

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

Crl.A.No.470 of 2017

Govinda

... Appellant

Vs.

1.State rep.by
The Inspector of Police,
Bagalur Police Station,
Hosur,
Darmapuri District.
2.Latchumayya
3.Venu
4.Thimmarayappa

... Respondents

Prayer: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure against the Judgment of the learned Assistant Sessions Judge, Hosur, Darmapuri District, in S.C.No.76 of 2016 dated 08.12.2016.

For Appellant : Mr.B.Harikrishnan

For Respondents : Ms.S.Thankira,
Government Advocate (Crl.Side)

JUDGMENT

This appeal has been preferred against the order passed by the learned Assistant Sessions Judge, Hosur, Dharmapuri District, in S.C.No.76 of 2016 dated 08.12.2016.

2.Though charge has been laid against the three accused persons on the complaint given by the petitioner/appellant, who was the defacto complainant, for the offence punishable under Sections 447 and 506(i) of IPC and Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, (in short called as 1992 Act), the learned trial Court Judge, after having tried the case, has ultimately acquitted the accused persons. Aggrieved over the said order of acquittal, the complainant filed this appeal before this Court, of course, after getting leave from this Court, on 28.07.2017 under Section 378(4) of CrPC.

3. Even at the time of getting the said leave, it seems that, the appellant has pleaded before this Court that, since he is the victim, he is entitled to prefer an appeal under Section 372 of CrPC and therefore, in that capacity, since he is entitled to file an appeal before this Court, he sought for the relief under Section 378(4) of CrPC, which was granted by this Court on 28.07.2017 and the appeal has been numbered and it is taken up for hearing.

4. Today, when the case is taken up for hearing, the learned counsel appearing for the appellant and the private respondents as well as the learned Government Advocate (Criminal Side) appearing for the State submitted that, in view of the proviso to Section 372 of CrPC, which was inserted, by amending Section 372 of the Code, from 01.01.2010, the appellant/Victim/complainant would be entitled to prefer an appeal before the Court, where, an appeal would ordinarily lie against the order of conviction.

5. I have heard the learned counsel appearing for the parties.

6. The learned counsel would rely upon the proviso to Section 372 of the Code, 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.]"

7. The learned counsel would also invite the attention of this Court to Section 374 of the Code, which reads thus:

"374. Appeals from convictions.

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial; may appeal to the High

Court.

(3) Save as otherwise provided in sub-section (2), any person,—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session.”

8. The learned counsel appearing for the appellant would very much rely upon Sub Section 2 of Section 374 of the Code and submit that, any person convicted by the Sessions Judge or Additional Sessions Judge may prefer an appeal before the High Court. Like that, if any person is convicted on a trial held by any other Court, where a sentence of imprisonment for more than seven years has been passed against such person convicted, appeal can also be preferred to the High Court against such conviction.

9. By relying upon Sub Section 2 of Section 374 of the Code, the learned counsel would further submit that, in the case in hand, the complaint was given against the private respondents/accused persons for the alleged offences punishable under Sections 447, 506(i) of IPC and Section 3(1) of 1992 Act. In the said offences, the maximum punishment was three months for Section 447 and for Section 506(i) of IPC, the maximum punishment was two years. Insofar as the offence punishable under Section 3(1) of the 1992 Act is concerned, the maximum punishment would be one year. In none of these offences, as has been tried in the present case by the learned Sessions Judge, even if the private respondents had been convicted and sentence is imposed, the maximum punishment could have been imposed by the learned Sessions Judge, only would be the maximum of two years and not beyond that.

10. If this situation is visualized, where, a Court other than Sessions Judge or Additional Sessions Judge tried a case and given conviction for two years, against the said conviction, whether the appeal would lie before the High Court or before the Sessions Court. The natural and unambiguous answer would be the Sessions Court because of the provision, namely Section 2 of Section 374, which has specifically restricted that the appeal to the High Court will only arise, from other Courts which includes Assistant Sessions in the cases where conviction for more than seven years and above.

11.If this situation is fit in with the proviso to Section 372 of the code, as has been quoted that "such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court". the appeal under Section 372 of the Code against an acquittal or conviction for a lesser offence or imposition of inadequate compensation, would lie before the Court, where ordinarily the appeal would lie.

12.Here in the case in hand, if the offences against the respondents/accused persons, as has been tried by the Assistant Sessions Court if it had been ended into conviction as said above, the maximum punishment is two years and not beyond that. In that situation, the accused persons would have preferred an appeal against such conviction only before the Principal Sessions Judge or Additional Sessions Judge and not before this Court by invoking Section 378(4) of CrPC.

13.Once an appeal against the conviction ordinarily lies before the Principal Sessions or Additional Sessions Court, certainly, the appeal filed by the complainant against acquittal under Section 372 of the Code would also lie in the same Court namely, the Principal Sessions or Additional Sessions Court.

14.Therefore, considering these aspects, the learned counsel appearing for the petitioner requested this Court to give its anxious consideration as to whether the present appeal can lie before this Court, even though a leave has already been granted by this Court as referred to above by invoking Section 378(4) of the Code.

15.In this regard, the Judgment of the Full Bench of this Court in the case of S.Ganapathy V. N.Senthilvel reported in 2016 (4) CTC 119, can very well be pressed into service.

16.In the Full Bench Judgment cited supra, the issue referred to was, as to whether the appeal by the victim or the complainant can be preferred before the Sessions Court or a High Court against the order of acquittal passed by the Courts other than the Principal Sessions or Additional Sessions, and in this regard, the Full Bench of this Court, in the said Judgment, after having extensively discussed, the entire case law in this issue, has ultimately concluded, by declaring the Law on this

aspect, in the following terms, which are extracted hereunder:

"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.

17. Only in this context, even at the time of seeking leave of this Court, it seems to have pleaded by the appellant that in view of the proviso to Section 372 of the Code, being an victim, the appellant have a right to prefer an appeal and accordingly, the leave was granted by invoking Section 378 of the Code.

18.No doubt, the appellant is a victim as well as the complainant and therefore, against the order of acquittal, in view of the proviso to Section 372 of the Code, he has got a right to file an appeal but, the question before this Court is, in which Forum such appeal has to be filed.

19.As has been discussed above, if we read the proviso to Section 372 of the Code as well as Sub Section 2 of Section 374 of the Code together, it can be ascertained that the right of a victim/complainant to file an appeal under the proviso to Section 372, is, to some extent controlled by Section 374 also. The reason being that, as per Section 374(2) of the Code, as discussed above, the appeal against conviction made by the Sessions Court or Additional Sessions Court, will lie before the High Court. Also, the appeal against the conviction by any other Court other than Sessions Court or additional Sessions Courts, where accused persons are convicted for more than seven years of sentence, would also lie before the High Court. It means that, where a conviction is made by any other Court other than additional or additional sessions Court, where conviction is given for seven years or more than seven years, the appeal would lie before the High Court. If the conviction of lesser punishment than seven years by any other Court, the natural corollary would be such appeal would lie before the Principal Sessions or additional Sessions Court.

20.If such appeal against conviction lie before the Principal Sessions or Additional Sessions, certainly, in view of the proviso to Section 372, similar appeal against acquittal or lesser punishment or lesser compensation, preferred by the victim or complainant, will also lie before the Principal Sessions or Additional Sessions.

21.If this principle is applied in the present case, as has been rightly canvassed by the learned counsel in this case, this appeal shall only lie before the Principal Sessions or Additional Sessions of the respective jurisdiction and not before this Court, even though a leave is granted by this Court under Section 378(4) of the Code.

22.In view of the aforesaid legal position, as has been discussed herein above, this Court is of the considered view that the said plea made by the learned counsel appearing for the appellant and supported by the learned counsel appearing for the respondents, that this appeal shall lie only before the Principal Sessions or Additional Sessions, can be accepted.

23.In the result, this Criminal Appeal is disposed of on the following terms:

(i)This Criminal Appeal is disposed of, along

with connected original petitions and miscellaneous petitions (if any), 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 this appeal is pending from the year 2017 before this Court, priority can be given to this appeal for disposal, and accordingly, this appeal can be disposed of as expeditiously as possible.

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

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

mps

To

1.The Principal District Judge,
Darmapuri District.

2.The Assistant Sessions Judge,
Hosur,
Darmapuri District.

3.The Inspector of Police,
Bagalur Police Station,
Hosur,
Darmapuri District.

+1cc to Mr.B.Harikrishnan, Advocate sr.no.10709

Cr1.A.No.470 of 2017

ks(co)
nr 09/04/2018