

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 06.01.2017	Date of pronouncing the Judgment : 09.01.2017
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CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.A.Nos.36/2010, 107/2010, 140/2010, 190/2010,
238/2010, 345/2010, 640/2010, 641/2010, 703/2010, 704/2010,
753 /2010 765/2010, 775/2010, 776/2010,
781/2010, 791/2010, 792/2010, 793/2010, 801/2010,
8/2011, 9/2011, 10/2011, 15/2011, 27/2011, 61/2011,
71/2011, 87/2011, 92/2011, 102/2011, 104/2011,
106/2011, 115/2011, 116/2011, 118/2011, 126/2011, 128/2011,
135/2011, 137/2011, 141/2011, 144/2011, 146/2011, 147/2011,
155/2011, 159/2011, 162/2011, 174/2011, 175/2011, 178/2011,
184/2011, 185/2011, 190/2011, 198/2011, 199/2011, 213/2011,
228/2011, 230/2011, 232/2011, 240/2011, 250/2011, 256/2011,
257/2011, 260/2011, 268/2011, 272/2011, 273/2011, 277/2011,
286/2011, 287/2011, 288/2011, 290/2011, 294/2011, 325/2011,
326/2011, 330/2011, 351/2011, 364/2011, 370/2011, 373/2011,
374/2011, 375/2011, 377/2011, 388/2011, 396/2011, 400/2011,
401/2011, 402/2011, 407/2011, 419/2011, 420/2011, 421/2011,
423/2011, 427/2011, 428/2011, 433/2011, 434/2011, 447/2011,
456/2011, 457/2011, 477/2011, 478/2011,
481/2011 to 486/2011, 489/2011, 492/2011, 503/2011, 507/2011,
513/2011, 517/2011, 521/2011, 525/2011,
528/2011 and M.P.No.1 of 2011, 536/2011, 545/2011, 562/2011,
576/2011, 579/2011, 604/2011, 609/2011, 610/2011, 613/2011,
619/2011, 636/2011, 640/2011, 642/2011, 644/2011, 650/2011,
684/2011, 696/2011, 700/2011, 701/2011, 705/2011, 720/2011,
721/2011, 734/2011, 738/2011, 742/2011, 747/2011, 753/2011,
754/2011, 756/2011, 761/2011, 762/2011, 786/2011, 787/2011,
788/2011, 794/2011, 795/2011, 796/2011, 807/2011, 818/2011
and 819/2011, 760/2010, 151/2011, 245/2011, 247/2011,
321/2011,
355/2011, 372/2011, 443/2011, 582/2011, 594/2011,
and 760/2011

Crl.A.No.36 of 2010

Zen Global Financial Services
represented by its
Authorised Signatory
Mr.Srinivasan

.. Appellant

Vs

P.N.Shivaprasad
Proprietor
M/s.Uma Rubber Industries
Jayalakshmipuram
Mysore - 570 012.

.. Respondent

Appeal filed u/s.378 (4) Cr.P.C., against the Judgment of acquittal passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.4708 of 2001 on 25.11.2009.

For Appellant : M/s.Ganesh Rajan

For Respondent : Notice sent.

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 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.

6. 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.

09.01.2017

Index : Yes/no
Internet : Yes/no

mra/nvsri

To

The respective Sessions Courts concerned.

S.BASKARAN, J.

mra/nvsri

Judgment in

Crl.A.No.36/2010 etc Batch.

09.01.2017