



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.09.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C.(MD).No.228 of 2013

Gnanasekaran

.. Petitioner /Defacto complainant

Vs.

1.Ramasamy
2.Mohan
3.Anandan
4.Murugesan
5.Udappasamy
6.Periyaduraiammal
7.Shanmugasundaram
Meesai Dhanapani @ Dhanapani (Died)
9.Ponnusamy
10.Muthusamy

.. Respondents / Accused 1 to 8

Prayer: Criminal Revision filed under Section 397 r/w 401 of Cr.P.C., against the order of acquittal passed in C.C.No.395 of 2003, dated 08.01.2013, passed by the learned Judicial Magistrate, Palani.

For appellant : Mr.N.Shanmugaselvam
For respondents : Mr.S.R.Suresh Kumar
for RR-1 to 7, 9 & 10

ORDER

This Criminal Revision has been filed by the defacto complainant, challenging the order of acquittal passed by the trial Court on a complaint instituted by her.

2. Earlier, the Full Bench of this Court 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 under Sections 372 and 378 Cr.P.C. has held as follows:-

https://hcservices.ecourts.gov.in/hcservices/ 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(Cr1) 169**, has held as follows:-

".. 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. 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) MadrasWeekly Notes(Cr1) 169**, this criminal revision case has to be transferred to the concerned Sessions Court for disposal in



accordance with law.

5. In view of the above, this Criminal Revision Case is disposed of and transferred to the file of the Court of the learned Judicial Magistrate, Palani forthwith and the Judicial Magistrate Court shall either dispose of the criminal revision case or make over the same to the Sessions Courts for disposal in accordance with law, after due notice of hearing to both parties and dispose of the case as expeditiously as possible, as this criminal revision case is of the year 2013.

6. The Registry is directed to ensure that the records of the lower Court, if received, shall also be forwarded to the Court of the Judicial Magistrate, Palani, along with the Criminal Revision papers.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Palani.
2. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.N.SHANMUGA SELVAM, ADVOCATE IN SR No. 77629

VS

TE/SV-MMS/SAR-I : 26/09/2017 : 3P/4C

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