IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:11.01.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.Appeal No.77 of 2011

The Manager,
Mariyappan,
Nagapattinam Umachit Funds,
S/o Venkatachalam,
Periya Kadai Theru,
Nagapattinam. ... Appellant/Complainant

Vs

Joseph ... Respondent/Accused

Prayer: Criminal appeal preferred under Sec.378 of the Code of Criminal Procedure against the order of acquittal dated 19.07.2010 made in S.T.C.No.17 of 2007 on the file of Judicial Magistrate No.I, Nagapattinam.

For Petitioner : M/s.S.Y.Masood
For Respondent : Mr.R.k.Ayyappan

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JUDGMENT

This Criminal Appeal has been filed by the petitioner/defacto complainant challenging the order of acquittal passed by the learned Judicial Magistrate No.1, Nagapattinam in S.T.C.No.17 of 2007 dated 19.07.2010.

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

> 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 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(Crl) 169, has held as follows:-

> "4. 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."

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) Madras Weekly Notes(Crl) 169, this Court by an order dated 07.02.2017 in Crl.R.C.1014 of 2010 and Crl.R.C.Nos.623, 766 and 789 of 2011, transferred the revision cases to the respective Sessions Court for disposal in accordance with law.

5. In view of the above, this Criminal Appeal is disposed of and this appeal as well as the connected original petition is transferred to the respective Principal Sessions Court, Nagapattinam, who shall either dispose of the appeal or make over the same to Additional Sessions Court, Nagapattinam, for disposal in accordance with law, after due notice of hearing to both parties. It is also directed that the Lower Appellate Court shall give priority for this appeal, as this appeal has become old appeal.

6. Hence, this Criminal Appeal is disposed of.

7. The Registry is directed to ensure that the records of the lower Court, if received, shall also be forwarded to the Sessions Court concerned along with the criminal appeal case papers.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1 THE LEARNED JUDICIAL MAGISTRATE NO.1, NAGAPATTINAM.

2 DO THRO. THE CHIEF JUDICIAL MAGISTRATE, NAGAPATTINAM.

3 THE PRINCIPAL SESSIONS JUDGE, NAGAPATTINAM,

4 ADDITIONAL SESSION JUDGE NAGAPPTTINAM.

5 THE SECTION OFFICER,
CRIMINAL SECTION, HIGH COURT, CHENNAI.

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AD(CO)
TR(18/01/2018)