

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2017

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Criminal Appeal No.698 of 2010

Umesh Burad

... Appellant

Vs

Kalai Chalvan
Proprietor
M/s.Sree Balaji Associates
No.104, Tiny Sector,
Sidco Industrial Estate,
Ambattur, Chennai 600 098.

... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal, under Section 256(1) Cr.P.C. Dated 09.03.2010 made in C.C.No.10977 of 2007 by the learned VII Metropolitan Magistrate George Town, Chennai

For Petitioner : M/s. M.N.S. Mohamed Habeeb Raja

For Respondent : No appearance

JUDGMENT

This appeal have been preferred by the victim of crime challenging the acquittal of the accused recorded by respective trial Court.

2. This case was originally instituted before the Court concerned by way of private complaint by the victim for the alleged offence. Aggrieved over the findings of the trial Court acquitting the accused, the victim has come up with this appeal, on presumption that under the proviso to Section 372 of the Cr.P.C, the appeal will lie only to this Court. Since doubt was raised earlier regarding jurisdiction of this Court to entertain such appeals, the Hon'ble single Judge of this Court referred the issue to a Full Bench and the Full Bench of this court by judgment dated 05.04.2016 in S.Ganapathy ..Vs.. Senthil Vel reported in 2016 (4) CTC 119, answered the reference holding that,

- (i) victim of crime who lodged a private complaint seeking action against the accused has a statutory right of appeal under Section 372 Cr.P.C;
- (ii) the Full Bench also held that even if the victim is not a complainant, he / she has a right to appeal under the proviso to Section 372 Cr.P.C, but only after seeking leave of the Court. Likewise the Full Bench concluded that a complainant in a private complaint who is not a victim can file an appeal challenging the acquittal of the accused, after obtaining necessary leave to appeal under Section 378 (4) of Cr.P.C. The Full Court also concluded that a victim, even though is a complainant, can avail all the rights and privileges of the victim and he or she does not cease to be a victim only because he or she being a complainant himself.

3. Thus, as per the conclusion arrived at by the Full Court in the reference cited above, the victim of a crime, who initiated prosecution of the accused by filing a private complaint, can prefer appeal, in the event of acquittal of the accused by the trial Court, only to the respective Sessions Court. The same is clear from the proviso to Section 372 of Cr.P.C. Following the conclusion of the Full Bench in the reference cited above, a single Judge of this Court (S.Nagamuthu, J.) in the case reported in D.Prabhu Vs. R.Manikandan 2016 (3) MWN (Cr) DCC 169 (Mad), by order dated 14.11.2016, held that the appeals preferred against acquittal of the accused in the proceedings initiated by private complainant will lie only to the respective Sessions Court and the same would not lie before this Court.

4. Further, the learned counsels appearing for the appellant in this appeal also conceded that following rulings referred to earlier, this appeal has to be transferred to the respective Sessions Court only.

5. In such circumstances, following the above said rulings and considering the arguments advanced before this Court by the learned counsels in this appeal, this Court is of the view that this appeal initiated against the findings of the trial Courts acquitting the accused in private complaint proceedings has to be transferred to the respective Sessions Courts for disposal

R.PONGIAPPAN, J
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in accordance with law.

6. In view of the above, this Criminal Appeal is disposed of and this appeal as well as the connected Original Petitions and the Miscellaneous Petitions are transferred to the respective Principal Sessions Court forthwith, who shall either dispose of the appeal or make over the same to the Additional Sessions Courts for disposal in accordance with law, after due notice of hearing to both parties. It is also directed that the lower Appellate Court shall give priority for this appeal and dispose of the case as expeditiously as possible, as this appeal has become old appeal.

7. The Registry is directed to ensure that the records of the lower Court, if received, shall also be forwarded to the Sessions Court concerned along with the appeal papers.

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Index : Yes / No
Internet : Yes / No

To
The VII Metropolitan Magistrate,
George Town, Chennai.

Crl.A.No.698 of 2010

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