

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.10.2017

CORAM

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.M.P.No.10108 of 2016
in
CrI.A.No.SR.3609 of 2015

J. Jayachitra Petitioner/Complainant

Vs

A. hariharan Respondent/Accused

Petition filed under Section 5 of Limitation Act to condone the delay of 403 days in filing the above appeal against the judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Omalur dated 04.10.2013 in C.C.No.89 of 2013.

For Appellant : Mr.M. Hariharan

JUDGMENT

For the convenient sake, the parties may be referred to as the complainant and the accused.

2. The complainant initiated a prosecution in C.C.No.89 of 2013 before the Judicial Magistrate, Fast Track Court (Magisterial Level), Omalur against the accused under Sec.138 of Negotiable Instruments Act and the learned Judicial Magistrate acquitted the accused on 04.10.2013. Aggrieved by which, the complainant has filed the present appeal against the order of acquittal with a delay of 403 days.

3. Heard Mr.M. Hariharan, learned counsel for the petitioner and Mr.G. Surya Narayanan, learned counsel for the accused.

4. The learned counsel for the complainant submitted that after acquittal of the accused, the complainant filed an appeal against the order of acquittal before the Principal Sessions Judge, Salem, but the same was returned for want of jurisdiction

and by the time, when the appeal was preferred before this Court, the delay of 403 days had occasioned.

5. The learned counsel also produced the original bundle. A perusal of which shows that the complainant had presented the appeal before the Sessions Court, Salem on 02.12.2013 and the same has been returned with the following endorsement:

" Returned:

A complainant of N.I. Act, cannot be treated as victim U/Sec.372 Cr.P.C., for the purpose of Appeal against acquittal. The complainant to take aid of Section 378 (4) Cr.P.C for preferring appeal before the Hon'ble High Court, Madras".

Prl. Sessions Judge
Salem
27.02.2014

6. In S. Ganapathy vs N. Senthilvel reported in (2016) 3 MLJ (Crl) 641 (FB), the Full Bench of this Court held that the appeal against acquittal would lie before the concerned Sessions Court under Sec.372 of Criminal Procedure Code.

7. In view of the judgment of Full Bench of this Court in the case of S. Ganapathy vs N. Senthilvel reported in (2016) 3 MLJ (Crl) 641 (FB), Registry is directed to send the records to the Court of Principal Sessions Judge, Salem after taking photocopy of the file, within a period of four weeks from the date of receipt of a copy of this Order.

8. However, the original Memorandum of Appeal that was presented by the complainant before the Sessions Court on 02.12.2013 was perused by this Court and has been handed over to Mr.M. Hariharan, learned counsel for the complainant for representation before the Sessions Court, Salem.

9. In view of the judgment of Full Bench of this Court in the case of S. Ganapathy vs N. Senthilvel reported in (2016) 3 MLJ (Crl) 641 (FB), the learned Sessions Judge, Salem is directed to entertain the appeal and decide the same in accordance with law.

10. The complainant and the accused are directed to appear before the learned Principal District Judge, Salem on 20.11.2017 at 10.30 a.m.

6. With the above direction, the criminal miscellaneous petition is disposed of. Consequently , Criminal Appeal SR No.3609 of 2015 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sr

To

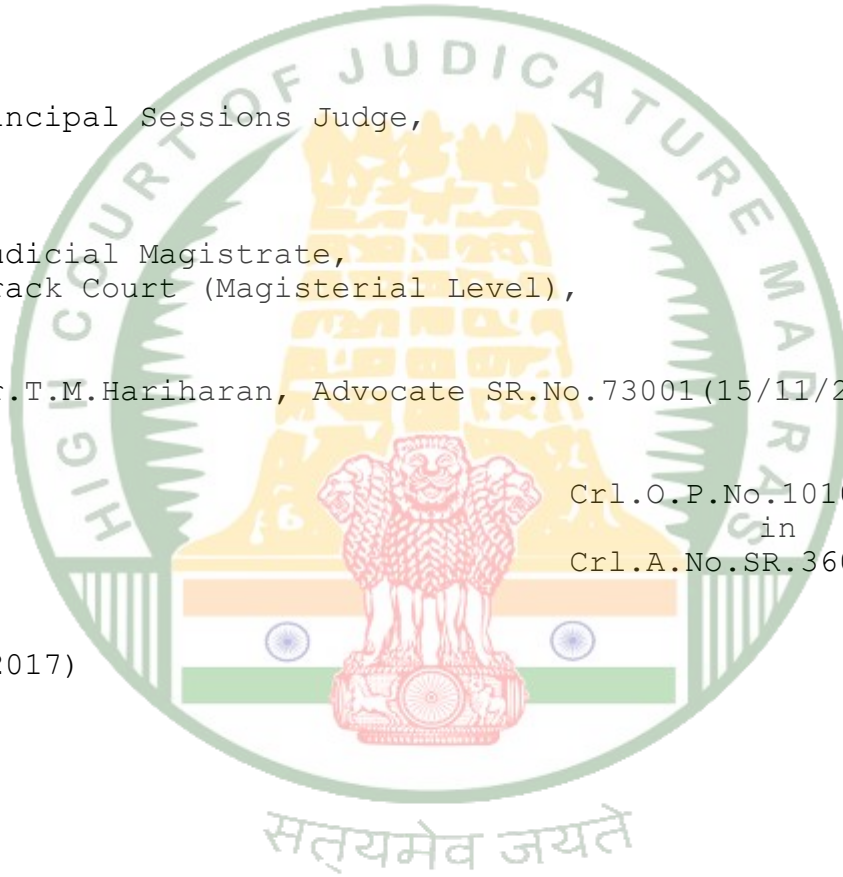
1. The Principal Sessions Judge,
Salem.

2. The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Omalur

+1cc to Mr.T.M.Hariharan, Advocate SR.No.73001(15/11/2017)

CrI.O.P.No.10108 of 2016
in
CrI.A.No.SR.3609 of 2015

RJ(CO)
GN(10/11/2017)



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