

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 23.01.2017

Judgment Pronounced On : 07.02.2017

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.RC.Nos.1014 of 2010, 623, 766 and 789 of 2011

CrI.RC.No.1014 of 2010

SOZHA V.THAMIZHAZHAGAM

... Petitioner

Vs

1.BALACHANDRAN

2.ELANGO VAN

3.PANDI THENNAVAN

4.STATE, REP. BY

THE SUB INSPECTOR OF POLICE,
MANNARGUDI POLICE STATION,
THIRUVARUR DISTRICT.

... Respondent

Revision Petition filed under Section 397 read with 401 Cr.P.C., to set aside the Order passed by the Judicial Magistrate No.I, Mannargudi in C.C.No.272 of 2007 dated 31.05.2010.

For Petitioner : Mr.P.Thiagarajan

For Respondent : Mr.A.Panneerselvam for R-3
Mrs.M.F.Shabana for R-4
Government Advocate(CrI. Side)
Mr.K.Azhagarasan for R1 & R2

CrI.RC.No.623 of 2011

R.RAMARAJ

... Petitioner

Vs.

K.G.JANARTHANAN

... Respondent

Revision Petition filed under Section 397 read with 401 Cr.P.C., to call for the entire records in so far as relates to order passed by Judicial Magistrate No.I, Coimbatore, Coimbatore District in S.T.C.No.1375 of 2007 dated 08.12.2010 and set aside

the same and remand back to the Judicial Magistrate No.I,
Coimbatore.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.B.Divakaran

Cr1.RC.No.766 of 2011

KANNAMMAL @ MARIYAMMAL

... Petitioner

Vs

1.NATESAN

2.KATHAMMAL

3.LAKSHMI

4.MARIYAMMAL

5.THE SUB INSPECTOR OF POLICE
UTHUKULI POLICE STATION
ERODE DISTRICT

... Respondent

Revision Petition filed under Section 397 read with 401
Cr.P.C., to set aside the order of acquittal dated 21.03.2011
made in C.C.No.422 of 2006 on the file of the District Munsif
cum Judicial Magistrate, Perundurai.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.A.K.Kumarasamy for R1 to R4
Mr.M.F.Shabana,
Government Advocate (Cr1.Side)
For R5

Cr1.RC.No.789 of 2011

RAMADOSS

... Petitioner

1.PERUMAL

2.VELU

3.ANJALAI

4.PATHMAVATHY

WEB Vs COPY

5.SUB INSPECTOR OF POLICE
MADURANTAGAM POLICE STATION
KANCHEEPURAM DISTRICT
(CR.NO.338 OF 2005)

... Respondent

Revision Petition filed under Section 397 read with 401 Cr.P.C., to set aside the order dated 28/02/2011 passed in C.C. No.276 OF 2005 on the file of the court of the Judicial Magistrate, Madurantagam.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : Mr.K.Thilagaraj for R1 to R4
Mr.M.F.Shabana,
Government Advocate(Crl.Side)
For R5

C O M M O N O R D E R

These Criminal Revisions have been filed challenging the order of acquittal passed by the trial Court on a complaint instituted by the victim of the crime.

2. Earlier, the Full Bench of this Court Judgment in S.GANAPATHY Vs. N.SENTHILVEL reported in 2016(4) CTC 119, considered the right of the victim who has prosecuted the accused by way of private complaint, and also the right of complainant in a private complaint, who is not a victim to file an appeal under Section 372 Cr.P.C against the order of acquittal. The Full Bench after considering the scope of the proviso Sections 372 and 378 Cr.P.C. has held as follows:-

31. Since, subsequent to the Full Bench reference, the Supreme Court in Satya pal 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 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 Satya pal 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 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.

3. Following the Full Bench Judgment of this Court, a single Judge of this Court (S.NAGAMUTHU.J), in D.PRABHU Vs. R.MANIKANDAN reported in 2016 (3) Madras Weekly Notes (Crl) 169, has held as follows:-

"4. As held by the Full Bench, as appeal by a victim of crime, who has prosecuted an accused, by way of a private complaint, against acquittal recorded by a Magistrate shall lie only to the respective Sessions Court. It is clear from the plain language employed in the proviso to Section 372 of the Code of Criminal Procedure. Therefore, I am of the view that these appeals, which have been admitted by this Court, need to be transferred to the respective Sessions Court for disposal in accordance with law."

In view of the judgment of the Full Bench referred supra, this Criminal Revision cases have been placed before this Court.

4. I have heard Mr.Anand Venkatesh, Mr.V.V.Parthiban and Mr.R.Karthikeyan, the learned counsel appearing for the parties and perused the materials available on record.

5. Mr.Anand Venkatesh, the learned counsel appearing for the petitioner would submit that against the order of acquittal in a private complaint, the complainant or victim has only right to file an appeal before this Court after obtaining leave under Section 372(4) Cr.P.C. by referring to a Judgment of Hon'ble Supreme Court in SUBASH CHAND Vs. STATE (DELHI ADMINISTRATION) reported in 2013 (2) SCC 17, wherein, the Hon'ble Supreme Court has held that against the order of acquittal, the complainant can only file an application under Section 378(4) seeking

special leave to appeal before the High Court, and the Full Bench did not consider the above Judgment and the learned counsel sought for reconsideration.

6. Mr.V.Parthiban, the learned counsel appearing for the parties would contend that in view of Section 378(4) Cr.P.C. which was not amended by the amendment Act, either the victim or the complainant in a private complaint has necessarily sought a special leave before this Court under Section 378(4) Cr.P.C. and they cannot resort to the appeal remedy under Section 372 Cr.P.C.

7. I have considered the submissions made by the respective parties and perused the materials available on record.

8. It is not correct to state that the Full bench did not consider the judgment of Supreme Court in SUBASH CHAND Vs. STATE (DELHI ADMINISTRATION) reported in 2013 (2) SCC 17, the Full Bench has considered the above Judgment in para 24 of the judgment. Apart from that the Full Bench also elaborately considered the latest Judgment of Hon'ble Supreme in SATYA PAL SINGH Vs. STATE OF M.P. AND OTHERS reported in 2016(2)LW (Crl.) 57, and also after elaborately considering the scope of Sections 372 and 378(4) Cr.P.C, has held that the victim of the crime, who has prosecuted the accused by way of private complaint has statutory right of appeal within the limit prescribed under Section 372 Cr.P.C. and the complainant in private complaint who is not a victim can file an appeal against the order of acquittal after obtaining the leave to appeal under Section 378(4) Cr.P.C. In the above circumstances, the contention of the learned counsel for the petitioner cannot be countenanced.

9. In the above circumstances, in view of the Full Bench Judgment of this Court in S.GANAPATHY Vs. N.SENTHILVEL reported in 2016(4) CTC 119, which was followed by a single Judge of this Court(S.NAGAMUTHU.J,) in D.PRABHU Vs. R.MANIKANDAN reported in 2016 (3) Madras Weekly Notes(Crl) 169, all the revision cases have to be transferred to the respective Sessions Court for disposal in accordance with law.

10. In view of the above, these Criminal Revisions are disposed of and these Criminal Revisions are transferred to the respective Sessions Courts forthwith and the Sessions Court shall either dispose of the criminal revision cases or make over the same to the Additional Sessions Courts for disposal in accordance with law, after due notice of hearing to both parties and dispose of these cases as expeditiously as possible, as these criminal revision cases are of the year 2011.

11. The Registry is directed to ensure that the records of the lower Courts, if received, shall also be forwarded to the Sessions Court concerned along with the criminal revision case papers.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rrg

To

1. The Principal Sessions Judge,
Tiruvarur.
2. The Principal Sessions Judge,
Erode.
3. The Principal Sessions Judge,
Coimbatore.
4. The Principal Sessions Judge,
Kancheepuram.
5. The District Munsif Cum
Judicial Magistrate,
Perundurai.
6. The Judicial Magistrate No.I,
Mannargudi.
7. The Judicial Magistrate No.I,
Coimbatore.
8. The Judicial Magistrate,
Madurantagam.
9. The Inspector of Police,
Mannargudi Police Station,
Thiruvarur District.
10. The Inspector of Police,
Uthukuli Police Station,
Erode District.

11.The Inspector of Police,
Madurantagam Police Station,
Kancheepuram District.

12.The Public Prosecutor,
High Court, Madras 104.

13.The Section Officer,
Criminal Section,
High Court, Madras 104.

+1cc to Mr.P.Thiyagarajan, Advocate, S.R.No.8342

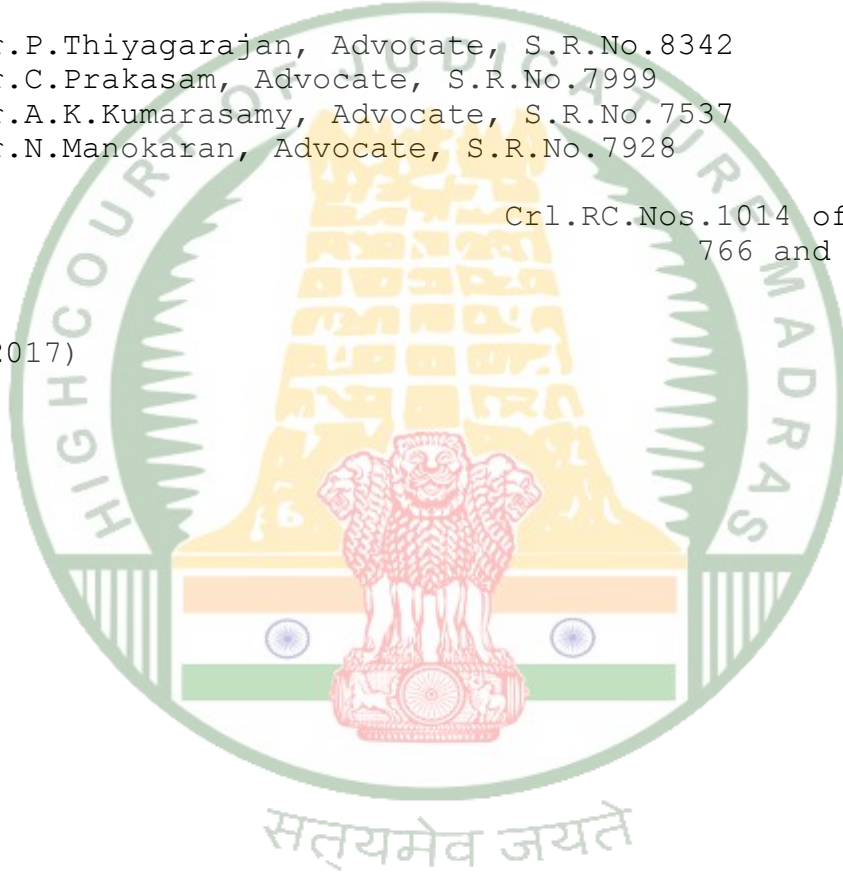
+1cc to Mr.C.Prakasam, Advocate, S.R.No.7999

+1cc to Mr.A.K.Kumarasamy, Advocate, S.R.No.7537

+1cc to Mr.N.Manokaran, Advocate, S.R.No.7928

Crl.RC.Nos.1014 of 2010, 623,
766 and 789 of 2011

MSM(CO)
CA(20/02/2017)



WEB COPY