

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

CRL.A.No. 564 of 2015

AGAINST THE JUDGMENT IN CRA 15/2013 of COURT OF II ADDL. SESSIONS
JUDGE, KOLLAM DATED 20-12-2013

AGAINST THE JUDGMENT IN ST 321/2009 of COURT OF JUDICIAL MAGISTRATE
OF FIRST CLASS - III, KOLLAM DATED 28-11-2012

APPELLANT/COMPLAINANT:

SREE GOKULAM CHIT AND FINANCE COMPANY (P) LTD.
SREE GOKULAM TOWERS, NO.55, ARCOT ROAD
CHENNAI, REPRESENTED BY IT'S ASSISTANT MANAGER
P.D.MADHUKUMAR, S/O. DHAMODHARAN, THOPPIL HOUSE
NEERAVIL, PERINAD.P.O., KOLLAM.

BY ADVS.SRI.K.S.BABU
SMT.N.SUDHA

RESPONDENTS/ACCUSED AND STATE:

1. V.SIVANKUTTY, AGED 54 YEARS
VRINDAVAN, T.C.69/120, MADHU BRIDGE
KARUMON, P.O., THIRUVANANTHAPURAM
PIN-695002.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM,
COCHIN-31.

R2 BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.A.No.564 of 2015

Dated 23rd June, 2015

JUDGMENT

In this appeal challenge is raised against the judgment dated 20.12.2013 in Crl.A.No.15 of 2013 passed by the Court of II Additional Sessions Judge, Kollam arising from the judgment in S.T.No.321 of 2009 of the Court of Judicial First Class Magistrate-III, Kollam. The appellant was the complainant in S.T.No.321 of 2009. The accused/first respondent herein was tried for the offence under Section 138 of the Negotiable Instruments Act and the trial court acquitted him under Section 255(1) of the Code of Criminal Procedure. Feeling aggrieved by the said order of acquittal the complainant/appellant herein preferred Crl.A.No.15 of 2013 and the same was dismissed as per the judgment now, sought to be impugned. Since the appellant has already preferred an appeal against the judgment in S.T.No.321 of 2009 as Crl.A.No.15 of 2013 and the impugned judgment was delivered by the Court of II Additional Sessions Judge, Kollam in the appeal confirming the order of acquittal the learned counsel for the appellant was required to argue on the maintainability of this appeal. The learned counsel for

the appellant attempted to canvass the position that in view of the decision of this Court in **Omana Jose v. State of Kerala (2014 (2) KLT 504)** against a judgment of the Court of Judicial First Class Magistrate in a prosecution under Section 138 of N.I. Act acquitting the accused the remedy of the complainant is to prefer an appeal before this Court after obtaining leave. Evidently, prior to the decision in **Omana Jose's** case (supra) the judgment governing the field was **Shibu Joseph & Ors. v. Tomy K.J. & Ors. (2013(4) KHC 629)**. As per the decision in **Shibu's** case (supra) an appeal would lie before the Sessions Court from an order of acquittal in a complaint under Section 138 of N.I. Act. In fact, a contra view was taken by another learned Single Judge in the decision in **Sree Gokulam Chit and Finance Co. (P) Ltd. v. Damodaran (2013 (4) KLT 547)**. It was taking note of the conflict in the decisions that Crl.R.P.Nos.2334 & 2338 of 2013 were referred to a Division Bench of this Court which culminated in the decision in **Omana Jose's** case (supra). The Division Bench found that the Sessions Court and High Court do not have concurrent jurisdiction in an appeal against acquittal filed by the victim in a case and ultimately found that an appeal would lie with leave only before this Court. The said decision in **Omana Jose's** case (supra) was rendered on 11.4.2014. It is to be noted that in this case Crl.A.No.15 of 2013 was filed against the judgment in S.T.No.321 of 2009 prior to the pronouncement of the decision in

Omana Jose's case (supra) and in fact, the judgment dismissing the appeal was also pronounced prior to the pronouncement of the said decision viz., on 20.12.2013. No provision has been brought to my notice by the learned counsel for the appellant to sustain the contention that against a judgment passed by a Sessions Court dismissing an appeal filed against an order of acquittal passed in a case instituted upon a complaint a further appeal will lie before this Court. The learned counsel for the appellant further contended that in this case in the light of the decision in **Omana Jose's** case (supra) the position is settled that the Sessions Court has got no jurisdiction to entertain an appeal against an order of acquittal passed in a case instituted upon a complaint for the prosecution of an offence under Section 138, N.I. Act. In the said circumstances, it is contended that the judgment passed by the Sessions Court in Crl.A.No.15 of 2013 is a nullity. How can such a contention be sustained ? Whenever a decision is rendered by higher courts with respect to the jurisdiction the pronouncement of the said decision laying down the law will not and cannot unsettle the cases which were already decided and attained finality. In a case where finality was attained in a proceedings a subsequent declaration of law especially with respect to the jurisdiction cannot efface the impact of the earlier judgment. I have no hesitation to hold that any contra view would lead to utter chaos. In this case, prior to the laying down of law in **Omana Jose's** case (supra)

by the Division Bench the learned Sessions Judge considered the appeal preferred against the judgment in S.T.No.321 of 2009 passed by the Court of Judicial First Class Magistrate-III, Kollam and dismissed the appeal. True that, as per the judgment in S.T.No.321 of 2009 the learned Magistrate virtually confirmed the order of acquittal. But, that by itself cannot be a ground for the appellant to canvass the position that ignoring the judgment rendered by the Sessions Court in Crl.A.No.15 of 2013 the complainant is entitled to file an appeal against the judgment in S.T.No.321 of 2009 as only one appeal is contemplated against an order of acquittal passed in a case instituted upon a complaint for the prosecution of the offence under Section 138 of N.I. Act. Having filed an appeal against the said order of acquittal passed by the learned Magistrate in S.T.No.321 of 2009 and obtained an adverse order in Crl.A.No.15 of 2013 the appellant cannot be heard to contend that ignoring the same another appeal has to be entertained against S.T.No.321 of 2009 or an appeal has to be entertained against the judgment whereby the appeal against the order of acquittal was dismissed. The long and short of the discussion is that this appeal is not maintainable and certainly this will not and cannot stand against the appellant in resorting to appropriate remedy. In the said circumstances, to enable the appellant to file appropriate proceedings to challenge the impugned order the Registry is directed to return the records to the

appellant. Certainly, the appellant will be entitled to seek exclusion of the time spent on this appeal, in accordance with law.

Sd/-
C.T.RAVIKUMAR
Judge

TKS