

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.A.Nos. 511, 513, 515, 523, 524, 528,
and 529 of 2017

- 1 S.M.LOGANATHAN 55 YEARS ... APPELLANT in CRL A No.511/17
S/O.M.MURUGANATHAN CHETTIAR
- 1 K.SIVANESAN M/A 49 YEARS ... APPELLANT in CRL A No.513/17
S/O.KASILINGAM
- 1 K.R.KANNAN ... APPELLANT in CRL A No.515/17
S/O.N.K.RAJAMANICKAM
- 1 V. MURGAN ... APPELLANT in CRL A No.523/17
S/O. P.C. VEILUMUTHU
- 1 N.M. SHANMUGAM 45 YRS ... APPELLANT in CRL A No.524/17
S/O. MANICKAM
- 1 M/S.OM TRANS LOGISTICS LTD. ... APPELLANT in CRL A No.528/17
REP BY ITS AUTHORIZED SIGNATORY THIRU.SURESH
CHAKRAPANI HAVING ITS REGISTER OFFICE AT NO.
159 RING ROAD
- 2 TRNASPORT CENTRE (NEAR PUNJABI BAGH
FLYOVER) NEW DELHI AND HAVING ITS BRANCH
OFFICE AT NO.10 NOBLE STREET ALANDUR
CHENNAI.
- 1 S.JAYANTHI F/A 38 YEARS ... APPELLANT in CRL A No.529/17

Vs.

- 1 S.RAJENDRAN ... RESPONDENT in CRL A No.511 of 2017
S/O.S.N.SOODAMANI
- 1 K.VADIVEL M/A 40 YEARS ... RESPONDENT in CRL A No.513 of 2017
S/O.S.KAI PROPRIETOR OF GANAPATHY TRAVELS
NO.18 SUBRAMANI KOIL STREET PUDUPPALYAM
VILLAGE AND POST CHENGUM TALUK
THIRUVNANAMALAI DISTRICT.

1 B.SURESH ... RESPONDENT in CRL A No.515 of 2017
S/O.BALAN

1 K. RAJENDRAN ... RESPONDENT in CRL A No.523 of 2017
S/O. LATE. P.KUPPUSAMY

1 AHAMED JALEEL ... RESPONDENT in CRL A No.524 of 2017
S/O. HAMEED ROWTHAR

1 M/S.HYAGREEVA LINES PRIVATE ... RESPONDENT in CRL A No.528/17
LIMITED REP. BY ITS DIRECTOR THIRUMALAI
KRISHNAN FLAT NO.55 & 56 BBC VILLA COMPLEX
NO.65-33 PRAKASAM SALAI CHENNAI.

2 THIRUMALAI KRISHNAN DIRECTOR
M/S.HYAGREEVA LINES PRIVATE LIMITED FLAT NO.
55 & 56 BBC VILLA COMPLEX NO.65-33
PRAKASAM SALAI CHENNAI.

3 RAMACHANDRAN SETHURAMAN
DIRECTOR M/S.HYAGREEVA LINES PRIVATE
LIMITED FLAT NO.55 & 56 BBC VILLA COMPLEX
NO.65-33 PRAKASAM SALAI CHENNAI.

1 P.SUKUMARAN M/A 40 YEARS ... RESPONDENT in CRL A No.529/17
S/O.V.PARAMASIVAM ID 9071 - OHPDN SHOP NO.
92 HVF 99/8 TYPE II HVF QUARTERS AVADI
CHENNAI.

PRAYER CRL A.511/2017:- Appeal filed u/s.378(4) of Cr.P.C., to
set aside the order passed by the learned Judicial Magistrate
Court No.I, Tiruppur dated 09.01.2014 in S.T.C.No.2477 of 2007
and convict the respondent/accused for offence under Section 138
of Negotiable Instruments Act.

PRAYER CRL A.513/2017:- To set aside the Judgment dated
28.02.2017 in Cc No.151 of 2015 on the file of the Learned
Judicial magistrate, Fast Track Court, Vellore.

PRAYER CRL A.515/2017:-To set aside the order dated 04.03.2016
passed in C.C. No.340/2015 on the file of Hon'ble Fast Track
Court Judicial Magistrate, Court No.1, at Erode.

PRAYER CRL A.523/2017:- To set aside the order of acquittal to the respondent dated 15.05.2017 in CC No.1421/2016 o the file of the Fast Track Court IV at George Town, Chennai.

PRAYER CRL A.524/2017:- Criminal Appeal against the Judgment and order of acquittal passed by the learned Judicial magistrate, No.II, Karaikkal, in STR No.1179/2010, dated 11.07.2016 for an offence under section 138 of negotiable Instrument Act.

PRAYER CRL A 528/2017:- To set aside the Judgment dated 20.04.2017 passed by the Judicial Magistrate Fast Track Court, alandur in CC No.115/2016, punish the respondents/accused in accordance with law and order equivalent to the cheque amount.

PRAYER CRL A 529/2017:- To set aside the Judgment of Acquittal made in STC No.196/2015 on the file of the Judicial Magistrate, Fast Track Court, (magistrate Level) at ambattur by its Judgment dated 06.03.2017 and convict the appellant under section 138 of negotiable Instrument Act and award the compensation twice the cheque amount.

FOR APPELLANT IN CRL.A.NO.511 : MR.MUKUND
FOR SARVABHAUMAN ASSOCIATES
FOR RESPONDENT IN CRL.A.NO.511: MR.V.NICHOLAS
FOR APPELLANT IN CRL.A.NO.513 : MR.R.MUNIYAPPARAJ
FOR APPELLANT IN CRL.A.NO.515 : MR.N.CHINNARAJ
FOR APPELLANT IN CRL.A.NO.523 : MR.K.B.VIVEKANANDHAN
FOR RESPONDENT IN CRL.A.NO.523: MR.AMAN PANWAN FOR CHENNAI
LAW ASSOCIATES
FOR APPELLANT IN CRL.A.NO.524 : L.BASKARAN,
FOR APPELLANT IN CRL.A.NO.528 : MR.A.M.AMUTHA GANESH
FOR RESPONDENT IN CRL.A.NO.528: MR.S.R. RAJAGOPAL
FOR APPELLANT IN CRL.A.NO.529 : MR.S.TEIJAPPAN
FOR RESPONDENT IN CRL.A.NO.529: MR.T.MURUGANATHAM.

COMMON JUDGMENT

All these appeals have been filed by the victims/complainants challenging the order of acquittal in respect of the cases tried by the trial Court, which were filed to punish the accused under Section 138 of the Negotiable Instruments Act. It is to be noted that, as per the amendment to Section 372 of the Code of Criminal Procedure with effect from 31.12.2009 a proviso has been inserted. Accordingly, 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 the court.

2. In view of the said amendment, it has been considered by a Full Bench of this Court where the law has been declared that a victim of the crime which has prosecuted the accused by way of a private complaint has a statutory right of appeal as prescribed under Section 372 of Cr.P.C.

3. Following the said dictum of the Full Bench of this Court and in view of the proviso to Section 372 of the Code, these appeals filed before this Court should have been filed before the concerned Sessions Court by way of an appeal.

4. When a number of said appeals (Crl.A.Nos.308,319,321,338 and 339, 341,348, 349, 353, 354, 355 & etc., batch) as that of the present set of appeals came up for consideration, after considering the proviso to Section 372 of the code as well as the dictum of the Full Bench judgment reported in S.Ganapathy vs. N.Senthilvel reported in (2016) (3) MLJ (Crl.) 641, 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."

5. Since these appeals are also of similar nature, where the complainant/victim suffered with an order of acquittal in 138 proceedings, these appeals also should have been filed before First Appellate Court and therefore, these appeals are disposed of, 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 on 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.

6. 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.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

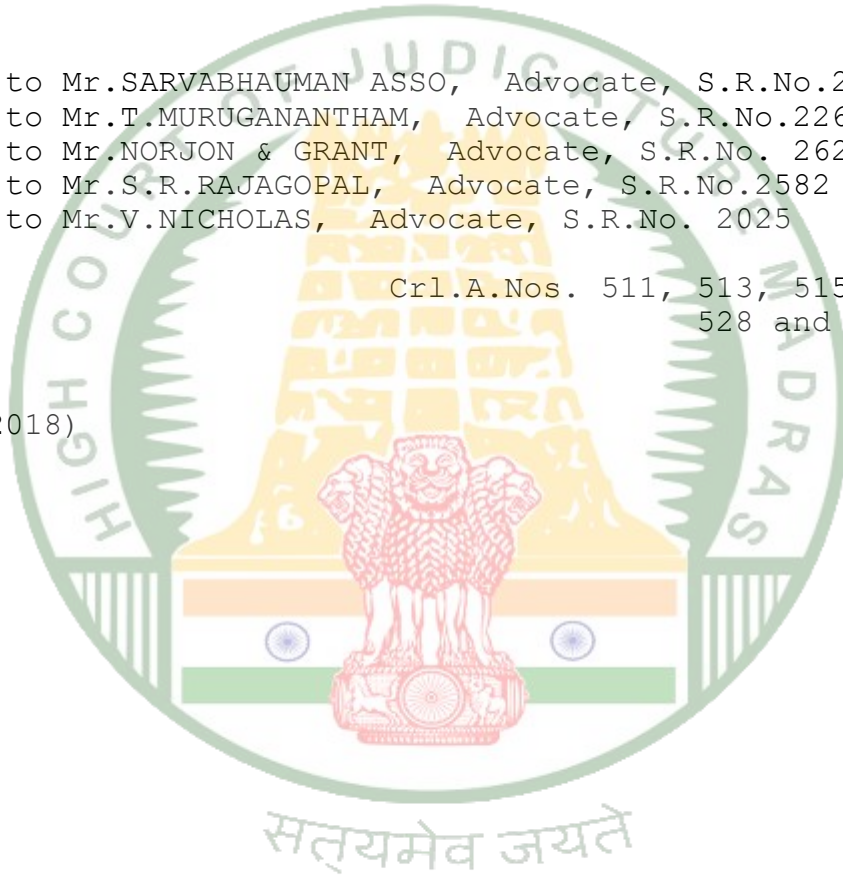
1. THE JUDICIAL MAGISTRATE, COURT NO.1,
TIRUPPUR.
2. THE JUDICIAL MAGISTRATE
FAST TRACK COURT, VELLORE.
3. FAST TRACK COURT, THE JUDICIAL MAGISTRATE
COURT NO.1, ERODE.
4. THE FAST TRACK COURT IV,
GEORGE TOWN, CHENNAI.

5. THE JUDICIAL MAGISTRATE NO.II,
KARAIKKAL.
6. THE JUDICIAL MAGISTRATE,
FAST TRACK COURT, ALANDUR.
7. THE JUDICIAL MAGISTRATE
FAST TRACK COURT (MAGISTRATE LEVEL),
AMBATTUR,
8. THE SECTION OFFICER, RECORDS,
CRIMINAL SECTION, HIGH COURT, MADRAS. (07.03.2018)

+1cc to Mr.SARVABHAUMAN ASSO, Advocate, S.R.No.2031
+1cc to Mr.T.MURUGANANTHAM, Advocate, S.R.No.2268
+1cc to Mr.NORJON & GRANT, Advocate, S.R.No. 2620
+1cc to Mr.S.R.RAJAGOPAL, Advocate, S.R.No.2582
+1cc to Mr.V.NICHOLAS, Advocate, S.R.No. 2025

CrI.A.Nos. 511, 513, 515, 523, 524,
528 and 529 of 2017

SK(CO)
TR(01/03/2018)



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