



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl.A.(MD) No.192 of 2011

WEB COPY

Ponnusamy

... Appellant / Complainant

-vs-

Nallamuthu

... Respondent / Accused

PRAYER: Criminal Appeal Petition is filed, under Section 378(4) Cr.P.C., to call for the records from the lower court (Judicial Magistrate, Tenkasi, Tirunelveli District) and set aside the judgment of the lower court by convicting the accused in S.T.C.No.3977 of 2007, dated 24.09.2010.

For Petitioner: Mr.K.Prabhu

For Respondent: Mr.C.Muthusaravanan

#### O R D E R

The complainant in S.T.C.No.3977 of 2007, on the file of the learned Judicial Magistrate, Tenkasi, is the appellant.

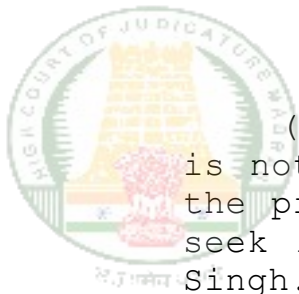
2. In the said Court, the accused has been prosecuted for an offence under Section 138 N.I. Act. On 24.09.2010, he was acquitted. As against that the complainant has preferred this Criminal Appeal to this Court.

3. A Full Bench of this Court, on 05.04.2016, in **Crl.A (MD) No.99 of 2015 (S.Ganapathy and N.Senthilvel and batch cases)** in paragraph 31 held as under:

"31. Since, subsequent to the Full Bench reference, the Supreme Court in Satyapal Singh interpreted these provisions, we are duty bound to follow the same to the extent it binds us. With that in mind and in the light of the above legal precedents and the discussion, we answer the questions posed by the Referral Judge as follows:-

(1) A victim of the crime, who has prosecuted an accused by way of a private complaint, has a statutory right of appeal within the limits prescribed under Section 372 of Cr.P.C.

(2) A complainant (in a private complaint), who is not a victim, has a remedy and can file an appeal against the order of acquittal of the accused after obtaining leave to appeal under Section 378(4) of Cr.P.C



(3) In a private complaint, even if the victim is not a complainant, he has a right to appeal under the proviso to Section 372 of Cr.P.C., but he has to seek leave as held by the Supreme Court in Satyapal Singh.

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(4) The term "victim" has been correctly interpreted by the Full Bench of the Delhi High Court in Ramphal and we are in agreement with the same.

(5) A victim (as defined under Section 2(wa) of the Cr.P.C does not cease to be a victim merely because he also happens to be a complainant and he can avail all the rights and privileges of a victim also and

(6) The decision of the Single Judge in Selvaraj holding that the term "victim" found in Section 372 excludes a complainant, is not legally correct and in a given case, a complainant, who is also a victim, can avail right granted under Section 372 of Cr.P.C."

4. The appellant besides being a complainant he is also a victim because he suffered financial loss. It is a case instituted on a private complaint for an offence under Section 138 of Negotiable Instruments Act. In the circumstances, appeal against order of acquittal passed by a Magistrate ordinarily lies to the concerned Court of Sessions.

5. In the circumstances, ordered as under:

- (i) This Criminal Appeal is not maintainable in this Court.
- (ii) The Registrar (Judicial) shall send the entire the case records to the learned Principal Sessions Judge, Tirunelveli, for disposal according to law at an early date.
- (iii) The Principal Sessions Judge, Tirunelveli, after receipt of the records will fix a date and issue notice of hearing to both parties.

Sd/-

Assistant Registrar(CS I)

/True copy/

Sub Assistant Registrar

To:

1.The Registrar (Judicial),  
Madurai Bench of Madras High Court,



2.The Principal Sessions Judge,  
Tirunelveli.

3.The Judicial Magistrate,  
Tenkasi.

4.The Section Officer,  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.

krk

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Cr1.A.(MD) No.192 of 2011