

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.3020 of 2016

ORDER:

This criminal revision case is filed under Sections 397 and 401 Cr.PC challenging the order dated 16.8.2016 in C.F.R. No.1892 of 2016 on the file of the Court of the Principal District Judge, Kurnool.

2. Heard the learned counsel for the petitioner and learned counsel for the first respondent.

3. A perusal of the record reveals that the first respondent herein faced the trial in C.C. No.227 of 2013 on the file of the Court of Special Judicial Magistrate of First Class for Prohibition & Excise, Kurnool for the offence punishable under Section 138 of Negotiable Instruments Act (NI Act). After full-fledged trial, the trial court found the first respondent-accused guilty of the offence punishable under Section 138 of the NI Act, convicted and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.10,000/- in default of payment of the fine amount, to suffer simple imprisonment for two months. Feeling aggrieved by the judgment of the trial court for non-awarding of the compensation, the petitioner-complainant preferred the appeal in CFR No.1892 of 2016. The appellate court, in the CFR, passed the following order:

Heard the counsel for the appellant. Granting of compensation under Section 138 of N.I. Act is the discretionary power of the Court. Hence, appeal for compensation is not at all maintainable under Section 372 of Cr.P.C., as the Court already convicted the accused and sentenced him for imprisonment and to pay fine.

Therefore, the CFR is rejected.

Hence, the present revision.

4. The learned counsel for the petitioner strenuously submitted that the appellate court misconstrued the scope of Section 372 Cr.P.C., and rejected the appeal. To substantiate the argument, he has drawn the attention of this court to the proviso to Section 372 Cr.P.C. Section 372 Cr.P.C., reads as under:

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.

5. A perusal of the proviso manifests that imposing of inadequate compensation entitles the victim or the complainant to prefer the appeal to that extent. It is further clear that an appeal lies to the court to which an appeal ordinarily lies against the order of conviction of such court. It is needless to say that a person, who was convicted for the offence under Section 138 of the NI Act is entitled to file appeal before the District Court having jurisdiction to entertain the appeal. In the instant case, the appeal lies to the District Court, Kurnool. The appellate court, without considering the scope of the proviso to Section 372 Cr.P.C., passed the impugned order.

6. The learned counsel for the petitioner has also drawn the attention of this Court to a Full Bench judgment of Madras High

Court in **S.Ganapathy v N.Senthilvel**¹. Paragraph No.31 is relevant and it reads as under:

31. Since, sub sequent to the Full Bench reference, the Supreme Court in *Satyapal Singh v State of M.P.*, 2015 (4) MadLJ (Cri) 219 (SC), interpreted these provisions (Sections 372 and 378 of Cr.P.C.,) 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 in the event 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*.

(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 v Venkatachalapathy*, 2015 (1) MWN (Cri) 553, 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.

The facts of the case on hand are identical to the facts of the case cited supra.

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, the order dated 16.8.2016 in CFR No.1892 of 2016 is not sustainable either on facts or in law, and therefore, the same is hereby set aside.

¹ 2016 LawSuit (Mad) 754

8. Accordingly, the criminal revision case is allowed, directing the District Court, Kurnool to number the appeal, if it is otherwise in order. Miscellaneous petitions, if any pending in this criminal revision case, shall stand closed.

T.SUNIL CHOWDARY, J

December 20, 2016.

YS

