

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CrI.R.C.No.984 of 2016

D.Ashok Kumar

... Petitioner/Complainant

Vs.

K.Ganesh

... Respondent/Accused

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. against the order dated 20.05.2014 made in CC.No.239 of 2010 on the file of the Learned Judicial Magistrate, Tambaram and revise the same by enhancing the sentence and awarding compensation of twice the amount of the Cheque and direct the same to be paid to the complainant/petitioner.

For Petitioner : Mr.M.Selvam,
No appearance

ORDER

The criminal revision petition is directed against the judgment passed by the learned Judicial Magistrate, Tambaram in CC.No.239 of 2010 dated 20.05.2014, for convicting accused for the offences punishable under Section 138 of Negotiable Instruments Act.

2. There is no representation on behalf of the petitioner. The records perused, the main question is whether criminal revision would lie before this Court against the order of conviction of the accused by the learned Judicial Magistrate, Tambaram in CC.No.239 of 2010, the complainant/revision petitioner.

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/Judicial Magistrate has right to file 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. Aggrieved over the said order passed by the learned Judicial Magistrate, Tambaram, 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 order of the learned Judicial Magistrate, Tambaram, he has to prefer an appeal before the concerned 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.

tsh

26/07/2016

This Criminal Revision petition having been posted on Thursday the first day of September 2016(01.09.2016) for being mentioned in pursuance to the order of this Court dated 26.07.2016 and made in Crl.R.C.984/2016 and in the presence of the aforesaid advocate the Court made the following order;

At the instance of the learned counsel for the petitioner, this criminal revision is listed today under the caption "for being mentioned".

2.When the matter is taken up for hearing, the learned counsel for the petitioner requested that this Court may direct the Registry to return the original impugned order dated 20.05.2014 passed in C.C.No.239 of 2010.

3.Considering the submission made by the learned counsel for the petitioner, the Registry is directed to return the original impugned order filed along with the Criminal Revision. The Registry is directed to issue a fresh order copy.

cla

01/09/2016

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Tambaram.

2.The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.M.Selvam, Advocate sr.42729

Crl.R.C.No.984 of 2016

SR(CO)
CA(16/08/2016)

ak[co]
srg 29/09/2016



WEB COPY