

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2017

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Criminal Appeal Nos.82/2010, 96/2010, 139/2010, 241/2010, 340/2010, 346/2010, 365/2010, 442/2010, 472/2010, 477/2010, 480/2010, 505/2010, 520/2010, 532/2010, 533/2010, 625/2010, 681/2010, 745/2010, 747/2010, 759/2010 & 794/2010

Criminal Appeal No: 82 of 2010

P.Dhurairaj

... Appellant

Vs

Madhana

... Respondent

Prayer in Crl.O.P.No:82/2010:- Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the judgment of the learned Additional District Munsif-cum-Judicial Magistrate, Ambur made in C.C.No.226/2006 dated 19.11.2009 acquitting the accused/respondent herein from the charge under Section 138 read with 141 of the Negotiable Instruments Act.

For Petitioner : Mr.T.R.Ravi

For Respondent : No appearance

COMMON JUDGMENT

These appeals have been preferred by the victims of crimes challenging the acquittal of the accused recorded by respective trial Courts.

2. These cases were originally instituted before the Courts concerned by way of private complaints by the victims for various offences. Aggrieved over

the findings of the trial Court acquitting the respective accused, the victims have come up with these appeals, 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 Courts and the same would not lie before this Court.

4. Further, the learned counsels appearing before this Court on either side in all these appeals also conceded that following the rulings referred to earlier, these appeals have 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 various counsels in these appeals, this Court is of the view that these appeals initiated against the findings of the trial Courts acquitting the accused in private complaint proceedings have to be transferred to the respective Sessions Courts for

R.PONGIAPPAN, J
dpq

disposal in accordance with law.

6. In view of the above, these Criminal Appeals are disposed of and these appeals as well as the connected Original Petitions and the Miscellaneous Petitions are transferred to the respective Principal Sessions Courts forthwith, who shall either dispose of the appeals 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 these appeals and dispose of these cases as expeditiously as possible, as these appeals have become old appeals.

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

14.12.2017

dpq

Index : Yes / No

Internet : Yes / No

Crl.A.Nos.82/2010, 96/2010, 139/2010, 241/2010, 340/2010, 346/2010, 365/2010, 442/2010, 472/2010, 477/2010, 480/2010, 505/2010, 520/2010, 532/2010, 533/2010, 625/2010, 681/2010, 745/2010, 747/2010, 759/2010 & 794/2010