an appeal by the victim to be 60 days under Article 115 of the Limitation Act 1963 describing this as a reasonable period.

*(iv) The second category*

This group of three decisions arose out of acquittals in cases instituted upon complaints filed for an offence under Section 138 of N.I. Act. At the outset it may be stated that none of these cases went into the question whether a complainant in such cases can be called a victim within Section 2(wa) of the Cr.P.C. Indeed in offences under the penal code relating to property or person such a question hardly presents any problem except as in CHATTAR SINGH and in KAREEMUL (Supra), the Court in rare cases may have to look at the Personal law of the alleged victim. Then, there are crimes without a victim. Advance Law Lexicon by P. Ramanath Aiyar (at page 4894 Vol.IV 3<sup>rd</sup> Edition, Reprint 2007) as well as Black's Law Dictionary (at page 400, Eight Edition, 2004) under the heading "victimless crime" have indicated consensual unnatural offence under Section 377 and possession of contraband drugs as examples of such crimes. There may be other such offences under the penal Code. More of the kind surely can be found in special laws and the offence under Section 138 N.I. Act may be one among them. In the widest sense any crime committed anywhere causes harm and disturbs or affects the peace and

tranquillity in the entire world and as such victim may be the whole world. But the definition of the victim in Section 2(wa) Cr.P.C. is exhaustive but restrictive. To enable the victim to maintain an appeal under Section 372 Cr.P.C. one must be a victim within the restrictions of the definition in Section 2(wa) Cr.P.C. The offence under Section 138 of the N.I. Act is not an offence like hurt or theft but is a deemed offence. It is plausible to argue that no loss or injury is directly and proximately caused to the complainant by commission of the deemed offence. Such arguments were not raised in these three cases and all of them assumed the complainant to be a victim within Section 2(wa) Cr.P.C. The common features of the three decisions end with this and the discordance and divergence begin.

In G. BASAWARAJ (Supra) in two cases relating to offence under Section 138 of the N.I. Act instituted by the complainant G. Baswaraj on acquittal of the accused two appeals were filed before the Sessions Court by the complainant labelling the appeals as appeals under Section 378 Cr.P.C. Despite the wrong label the appeals were admitted. Two Revision Petitions against the orders of the Sessions Court being Criminal Petition No.5987 and 9726 of 2009 came to be filed before the Andhra Pradesh High Court. The High Court first rejected the objection as regards the wrong label of the two appeals. The Judgment recognized the stark fact that the words "victim" and "complainant" are not synonymous and that at times, a complainant may include a victim and vice versa, but not always. Then the Judgment went into great detail to resolve the apparent dichotomy in the field of operation of Section 372 Cr.P.C. and Section 378(4) Cr.P.C. The following portions from the Judgment are meaty and lucid:

*"Thus, while interpreting any statutory provision, first and foremost cardinal principle of interpretation is plain and simple reading of language employed in that provision  
.....  
..... It is only if the two provisions are clashing or conflicting with each other and are irreconcilable, then the Court has to resort to other rules of interpretation of statutes to resolve the clash or controversy or inconsistency and to consider which of the two provisions would override the other. In the case on hand, on plain, simple and proper reading of language employed in Section 378(4) Cr.P.C. and proviso to Section 372 Cr.P.C., this Court is of the opinion that there is no clash or conflict or inconsistency between the two provision. On harmonious reading of both the provisions  
.....  
..... Thus, a victim irrespective of the fact whether he is complainant or not, has been conferred*

the right to file appeal against an order recording acquittal by the trial court either to Sessions Court or to the High Court as the case may be. In case, the victim is also the complainant in a case instituted by way of a private complaint, then such person has two options to file appeal against an order of acquittal recorded by the trial Court, either to the High Court under Section 378 (4) Cr.P.C. or to the Sessions Court/ High Court under proviso to Section 372 Cr.P.C. It is open to that person who is a victim as well as a complainant to choose one of the two remedies available in law and to approach an appellate court of his choice depending on the trial court which recorded order of acquittal..... Section 378 (4) Cr.P.C. and the proviso to Section 372 Cr.P.C..... can be given effect to simultaneously..... the provisions can operate in the field at one and the same time and there is no conflict or clash or inconsistency between those two provisions.  
(underlining supplied).

On the principles of interpretation G. BASAWARAJ (Supra) has quoted from several Supreme Court Judgments which the next two Judgments failed to adhere to DHARMVEER (Supra), strangely, thought that unless Section 372 Cr.P.C. itself specifies that victim also includes a complainant a complainant cannot maintain an appeal as a victim and the remedy therefore is only under Section 378(4) Cr.P.C. as in a case instituted upon complaint. The Judgment also sought to support the conclusion of non maintainability of the appeal under Section 372 Cr.P.C. in a case of acquittal by a Magistrate for an offence under Section 138 of the N.I. Act by quoting from the Supreme Court Judgment in DAMODAR S. PRABAU, 2010 Cr.L.J 2860. The Supreme Court Judgment has nothing at all to say about Section 372 Cr.P.C. Going by the dates 31.12.2009 when the proviso to Section 372 Cr.P.C. came into force and 03.05.2010, 122 days later, when the said Supreme Court Judgment came to be delivered it is quite possible that the Supreme Court may have been unaware of the new provision when the observation in quite different context was made with regard to Section 378(4) Cr.P.C. It is not a precedent on the proviso because of the simple reason that having made no reference to the provision at all the Supreme Court can by no known doctrine of precedent be said to have declared the law on 372 Cr.P.C. DHARAMVEER (Supra) has thus, reduced Section 372 Cr.P.C. to a dead letter instead of making it workable.

In M/S TOP NOTCH INFOTRONIX (Supra) dated 17.06.2011 the Bombay High Court added another twist to the tale of Section 372 Cr.P.C. by restricting the provisions to the victim in Police Report cases only. It in effect read the word "victim" as a synonym of the word "complainant". This was held in disposing of



a petition under Section 378 (4) Cr.P.C. filed in the High Court seeking special leave to appeal against acquittal in a case under Section 138 of the N.I. Act. The objection of the respondent as to maintainability of the appeal was rightly rejected but the same cannot be said about the reasons thereof. In all probability had G. BASWARAJ (Supra) been placed DHARAMVEER (Supra) and M/S TOP NOTCH INFOTRONIX (Supra) would have dealt with the apparent dichotomy between the provisions 372 Cr.P.C. and 378(4) Cr.P.C. detailing acceptable reasons. At any rate it is difficult to understand how a victim within the clear language used in Section 2(wa) Cr.P.C. may lose his or her status as a victim depending upon the route taken by the relevant criminal case to reach the Court.

(v) *The single decision of the third category.*

The four paragraph judgment of the Andhra Pradesh High Court dated 26.04.2011 in Criminal Appeal No.502 of 2011 in PEETHALA RAJASEKHAR (Supra) reiterates the law laid down in G. BASWARAJ (Supra). From the barest of facts that appear in the Judgment one can gather that it was an appeal under Section 378 Cr.P.C. from an order of acquittal passed by the Magistrate. While the judgment reiterates the core of the law in G. BASAWARAJ (Supra) somewhat surprisingly it says, departing from its predecessor, that “when there are two rights of appeal provided to a party, one right of appeal cannot be taken away by entertaining the present appeal by this Court.” The rights of appeal spoken of in the case is one under Section 372 Cr.P.C. and the other under Section 378(4) Cr.P.C. The appeal under Section 378 (4) Cr.P.C. was dismissed by giving liberty to the appellant to file appeal to the Sessions Court under Section 372 Cr.P.C. This does not tally with the portions underlined in the extract from G. BASAWARAJ (Supra) at para 3(iv). The direction in para 4 of the Judgment to Sessions Court regarding Limitation of the appeal to be filed in that court also does not have the support of any provision of the Limitation Act , 1963.

The upshot of this survey of the available case law on the topic is that the law enunciated in G. BASWARAJ (Supra) and reiterated in PEETHALA (Supra) minus the minor aberrations pointed out above lays down the correct law on Section 372 Cr.P.C. *vis-a-vis* the provisions of Section 378(4) Cr.P.C. more particularly in cases instituted upon complaint to Magistrates. The enunciation of the law on Section 372 Cr.P.C. as regards the police report cases except in BHIKHABHAI (Supra) also is valid.

4. ANNEX TO G. BASWARAJ (SUPRA)

One or two illustrations may serve to further clarify the law enunciated in G. BASWARAJ (Supra) dealt with in para 3(iv) above. It is trite to say that ordinarily the criminal law can be set in motion by

anybody. This general principle is, however, subject to any eligibility criteria enacted by a Special Law or even by the Cr.P.C. in the group of provisions under Chapter XIV comprising Section 190 to 199 of the Cr.P.C. One may pick Section 198 A Cr.P.C., the latest (December 1983) to enter the group. Under this Section an offence punishable under Section 498A can reach the court for trial of the offender (1) on a Police Report if the defacto complainant goes to a police station and lodges a first information (2) On a complaint to court by the person aggrieved by the offence that is the wife who is the direct victim of the offence. (3) on a complaint to court by near relations like father, mother, brother, sister or (4) on a complaint with leave of the court by any other person related to the wife through blood, marriage or adoption. Only in (2) above the victim and the complainant is one and the same. In (1) the victim and the defacto complainant may or may not be one and the same depending on whether the first information is lodged by the wife, the victim or by any other person. In (3) and (4) wife remains the victim but the first informant/complainant are not the victims of the offence of cruelty to wife within the definition 2(wa) Cr.P.C.

Illustration 2 may be as follows.

“F. the father institutes a case for offence under Section 324 I.P.C. upon a complaint to court against A for having caused hurt to his son. S. The Magistrate after trial acquits A. F dies or does not appeal. Before 31.12.2009 S had no remedy by way of appeal to any court. After 31.12.2009 he can appeal as a victim under Section 372 Cr.P.C. in the Court of Sessions. If the father being alive and willing wants to appeal he has to approach only the High Court under Section 378(4) Cr.P.C. In both these illustration victim within Section 2(wa) Cr.P.C. is the wife in one case and the son in the other case. Merely because one or the other way or ways are adopted the status of the victim that is the wife or the son does not change and they remain capable of maintaining an appeal to the Sessions Court under Section 372 Cr.P.C. against the acquittal by the Magistrate.

G. BASAWARAJ (Supra) also has dealt with an argument based on the maxim “*generalia specialibus non derogant*”. It was submitted that Section 372 Cr.P.C. is a general provision and Section 378(4) being a Special provision would prevail. It was held that the maxim has no application after the coming into force of the amended provision of Section 372 Cr.P.C. with effect from 31.12.2009. The writer thought that the maxim may still apply if one looks at cases instituted upon a complaint within Section 378(4) as the general provision and the proviso enacting special provision within the complaint cases when the complaint is instituted by the victim. The result of this line of reasoning will lead to the conclusion that a complainant who is also the victim does not have any option but to resort to Section 372 Cr.P.C. which will have overriding effect in view of the maxim. Such a conclusion would be contrary to the holding in

**G. BASAWARAJ (Supra). The anomaly has been resolved upon reaching BIHAR STATE CO-OPERATIVE MARKETING UNION LTD. – VS- UMA SHANKAR SHARAN AND ANOTHER, AIR 1993 S.C. 1222, 1992 (4) SCC 196 through reading of comments on the maxim in principles of Statutory Interpretation by Justice G.P. Singh, 11<sup>th</sup> Edition 2008 at page 142/143. It is stated there that the principle of the maxim has not been applied when the two provisions deal with remedies like here. End of para 5 and para 6 of the aforesaid Supreme Court Judgment contains the following :**

*“The High Court has in its judgment assumed that whenever a specific remedy is made available in law the other remedy, more general in nature, necessarily gets excluded.*

*6. Validity of plural remedies, if available under the Law, cannot be doubted. If any standard book on the subject is examined, it will be found that the debate is directed to the application of the principle of election, where two or more remedies are available to a person. Even if the two remedies happen to be inconsistent, they continue for the person to choose from, commencing an action accordingly.”*

The echo of the above extract is discernible in **G. BASAWARAJ (Supra)** and this lends additional support to the enunciation of the law holding that the victim in a complaint case who also is the complainant has two remedies to choose from one under the proviso to Section 372 Cr.P.C. and the other under Section 378(4) Cr.P.C.

#### **5. PERIOD OF LIMITATION OF THE APPEAL BY A VICTIM**

**KAREEMUL HAJAZI (Supra)** deals with the question of period of limitation. The second division in the Schedule to the Limitation Act 1963 starting from Article 114 and ending in Article 117 does not contain any Article providing for an appeal by the victim. There is no residuary Article either in the second division unlike in the first and the third Division of the Schedule. For Civil Appeals Article 116 has been interpreted as the residuary Article by the majority in the Constitution Bench decision of the Supreme Court in **VIDYA CHARAN SHUKLA -VS- KHUB CHAND BAGHEL, AIR 1964 S.C. 1099**. Article 115 similarly worded can be similarly interpreted as the residuary Article for appeals under Cr.P.C. The period will be 30 days for appeals in the Sessions Court and 60 days for those in the High Court. The language of the proviso also is a pointer in that direction. The reliance in **KAREEMUL (Supra)** on **STATE OF PUNJAB AND ORS, 2007 (11) SCC 363** and **GOVERNMENT OF INDIA, 1989(3) SCC 483** is not appropriate. Limitation spoken of in these two cases from the Supreme Court is in regard to exercising of power by the

authorities and limitation here is in regard to exercising the right of appeal by a victim,. Question is of period of limitation and not a reasonable period of limitation.

## 6. ACKNOWLEDGEMENTS AND CONCLUSION.

Sri S.D. Purkayastha, a Grade-I Officer of the Tripura Judicial Service, is the trainee officer mentioned in the preface. His intervention prompted the writer to embark on this exercise of attempting the essay. Without assistance of Sri R.A. Tapadar and Sri K. Sarma Pathak of the Assam Judicial Service, it would not have been possible for the writer to gather the materials, particularly the case law used in the Article. The Director of the Andhra Pradesh Judicial Academy promptly faxed to the writer a copy of the Judgment of G. BASAWARAJ reported in 2011 (1) ALT (CrL.) 88 (A.P.) . The writer deeply appreciates and acknowledges the contribution of each one of them towards completion of this exercise.

In conclusion, it is hoped that anomalies and errors, in the opinion of the writer, indicated in the essay particularly in BHIKHABHAI (Supra), DHARMVEER (Supra) and M/S TOP NOTCH INFOTRONIX (Supra) will get corrected by larger Benches of the respective High Courts or by a definitive pronouncement from the Supreme Court.

## 7. THE POSTSCRIPT

After completion of this essay on 11.08.2011 the Writer received the copy of August issue of AIR. There MANJU KAWADIYA – VS- GHANSHYAM SAHU of the Rajasthan High Court has been digested at AIR 2011 (NOC)326 (RAJ). Retrieving the 6 para full Judgment dated 19.01.2011 of the Rajasthan High Court from [www.airwebworld.com](http://www.airwebworld.com), the Writer found that the High Court has roundly condemned an appeal against acquittal filed by the complainant in the Sessions Court in a case under Section 138 of the N.I. Act as illegal, improper and perverse.

There is no mention in the Judgment of the provisions of Section 372 Cr.P.C. This Judgment is also included here, if only for its negative importance, to highlight the general lack of awareness, of all concerned, of the new remedy provided to the victims of crime by the Parliament.