

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.8.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 316 of 2015

Sivakumar

.. Petitioner

Versus

1. State rep.by Inspector of Police(Crime)
E-4, Abiramapuram Police Station
Chennai

2. Kalathiyappan .. Respondents

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to set aside the judgment passed in C.C.No.240 of 2009 dated 27.1.2015 on the file of the 23rd Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.V.Arul
Government Advocate (Crl.side)
for R1

No Appearance for R2

ORDER

According to the defacto complainant/petitioner, the second respondent/ accused received a sum of Rs.1,81,500/- from the defacto complainant promising him to get a job and since he failed to get a job, he issued a cheque dated 13.3.2008 for the said sum in favour of the defacto complainant and when the same was presented for encashment, it was returned with an endorsement insufficient funds. Therefore, the petitioner preferred a complaint before the first respondent police and the same was registered in Crime No.737 of 2008 for the alleged offence under Section 420 IPC against the second respondent / accused. After investigation, final report was filed and the same was taken on file in C.C.No.240 of 2009 on the file of the 23rd Metropolitan Magistrate Court, Saidapet, Chennai. After trial, by judgment dated 27.01.2015, the second respondent was acquitted by the Trial Court. Aggrieved against the same, the defacto complainant has filed this Criminal Revision Case.

2. When the matter is taken up for hearing today, the learned counsel on either side would submit that as against the order of acquittal, only appeal would lie in view of the amendment made to

Section 372 of the Criminal Procedure Code, which came into effect from 31.12.2009 as the order of acquittal has been passed only on 27.01.2015 and erroneously the revision petitioner has filed this revision before this Court. Accordingly, the learned counsel for the revision petitioner would only pray this Court to direct the District Court to entertain the appeal to be filed by the petitioner with a petition to condone the delay in preferring the said appeal.

3. Learned Government Advocate appearing for the first respondent has expressed no objection for such course of action.

4. Having regard to the submissions made on either side and in view of the insertion of proviso to Section 372 of Cr.P.C. by the Criminal Procedure Code (Amendment) Act, 2008 (5 of 2009) with effect from 31.12.2009, which reads as follows:

"372. No appeal to lie unless otherwise provided.-- 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.

Amendment Act, 2008.-- Clause 29 amends section 372 of the Code relating to appeals from judgment or order of a Criminal Court. It gives to the victim the right to prefer an appeal against any adverse order passed by the trial Court"

and in view of the fact that as against the order of acquittal passed by the trial court only appeal would lie, this Criminal Revision Case is dismissed. However, the petitioner is given liberty to file an appeal before the appropriate forum viz., District Court, since, as against an order of acquittal the victim is given the right to prefer an appeal against the order passed by the Trial Court after insertion of the proviso to Section 372 of Cr.P.C. by the Criminal Procedure Code (Amendment) Act, 2008 (5 of 2009) with effect from 31.12.2009. When liberty is given by this Court, the Appellate Court shall take into consideration that the petitioner is entitled to get the period of limitation to be excluded during which the Criminal Revision Case is pending before this Court.

Sd/-

Assistant Registrar

True Copy

Note: Office is directed to return
back the originals, if any,
to the petitioner's counsel
after retaining xerox copy
in the bundle.

To

1. The 23rd Metropolitan Magistrate Court, Saidapet, Chennai
2. The Public Prosecutor, Madras.
3. The Inspector of Police (crime)
(E4) Abiramapuram Police Station,
Chennai.

1 cc to Mr..S.Doraisamy , Advocate Sr.No.45282/15

Cr1.R.C. No.316 of 2015

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pmk.9.9.2015



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