

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.01.2018
CORAM
THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.A.Nos. 530, 539, 540, 548, 549, 556,
557 and 558 of 2017

Ravindra Kumar Agarwal ... Petitioner in Crl.A.530/207
M/s.Sree Gokulam Chits & Finance
Co.(P) Limited Represented by its
Assistant Manager Mr.S.Sivalingam
No.19/A, Officers Lane First Floor
Krishna Nagar, Vellore. ...Petitioner in Crl.A.539,540 of 2017

Sree Gokulam Chit and
Finance Company Pvt., Limited
Represented by its Branch Manager
M.Sasi Kumar, No.205 Sattar Sait
Buildings Commercial Road, Ootacamund
...Petitioner in Crl.A.548/2017

S.Yesodha
D/o.B.Sivan ...Petitioner in Crl.A.549/2017

D.Dineshkumar
S/o.D.Deivasigamani ...Petitioner in Crl.A.556/2017

Pramod Kumar Daga
Proprietor of M/s.Ambica
Genpower
Chennai ...Petitioner in Crl.A.557/2017

D.Dhasarathan,
S/o.Aarumugam ...Petitioner in Crl.A.558/2017

Vs.

R.Raman Puri ... Respondent in Crl.A.530/2017

C.Sundaresan ...Respondent in Crl.A.No.539, 540 of 2017

N.Anand
S/o.B.K.Nanjiah ...Respondent in Crl.A.548/2017

T.Alexander
S/o.Thangaraj ...Respondent in Crl.A.549/2017

P.Amutha

W/o.M.Krishnaswamy,

...Respondent in CrI.A.556/2017

- 1 M/S.INSULATION HOUSE
REP BY MRS.MEENAKSHI DAVEY PARTNER OFFICE
AT NO.19 NARASINGAPURAM STREET 1ST FLOOR
MOUNT ROAD CHENNAI.
- 2 MEENAKSHI DAVEY
PARTNER NEW NO.17 MELONY ROAD GROUND
FLOOR B & C REAR BLOCK OAKLAND APARTMENT
T.NAGAR CHENNAI.
- 3 CHANDRAKANT P.DAVEY
PARTNER FLAT-G 1ST FLOOR NEW NO.17 MELONY
ROAD OAKLAND APARTMENT T.NAGAR CHENNAI.
- 4 PRAKASH R.DEVEY
MANDATE HOLDER NEW NO.17 MELONY ROAD
GROUND FLOOR B & C REAR BLOCK OAKLAND
APARTMENT T.NAGAR CHENNAI. ...Respondents in CrI.A.557/17

S.BAKKIYAM F/A-34 YEARS

W/O.SEKAR D.NO.32/1 POLICE COLONY

PAPARAPATTI PENNAKARAM TALUK

DHARMAPURI DISTRICT.

...Respondent in CrI.A.558/2017

Prayer in CrI.A.530/2017:

Appeal filed u/s.378(4) of Cr.P.C., to set aside the order of acquittal dated 03.10.2016 made in S.T.C.No.80 of 2013 on the file of the learned Judicial Magistrate/Fast Track Court No.1, Erode by allowing this Criminal Appeal.

Prayer in CrI.A.539/2017: Appeal filed u/s.378(4) of Cr.P.C., to call for the records and Judgment acquitting the respondent/Accused in C.C.No.78 of 2016 dt.22.5.2017 passed by the Hon'ble Judicial Magistrate, Fast Track, Vellore and set aside the same.

Prayer in CrI.A.540/2017: Appeal filed u/s.378(4) of Cr.P.C., and against to call for the records and Judgment acquitting the respondent/Accused in C.C.No.77 of 2016 dt.22.5.2017 passed by the Hon'ble Judicial Magistrate, Fast Track, Vellore and set aside the same.

Prayer in CrI.A.548/2017: Appeal filed u/s.378 of Cr.P.C., to allow the appeal and set aside the order passed by the Learned Judicial Magistrate and be pleased to restore C.C.No.49/11 on the file of the Judicial Magistrate, Udhagamandalam.

Prayer in CrI.A.549/2017: Appeal filed u/s.378 of Cr.P.C., and to set aside the Judgment in STC.No.1/2013 passed by the Judicial Magistrate, Udhagamandalam, dt.10.3.2016 and convict the respondents.

Prayer in CrI.A.556/2017: Appeal filed u/s.378(4) of Cr.P.C., and set aside the judgment passed by in STC.No.138 of 2014 on the file of the Judicial Magistrate, Fast Track Court No.I, Erode dt.1.10.2015.

Prayer in CrI.A.557/2017: Appeal filed u/s.378(4) of Cr.P.C., to set aside the order dated 24.04.2017 passed in C.C.No.3498 of 2011 on the file of the Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai.

Prayer in CrI.A.558/2017: Appeal filed u/s.378(4) of Cr.P.C., to set aside the Judgment made in STC.No.83 of 2013 dated:17.10.2016 on the file of the Judicial Magistrate, FTC, Dharmapuri and convict the respondent by allowing the appeal.

In CrI.A.No.530/2017:

For Appellant : Mr.C.Ramkumar
For Respondent : Mr.I.C.Vasudevan

In CrI.A.No.539 & 540/2017:

For Appellant : Mr.I.Rajasekar
For Respondent : Mr.M.Rajendran

In CrI.A.No.548/2017:

For Appellant : Mr.C.Yesuraj
For Respondent : Mr.Lenin & Bhagya

In CrI.A.No.549/2017:

For Appellant : Mr.S.Shankar
For Respondent : Mr.J.R.Prabhakaran

In CrI.A.No.556/2017:

For Appellant : Mr.V.S.Kesavan
For Respondent : Mr.I.C.Vasudevan

In CrI.A.No.557/2017:

For Appellant : Mr.N.R.Anantha Ramakrishnan
For Respondent : Mr.A.Thirumaran

In CrI.A.No.558/2017:

For Appellant : Mr.K.Gandhikumar,
For Respondent : Mr.J.Karthikeyan

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 (CrI.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 (CrI.) 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(VI)

//True Copy//

Sub Assistant Registrar

rts

To

- 1.The Judicial Magistrate I, Fast Track Court,I,
Erode
- 2.The Judicial Magistrate I,
Fast Track Court, Vellore
- 3.The Principal Sessions Court, Vellore
- 4.The Additional District and Sessions Judge,
Fast Track Court I, Vellore
- 5.The Principal Sessions Court, Erode
- 6.The Principal Sessions Court, Chennai.
- 7.The Principal Sessions Court, Dharmapuri
- 8.The Principal Sessions Court, Nilgiris at Udhagamandalam
- 9.The Judicial Magistrate, Uthagamandalam
- 10.The Judicial Magistrate, Erode
- 11.The VII Metropolitan Magistrate
George Town, Chennai
Fast Track Court IV, Chennai
- 12.The Judicial Magistrate, Fast Track Court, Dharmapuri

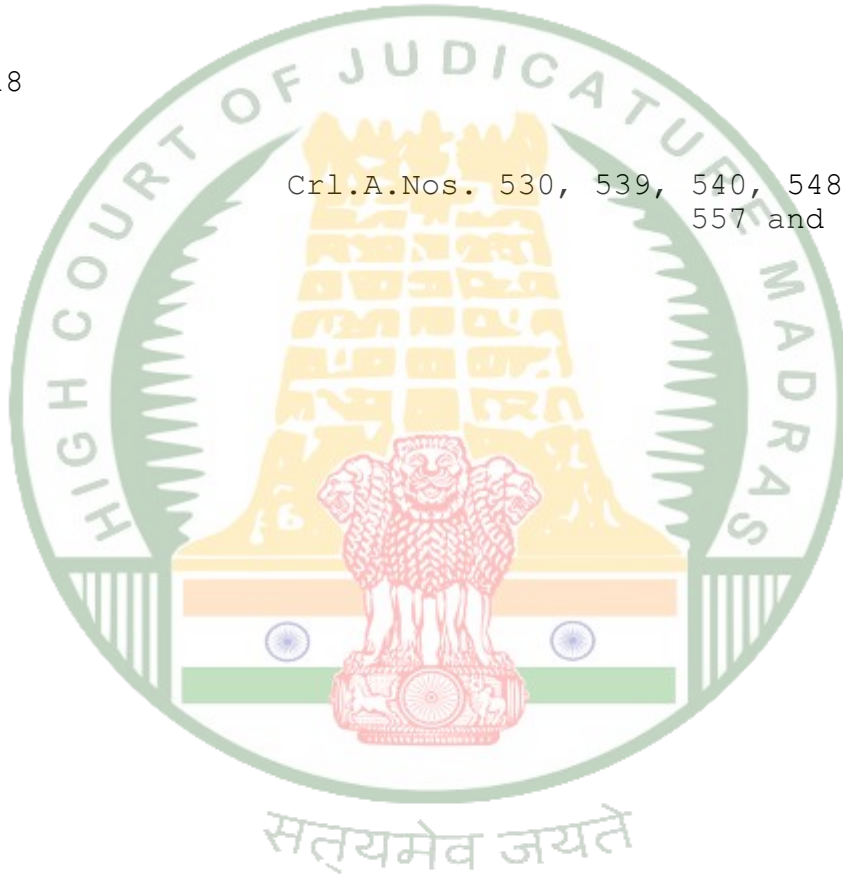
13.The Section Officer,
Criminal Section, High Court, Madras

(with a direction to sent the case bundles
with all connected records of the lower court to
the concerned sessions court)

+lcc to M/s.K.Gandhikumar, Advocte SR.No.1911
+lcc to M/s.C.Yesuraj, Advocate Sr.No.1963
+lcc to M/s.C.Ramkumar, Advocated Sr.No.2291

RR(CO)
sm:9.3.2018

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557 and 558 of 2017



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