



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.14392 of 2019

M.Sumathi

... Petitioner/Appellant/Defacto
Complainant

-vs-

1.State Rep.by

The Sub Inspector of Police,
Taluk Police Station,
Sivagangai District.
Crime No.211 of 2016.

... 1st Respondent/1st Respondent/
Complainant

2.Sethupathy

... 2nd Respondent/2nd Respondent/
Accused

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the Return Order dated 11.03.2019 passed in unnumbered Cr.A.No. of 2019 on the file of the Principal District Judge, Sivagangai against C.C.No.93 of 2016 on the file of the Judicial Magistrate No.II, Sivagangai and to direct the Principal District Judge, Sivagangai to number the same.

For Petitioner : Mr.G.Prabhu Rajadurai

For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate(Crl.side)

ORDER

This Criminal Original Petition has been filed to set aside the return order dated 11.03.2019 passed in unnumbered criminal appeal filed as against the order passed in C.C.No.93 of 2016.

2.The petitioner is the complainant and he lodged complaint before the first respondent herein and the same was registered in crime No.211 of 2016. After completion of investigation, the respondent police filed final report and the same has been taken cognizance in C.C.No.93 of 2016 on the file of the learned Judicial Magistrate No.II, Sivagangai. The trial Court after conducting trial, acquitted the second respondent by an order dated 05.12.2018. Aggrieved by the same, the petitioner / defacto complainant filed an appeal as against the order of acquittal under Section 372 Cr.P.C.,



before the learned Principal District Court, Sivagangai.

3.The petitioner filed an appeal on 07.03.2019 as against the order of acquittal dated 05.12.2018. The appeal filed within a period of 43 days from the date of acquittal order by the petitioner herein. The same was returned by the appellate Court for the reason that it should be filed along with condone delay application.

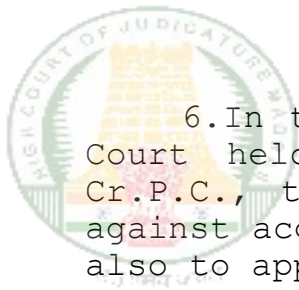
4.This Court finds that no delay in filing the appeal as against the order of acquittal, dated 05.12.2018. The Hon'ble Full Bench of Hon'ble Allahabad High Court held in C.M.A.No.351 of 2017 dated 19.01.2019 as follows:

"5. We refer to Article 114 of the Limitation Act, which refers to Section 417 (2) of the Cr P C, that, the Cr P C of 1988 and that is equivalent to present Section 378 Cr P C. In that case the period is prescribed as 90 days, but the provisions under Section 372 Cr P C being a new one, which was brought out by virtue of Amending Act No. 5 of 2009 and on consideration of the very Article 114 of the Limitation Act, we find that it speaks of an appeal from an order of acquittal and thereafter, makes categorization of different appeals under different headings. We have to assume that the Legislature at the time of the framing Article 114 of the Limitation Act in absence of the previous proviso to Section 372 Cr P C, had nothing before it to mention that particular provision as one of such occasions on which the law of limitation shall be considered for computing the period of limitation. But, the provision speaks of appeals against acquittal and we are of the opinion that a period of 90 days should be applicable also to appeals under Section 372 proviso Cr P C.

Thus, we are satisfied that the limitation for preferring an appeal against the order of acquittal by the victim would be 90 days in all cases, other than the cases instituted upon complaint, and 60 days for any case instituted upon complaint against the order of acquittal after the High Court grants special leave to appeal."

5.The appeal has to file as against the order of acquittal under Section 372 Cr.P.C., as amended by the Amendment Act No.5 of 2009. It is seen from the provision under Section 372 Cr.P.C., there is no limitation prescribed under Section 372 Cr.P.C. It is relevant to extract Section 372 Cr.P.C.:

"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."



6.In this regard, Hon'ble Full Bench of Hon'ble Allahabad High Court held that no period is prescribed under Section 372 of Cr.P.C., to file an appeal. But the provision speaks of appeals against acquittal and as such period of 90 days should be applicable also to appeals under Section 372 Cr.P.C.

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7.In view of the above discussion, the case on hand, the petitioner filed appeal under Section 372 Cr.P.C., within a period of 43 days from the date of order of acquittal passed in C.C.No.93 of 2016, dated 05.12.2018. Therefore, the appeal filed by the petitioner is well within the time.

8.Considering the above facts and circumstances, the petitioner is directed to re-present the appeal papers within a period of one week from the date of receipt of a copy of original appeal papers from the Registry of this Court and on receipt of the same the appellate Court, namely Principle District Court, Sivagangai, is directed to number the appeal and take the same on file.

9.With the above directions, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Principal District Court, Sivagangai.

2.The Judicial Magistrate No.II, Sivagangai.

3.The Sub Inspector of Police, Taluk Police Station,
Sivagangai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-92093[F] dated
16/10/2019)

CrI.O.P. (MD)No.14392 of 2019
15.10.2019

JMN(30.10.2019) 3P : 6C