

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1318 of 2013

T.S.Balasubramanian

...Petitioner/
Defacto Complainant

Versus

1. State rep.by Sub Inspector of Police
CCB II, Team 1
Egmore, Chennai.Respondent/Complainant
2. P.Kabali
3. T.D.Saravanan
4. S.PushpavalliRespondents 1 to 3/Accused 1 to 3

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order of acquittal dated 22.07.2013 passed by the learned Judicial Magistrate, Alandur in C.C.No.328 of 2012.

For Petitioner : Mr.R.Thiyagarajan

For Respondents : Mr.Md.Riyaz
Government Advocate (Crl.side)
for R1

Mr.T.Easwaradhas for RR2 to 4

ORDER

Based on the complaint given by the defacto complainant/petitioner contending that the accused persons by forging a Power of Attorney Deed executed by the defacto complainant's father attempted to grab his property, a case was registered against the accused persons/respondents 2 to 4 for the alleged offences under Sections 120(b), 465, 466, 467, 468 r/w 471, 420 as against A1 and A2; and under Sections 465, 466, 467, 468 r/w 471 and 120(b) r/w 109 and 420 IPC as against A3 and A4. Pending trial, A2 died and the charges as against him are abated. The case was taken on file in C.C.No.328 of 2012 on the file of the learned Judicial Magistrate,

Alandur. After trial, by judgment dated 22.07.2013, the respondents 2 to 4 were acquitted by the Trial Court. Aggrieved against the same, P.W.1, 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 22.07.2013 and erroneously the revision petitioner has filed this revision and the same is kept pending before this Court from the year 2013. 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 counsel appearing for the respondents/accused as well as the learned Government Advocate (Criminal Side) has expressed no objection for such course of action.

4. It is also brought to the notice of this Court by the learned Government Advocate (Crl.side) that the prosecution has also filed a regular appeal and the same is pending because of the delay.

5. 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 (CS-II)

//True Copy//

Sub Assistant Registrar

vj2

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 Judicial Magistrate, Alandur.
2. -Do- Through The Chief Judicial Magistrate, Kancheepuram.
3. The Sub - Inspector Of Police, CCB - II, Team I, Egmore, Madras.
4. The Public Prosecutor, Madras.

1 CC to Mr.M.Guruprasad, Advocate SR.No. 40883

Cr1.R.C. No.1318 of 2013

SCD (CO)
PSI (12.08.2015)