

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.09.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Cr1.R.C.No.806 of 2010

Marimuthu

.. Petitioner/P.W.1

Vs.

1.Karthikeyan

.. 1st Respondent/Accused

2.State rep by

Deputy Superintendent of Police,

Villupuram Division,

Kaanai Police Station,

Villupuram District.

Cr.No.248 of 2008

..2nd Respondent/Complainant

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 01.06.2010 made in SC.No.178 of 2009 on the file of the Learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Villupuram.

For Petitioner : M/s.S.Parthasarathy

For Respondents: Mrs.M.F.Shabana, GA (Cr1. Side)
for R2.

Notice served - No appearance for R1.

ORDER

The criminal revision petition is directed against the order passed by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Villupuram in SC.No.178 of 2009 dated 01.06.2010, acquitting the accused from the charges under Sections 498A and 304(b) IPC.

2.The learned counsel for the petitioner would contend that the question of criminal revision would lie before this Court against the order of acquittal of the accused by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Villupuram in SC.No.178 of 2009 as against the complaint given by the complainant.

3. In the above said circumstances, it is useful to extract Sections 372 and 374 Cr.PC which read 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 (Notes on Clauses).

374. Appeals from convictions -

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial; may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,-

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session."

4. In view of the above said provisions, the person convicted before the trial court/Chief Judicial Magistrate-cum-Assistant Sessions Judge has right to file an appeal before the Sessions Judge and also in the case of acquittal, the appeal shall lie before the appellate Court to which the appeal ordinarily lie, the appeal has to be necessarily preferred before the concerned Sessions Court.

5. In this case, aggrieved over the order passed by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Villupuram, the present revision is preferred by the revision petitioner. The revision petitioner has every right to prefer an appeal before the Sessions Judge of the concerned District. If the petitioner is aggrieved over the said order, he has to prefer an appeal before the concerned Sessions Court and without following the above said procedure, the petitioner, straightaway, filed the revision petition before this Court which is not at all maintainable and the revision is liable to be dismissed.

6. In the result, the criminal revision petition stands dismissed, with liberty to the petitioner to approach the competent court in accordance with law.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate-cum-Assistant Sessions Judge,
Villupuram

2. The Deputy Superintendent of Police,
Villupuram Division, Kaanai Police Station,
Villupuram District.

3. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.S.Parthasarathy, Advocate, sr.52210

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