

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

OP(Crl.).No. 259 of 2014 (Q)

CRA 298/2014 OF THE SESSIONS COURT, THALASSERY

PETITIONER:

**SNEHARAJ CHANDROTH, AGED 57 YEARS
S/O.NARAYANAN, PARVANAM, MAKRERI
P.O.MUNDALLUR, KANNUR DISTRICT, PIN-670622.**

BY ADV. SMT.M.MEENA JOHN

RESPONDENTS:

**1. SUNIL KUMAR P.P., AGED 49 YEARS
S/O.RAJAN, JAYARAJ BHAVAN
NEAR SREE NARAYANA U.P.SCHOOL
CHANDROTH KULAM ROAD
P.O.VADAKKUMBAD, KANNUR DISTRICT, PIN-670105.**

**2. S.H.O. OF THALASSERY POLICE STATION
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, KOCHI-31.**

**R1 BY ADV. SRI.C.P.UDAYABHANU
R2 BY PUBLIC PROSECUTOR SMT. P. MAYA**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 02-02-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1 COPY OF THE CRIMINAL APPEAL MEMORANDUM NO.298/14 FILED
 BEFORE THE SESSION COURT, THALASSERY.
- EXT.P2 COPY OF THE ORDER DATED 29/8/14 IN CRL.APPEAL NO.298/14 OF
 THE SESSIONS COURT, THALASSERY.
- EXT.P3 COPY OF THE FIRST INFORMATION STATION IN FIR NO.452/2009 IN
 C.C.NO.51/2010 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
 THALASSERY
- EXT.P4 COPY OF THE FINAL REPORT IN FIR NO.452/2009 IN C.C.NO.51/2010 OF
 THE JUDICIAL FIRST CLASS MAGISTRATE COURT, THALASSERY
- EXT.P5 COPY OF THE JUDGMENT DATED 30.07.2014 OF ACQUITTAL IN
 C.C.NO.51/2010 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
 THALASSERY

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

O.P.(Crl) No.259 of 2014

Dated this the 2nd day of February, 2015

JUDGMENT

The petitioner herein is the defacto complainant in C.C.No.51/2010 of the Judicial First Class Magistrate Court, Thalassery, which stands disposed of by a judgment of acquittal on 30.07.2014. The petitioner herein brought complaint in the said case in his capacity as manager of the Thalassery branch of the Kannur District Co-Operative Bank, alleging the offence under Section 408 IPC. The petitioner herein preferred an appeal against the acquittal before the Court of Session, Thalassery, under the proviso to Section 372 Cr.P.C. as Crl.Appeal No.298/2014. The learned Sessions Judge returned the appeal memorandum for presentation before the proper court, on the ground that the petitioner will have to file appeal against the acquittal under Section 378(4) Cr.P.C. The said order dated 29.08.2014 is under challenge. On a perusal of the impugned order, I find that the learned Sessions Judge returned the appeal memorandum on a misconception regarding the spirit and application of the decision of this Court (Division Bench) in

Omana Jose v. State of Kerala [2014(2)KLT 504]. In the said decision, this Court has made it very clear that the complainant in a complaint case cannot file appeal against acquittal under proviso to Section 372 Cr.P.C. The right of a victim to file appeal against acquittal under the proviso to section 372 Cr.P.C. is not affected in any manner by the decision in **Omana Jose's** case (cited supra). Right of appeal was given to the victims under the proviso to Section 372 Cr.P.C. by an amendment. In the said process of amendment the provisions under Section 378(4) Cr.P.C. were not touched. Thus, the legislative intent is clear. Right of appeal given under the proviso to Section 372 Cr.P.C. is a special right given to the victims of offence. When the State does not prefer appeal against acquittal, and when there is a victim who is really aggrieved, such victim cannot be without any remedy. When there is acquittal in a complaint case, the law specifically provides right of appeal to the complainant under Section 378(4) Cr.P.C. It was to protect the interest of victims of offences, a special provision was introduced by amendment, giving right of appeal to victims, when the

complainant or the State would not prefer appeal against acquittal. I find that the spirit and purport of the decision of this Court in **Omana Jose's** case (cited supra) was not properly understood by the learned Sessions Judge. I find that the impugned order is liable to be set aside, and the Court of Session will have to be directed to entertain the appeal, decide it according to law, and pass appropriate order.

In the result, this original petition is allowed. The impugned order passed by the Court of Session is hereby set aside, and Crl.A.No.298/2014 is ordered to be revived. The petitioner will accordingly re-present the appeal memorandum in the Court of Session itself, within seven days. The learned Sessions Judge will receive the appeal memorandum, hear it according to law, after notice to the other side also, and take appropriate decision in the appeal at the earliest. Finding, that direction for a time bound disposal is inappropriate, I direct disposal expeditiously by the appellate court.

Sd/-

P. UBAID, JUDGE

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