

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.01.2018
CORAM
THE HON'BLE MR. JUSTICE R.SURESH KUMAR
Crl.A.No.432 of 2017

D.Bhavana

... Appellant/Complainant
Vs.

A.Jayaraj

... Respondent/Accused

Prayer:- This Criminal Appeal is filed under Section 378 of Cr.P.C., against the judgment in S.T.C.No.206 of 2013 dated 07.04.2017 on the file of the Judicial Magistrate, Gudiyatham in dismissing the complaint filed under Section 138 of Negotiable Instrument Act.

For Petitioner : Mr.S.Arokia Maniraj
For Respondent : No Appearance

JUDGEMENT

The appellant has filed a complaint to initiate a criminal action and punish the respondent for the alleged offence punishable under Section 138 of Negotiable Instrument Act.

2. The trial Court by order dated 29.01.2015 has rejected the said complaint on the ground of proper jurisdiction. As against the said order dated 29.01.2015, the appellant has filed this appeal.

3. Heard, Mr.S.Arokia Maniraj, learned counsel appearing for the appellant. Though the notice was served on the respondent, no one is present before this Court for the respondent.

4. Since, Section 372 of the Code of Criminal Procedure underwent amendment dated 31.12.2009, any person aggrieved over the order of acquittal on any private complaint, (the victim or complainant) can prefer an appeal under the proviso to section 372 of the Cr.P.C., before the Sessions Court, as per the procedure for filing the regular appeal arising out of Court of Magisterial level.

5. In this regard, the full Bench of this Court after having thoroughly gone into the said amendment has held in the matter of "S.Ganapathy V. N.Senthilvel(2016) 4 CTC 119: (2016) 3 MLJ (Crl) 641.", that appeal shall lie only before the Sessions Court and not before this Court, against the order of acquittal passed by the Trial Court/Magisterial level. In case, if the appeal is filed by the victim or complainant. Following

the said full bench judgment, two learned Judges of this Court have disposed of number of cases and transfer such kind of appeals to be heard by the concerned Sessions Court. I had an occasion to consider a batch of cases of similar nature and disposed the same reported in "Shanmugasundaram Vs. S.Mani (2017) 3 MLJ(Crl.) 591. Where I have passed the following order:

"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.

14. 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."

6. Since in this case also the private complaint given by the appellant/complainant has been rejected and therefore the complainant/ victim has filed this appeal. Therefore this appeal can only be heard by the Sessions Court. Accordingly the following order is passed :-

(i) This criminal appeal is disposed of, along with connected original petitions and miscellaneous petitions, by transferring the same to the concerned Principal Sessions Court;

(ii) On receipt of the transferred case, it is for the Sessions Court to take up and dispose the appeal 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 on both parties;

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

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

Sd/-
Assistant Registrar(CO)
//True Copy//
Sub Assistant Registrar

ggi/rts

To

1. The Principal District Judge
District Court,
Vellore.

2. The Judicial Magistrate Court,
Gudiyatham

3. The Section Officer
Criminal Section
High Court, Madras

+1 cc to M/s.S.Arokia Maniraj Advocate sr 2885

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gmi(co)
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