

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.08.2017**

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.A.Nos.401, 441, 475, 514, 519, 592, 621, 633, 634, 639, 642, 655, 728, 738, 748, 778, 779, 793, 798 and 802 of 2013
and
Crl.A.Nos.4, 28, 44, 47, 51, 64, 69, 81, 86, 85, 90, 95, 106, 124, 142, 147, 160, 167, 168, 178, 182, 185, 188, 196, 197, 198, 199, 205, 206, 238, 240, 241, 244 and 247 of 2014
and
Crl.A.No.520 of 2015
and
Crl.A.Nos.260, 286, 287, 288, 296 and 297 of 2014

Crl.A.No.401 of 2013

R.Kumar @ Sivakumar

.. Appellant

Vs.

T.Vasumathi

सत्यमेव जयते.. Respondent

Appeal filed under Section 378 of the Code of Criminal Procedure against the Judgment dated 18.03.2013 passed in S.T.C.No.1731 of 2011 on the file of the learned Judicial Magistrate No.II, Pollachi.

For Appellant

: Mr.Munirathnam Naidu

For Respondent

: Mr.B.Nedunchezhiyan

COMMON JUDGMENT

All these appeals have been preferred by the victims/complainants challenging the acquittal of the accused in the respective cases.

2.All these appellants had set the law in motion by filing private complaints for the alleged offences in the respective cases before the concerned jurisdictional Courts.

3.After trial, the trial Court concerned have acquitted the accused.

4.Being aggrieved by the said acquittal, the victims of the crime/complainants invoking Section 378 of the Code of Criminal Procedure, 1973 (in short, 'the Code') have preferred these appeals directly to this Court in the year either 2013 or 2014.

5.It is pertinent to be noted that Section 372 of the Code has underwent amendment under the Code of Criminal Procedure Amendment Act (Act 5 of 2009) with effect from 31.12.2009. As per

the said amendment, a proviso was inserted in Section 372 which reads thus:

“372.No appeal to lie unless otherwise provided.- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]”

6.Though such a proviso was inserted through the said amendment in Section 372, still victims seem to have chosen to file appeals against acquittal to this Court under Section 378 of the Code.

7.On 27.4.2015, a learned single Judge of this Court, on the issue, as to whether or not the appeal shall be filed before the First Appellate Court / Sessions Court concerned as against the acquittal made by the trial Court, by a victim / complainant, has referred the

matter for consideration by a Full Bench by framing six questions which are given herein below:

“(1)Whether a victim of a crime, who has prosecuted an Accused by way of a Private Complaint, does not have statutory right of Appeal against acquittal under Proviso to Section 372 of the Code of Criminal Procedure?

(2)Whether a Complainant, in a Private Complaint case, who is not a victim, has got the remedy to seek only leave to file Appeal under Section 378(4) of the Code of Criminal Procedure in the event of acquittal of the Accused?

(3)In a Private Complaint case, if a victim does not happen to be a Complainant and in the event of acquittal, whether he has got right of Appeal under Proviso to Section 372 of the Code of Criminal Procedure or he has to seek leave to file Appeal under Section 378(4) of the Code of Criminal Procedure?

(4)Whether a victim in a case instituted on a Police Report, has a better place in the Criminal Justice Delivery System than a victim in a Private Complaint case ?

(5)Whether the term 'victim' as defined in Section 2(wa) of the Code of Criminal Procedure excludes a Complainant in a Private Complaint case though he has suffered loss or

injury on account of the offence committed against him? and

(6) Whether the view held in the judgment of this Court in **Selvaraj v. Venkatachalapathy**, 2015 (1) MWN (Cr.) DCC 26 (Mad.), reflects correct exposition of law or the same requires to be overruled?"

8. In order to answer the said six questions, a Full Bench was constituted, before whom, the matter was referred. The Full Bench, after having exhaustively discussed the issue in depth, has ultimately, concluded by its Judgment dated 05.04.2016 reported in **2016 4 CTC 119** in the matter of **S. Ganapathy Vs. N. Senthilvel**. The Full Bench has given answers to the questions posed before it, at paragraph 31 of the said Judgment cited supra, which reads thus:

"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 **Ram Phal v. State of Ors.**, 2015 (3) MWN (Cr.) 491 (FB) (Del.), 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.

32.The questions posed are answered accordingly. All these matters are directed to be listed before the appropriate Court for their disposal in accordance with the opinion expressed hereunder.”

9.In view of the said authoritative pronouncement of the Full Bench as cited supra, a learned single Judge of this Court also in the matter of **D. Prabhu Vs. R.Manikandan 2016 3 MWN (CR) DCC 169 (Mad)** by order dated 14.11.2016 had held that, appeals preferred against the acquittal of the accused in the proceedings initiated by a private complainant will lie only to the respective Sessions Court and the same would not lie before this Court.

10.Based on the said Full Bench pronouncement, followed by another order passed by the learned Judge as cited supra, a batch of criminal appeals of the year 2010 and 2011 were grouped together and heard by another learned Judge and he has passed an order in all those batch of appeals by his order dated 09.1.2017 in Crl.A.No.36 of 2010 etc., batch, in the matter of **Zen Global Financial Services Vs. P.N.Shivaprasad.**

11.The learned Judge (Hon'ble Mr. Justice S.Baskaran) on 09.1.2017, has passed the following order:

"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."

12. When these batch of appeals are listed today for hearing, the respective counsels appearing for the appellants, in one voice, had submitted that, all these appeals are arising out of the order of acquittal, by the trial Court, in private complaints, made by victims who are the appellants before this Court. They have also submitted that in view of the said Full Bench Judgment, followed by the decisions of the learned single Judge, as well as the latest order dated 09.1.2017, passed in a batch of cases of similar nature, these batch of appeals also can be disposed of, on the same terms, by transferring these appeals to the respective Principal Sessions Courts for further action.

13. In view of the said Judgment of the Full Bench as well as the other two orders of the learned respective single Judges and also in view of the submissions made by the counsels appearing for the appellants, this Court is inclined to dispose of all these appeals in the following terms:

(i) These criminal appeals are disposed of, along with connected original petitions and miscellaneous petitions, by transferring the same to the respective Principal Sessions Courts;

(ii) On receipt of the transferred cases, it is for the Sessions Court to take up and dispose the appeals or make over the same to the Additional Sessions Court for disposal, in accordance with law.

(iii) Before taking up the appeal by the Sessions Court concerned, due notices be served to both parties;

(iv) Since these appeals are pending for some years before this Court, priority can be given for these appeals for disposal, and accordingly, these appeals can be disposed of as expeditiously as possible.

Registry is directed to send these case bundles with all connected records of the lower Court, if any received, to the concerned Sessions Court forthwith.

18.08.2017

Index : Yes

Internet : Yes

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To

The respective Sessions Courts concerned.

R.SURESH KUMAR, J,

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Crl.A.No.401 of 2013 etc., batch

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