

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Criminal Appeal.No.293 of 2009

K.P.Ashokan

..Appellant/Complainant

Versus

Mrs. Prabha Parthasarathy

..Respondent/Accused

PRAYER:Criminal Appeal filed under Section 378(h) of the Criminal Procedure Code, to set aside the judgement passed in C.C.412 of 2003, dated 23.01.2009, by the Learned Judicial Magistrate, Ambattur.

For Appellant :: Mr.S.M.Nandhie Devhan

For Respondent :: No appearance

JUDGMENT

This Criminal Appeal had been filed against the Judgment dated 23.01.2009 in STR.No.412 of 2003 on the file of the learned Judicial Magistrate, Ambattur.

2. The appellant herein had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the respondent in STR.No. 412 of 2003. On conclusion of trial, the learned Magistrate had acquitted the accused by order dated 23.01.2009.

3. In effect, this is an appeal challenging the order of acquittal filed by the complainant. This appeal has been filed under Section 378 of Criminal Procedure Code. It is to be noted that Section 372 of the Code has undergone an amendment under the Code of Criminal Procedure Amendment Act, 2008 (5 of 2009) with effect from 31.12.2009. As per the said amendment, a proviso was inserted in Section 372 which reads as follows:

"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.]".

4. On 27.4.2015, a learned single Judge of this Court, on the issue, as to whether or not the appeal shall be filed before the First Appellate Court / Sessions Court concerned as against the acquittal made by the trial Court, by a victim / complainant, has referred the matter for consideration by a Full Bench by framing six questions which are given herein below:

" 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 Proviso to Section 372 of the Code of Criminal Procedure?

2. Whether a Complainant, in a Private Complaint case, who is not a victim, has got the remedy to seek only leave to file Appeal under Section 378(4) of the Code of Criminal Procedure in the event of acquittal of the Accused?

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 Proviso 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 v. Venkatachalapathy, 2015 (1) MWN (Cr.) DCC 26 (Mad.), reflects correct exposition of law or the same requires to be overruled?''

5. In order to answer the said six questions, a Full Bench was constituted, before whom, the matter was referred. The Full Bench, after having exhaustively discussed the issue in depth, has ultimately, concluded by its Judgment dated 05.04.2016 reported in 2016 4 CTC 119 in the matter of S.Ganapathy Vs. N. Senthilvel. The Full Bench has given answers to the questions posed before it, at paragraph 31 of the said judgment cited supra, which reads thus:

"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.

32. The questions posed are answered accordingly. All these matters are directed to be listed before the appropriate Court for their disposal in accordance with the opinion expressed hereunder."

6. In view of the said authoritative pronouncement of the Full Bench as cited supra, a learned single Judge of this Court also in the matter of D. Prabhu Vs. R.Manikandan 2016 3 MWN (CR)

DCC 169 (Mad) by order dated 14.11.2016 had held that, appeals preferred against the acquittal of the accused in the proceedings initiated by a private complainant will lie only to the respective Sessions Court and the same would not lie before this Court.

7. Based on the said Full Bench pronouncement, in batch of Criminal Appeals in CrI.A.Nos. 308 etc., of 2015 Shanmugasundaram Vs. S.Mani, dated 12.07.2017, the learned Single Judge of this Court (Hon'ble Mr. Justice R. Suresh Kumar), had disposed of the criminal appeals by transferring the same to the respective Principal Sessions Court.

8. In view of the said binding precedents of the Full Bench Judgment and also the consistently followed by this Court, this appeal is disposed of on the following terms:

(i) This criminal appeal is disposed of, by transferring the same to the Principal District Court, Thiruvallur District.

(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 the taking up the appeal by the Sessions Court concerned, due notices be served to both parties;

(iv) Since this appeal is pending for more than ten years before this Court, priority can be given for this appeal for disposal, and accordingly, this appeal can be disposed of as expeditiously as possible. The appeal stands disposed of.

9. Registry is directed to send the case bundles with all connected records of the lower Court, if any received, to the Court of the Principal District Court, Thiruvallur District, forthwith.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

sbn/kmm

To

1. The Judicial Magistrate, Ambattur.
2. The Principal District Judge, and Sessions Court,
Thiruvallur District.
3. The Section, Officer, Criminal Section,
High Court, Madras.
4. The Secition Officer, ER Section,
High Court, Madras

Cr1.A.No.293 of 2009

RJ(CO)
GMY(18/07/2019)



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