

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.A.No.473 of 2016

A.Marudachalam

....Appellant/Complainant

.Vs.

A.Venkatachalam

.....Respondent/Accused

Prayer:

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to call for the records in C.C.No.177 of 2012 and set aside the Judgement of the Learned Judicial Magistrate Fast Track Court No.I@Magistrate Level, Dated 27.03.2015, Coimbatore, acquitting the respondent / accused of charges under Section 138 of the Negotiable Instruments Act.

For Appellant : Mr.C.Anandaramani

For Respondent : Mr.J.Pothiraj

J U D G M E N T

This Appeal has been filed by the victim of crimes challenging the acquittal of the accused recorded by the Judicial Magistrate. This case was originally instituted before the learned Judicial Magistrate, Fast Track Court No.I @ Magistrate Level, Coimbatore in C.C.No.177 of 2012 by way of private complaint by the victim for the alleged offence.

2. Challenging such acquittal, the victim has come up with the appeal, probably, under the impression that such an appeal would lie only to this Court under the Proviso to Section 372 of the Code of Criminal Procedure. Since, there was a doubt regarding the jurisdiction of this Court to entertain such appeals, the matter was referred to a Full Bench in S.Ganapathy v. N.Senthilvel, 2016(2) MWN (Cr.) 321 (FB) : 2016(4) CTC 119 (FB), in that, the following questions were placed before the Full Bench for answering:

"1. Whether a victim of a crime, who has prosecuted an Accused by way of a private complaint, does not have statutory right of appeal against acquittal under provision to

section 372 of the Code of Criminal Procedure?

2. Whether a complainant, in a private complaint case, if a victim does not happen to be a complainant and in the event of a acquittal, whether he has got right of appeal under Provisio to Section 372 of the Code of Criminal Procedure or he has to seek leave to file Appeal under Section 378(4) of the Code of Criminal Procedure?

3. In a Private Complaint case, if a victim does not happen to be a complainant and in the event of acquittal, whether he has got right of Appeal under Provisio to Section 372 of the Code of Criminal Procedure or he has to seek leave to file Appeal under Section 378(4) of the Code of Criminal Procedure?

4. Whether a victim in a case instituted on a Police Report, has a better place in the Criminal Justice Delivery System than a victim in a Private Complaint case?

5. Whether the term 'victim' as defined in Section 2(wa) of the Code of Criminal Procedure excludes a complainant in a Private Complaint case, though he has suffered Loss or Injury on account of the offence committed against him? and

6. Whether the view held in the Judgment of this Court in *Selvaraj vs Venkatachalapathy*, 2015 (1) MWN (Cr.) DCC 26 (MAD.), reflects correct exposition of law or the same required to be overruled?"

3. The Full Bench, by Judgment dated 05.04.2016, answered the same in the following terms:

"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 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 & Others, 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."

4. As held by the Full Bench, an 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 the Appeal, need to be transferred to the Sessions Court for disposal in accordance with law.

5. The learned Counsel appearing on either side in this Appeal also conceded that the Appeal deserve to be transferred to the Sessions Court.

6. In view of the above, this Criminal Appeal is disposed of and the appeal is transferred to the Principal Sessions Court, Coimbatore, forthwith, who shall either dispose of the Appeal or make over the same to Additional Sessions Court for disposal in accordance with law, after due Notice of hearing to both parties. After receipt of the appeal papers as well as the

lower Court records, the Lower Appellate Court is directed to dispose of the appeal on merits, within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

smn

To.

1.The Judicial Magistrate,
Fast Track Court No.I@Magistrate Level, Dated 27.03.2015,
Coimbatore.

2. The Principal Sessions Court, Coimbatore.

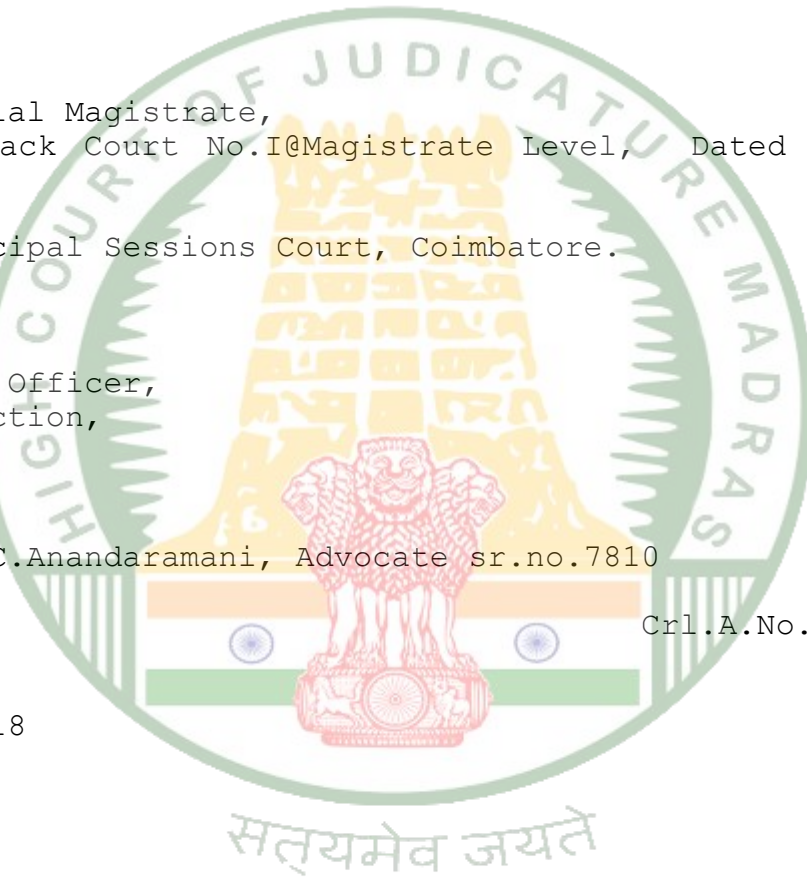
Copy to:

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

+lcc to Mr.C.Anandaramani, Advocate sr.no.7810

CrI.A.No.473 of 2016

ss(co)
nr 26/02/2018



WEB COPY