



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 10.12.2019**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**CRL OP(MD) . No.22159 of 2015**

**WEB COPY**

Ramamurthy ...Petitioner/Revision Petitioner/Defacto Complainant

-Vs-

1.Kanagaraj

2.Ravi

... Respondents 1 &2/Respondents 1&2/Accused

3.The State through

The Sub Inspector of Police,  
Sivagangai Town Police Station,  
Sivagangai.

(Crime No.399 of 2013)

... 3<sup>rd</sup> Respondent/3<sup>rd</sup> Respondent/Complainant

**Prayer:** Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the order made in Crl.R.C.No.13 of 2014, dated 24.06.2015 on the file of District and Sessions Judge, Sivagangai by confirming the order made in S.T.C.No.1496 of 2013, dated 19.03.2014, on the file of the Judicial Magistrate No.I, Sivagangai by allowing this criminal original petition.

For Petitioner : Mr.M.Thirunavakarasu

For Respondents : Mr.A.Robinson

Govt. Advocate (Crl. Side) for R3

: Mr.K.Ramachandran for R1 and R2

### **O R D E R**

The petitioner is the defacto complainant in S.T.C.No.1496 of 2013, on the file of the learned Judicial Magistrate No.I, Sivagangai. The respondents 1 and 2 herein were shown as accused in the said case. The said case ended in acquittal. Questioning the same, the petitioner herein filed an appeal before the Sessions Court, Sivagangai. The learned Sessions Judge converted the same into one of revision. The revision case was dismissed eventually. Challenging the same, this criminal original petition came to be filed.

2.The learned counsel appearing for the accused initially submitted that having filed a revision before the Sessions Court, it is not open to the petitioner herein to file a second revision and that he cannot also be permitted to overcome the statutory bar encrypted in Section 397(3) of Cr.P.C., by invoking Section 482 of Cr.P.C. Though this submission appears to be rather formidable, the



learned counsel appearing for the respondents 1 and 2 appears to have overlooked a fundamental error committed by the learned Sessions Judge.

3.The petitioner aggrieved by the acquittal of the respondents 1 and 2, rightly filed criminal appeal before the Sessions Court. The same was erroneously converted into one of revision. As rightly pointed out by the learned counsel appearing for the respondents 1 and 2, in a decision reported **[2015-1-L.W. (Cr1.) 91 (M.Kasinathan Vs. P.Murugaiyan and Another)]**, a learned Judge of this Court had clarified the position in the following terms:-

*''5.At the same time, I cannot now hold that the revision is maintainable before the learned Sessions Judge because the petitioner has got right of appeal. Now the further question which arises for consideration is that on this ground whether this petition should be dismissed thereby confirming the order of the learned Sessions Judge. In this regard, I may refer to sub section 5 of Section 401 Cr.P.C., which reads as follows: "Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly." Thus, it is crystal clear that if a revision has been made under a mistaken impression that no appeal lies, the High Court has got power to convert and treat the same as appeal. Sub section 5 of Section 401 Cr.P.C. is applicable to the Court of Sessions also, as per sub section 6 2 of Section 399 Cr.P.C., which reads as follows: "Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 401 shall, so far may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge". Therefore, the only course now available for this Court is to set aside the order of the learned Sessions Judge with a further direction to the learned Sessions Judge to convert the revision as an appeal under Section 372 of Code of Criminal Procedure and dispose of the same, after affording sufficient opportunity to the*



respondents herein. This alone would meet the ends of justice.''

4.The scope of appeal is wider. The scope of revision is limited. Hence, the petitioner has been put to prejudice on account of the conversion of appeal into one of revision. Therefore, I propose to set aside the order passed by the Sessions Court and remand the matter by converting the Crl.R.C.No.13 of 2014 to one of appeal.

5.At this stage, the learned counsel appearing for the petitioner made a fair offer. He stated that the petitioner will be more than satisfied if the respondents 1 and 2 herein express their sense of regret and remorse for the entire occurrence. He will be satisfied if a letter of unconditional of apology is given to him. This offer made by the petitioner's counsel is also acceptable to the learned counsel appearing for the respondents 1 and 2. But then, the learned counsel appearing for the respondents 1 and 2 had one apprehension. The respondents 1 and 2 are still in Government Service. He therefore wanted this Court to protect their services. I make it clear that I am not interfering with the judgment of acquittal passed by the Courts below and it shall hold good. Therefore, the submission of a letter of unconditional apology by the respondents 1 and 2 to the petitioner herein will not in any way have any effect or impact on their services and carrier.

6.The hand written letter of apology shall be handed over by the learned counsel appearing for the respondents 1 and 2 to the learned counsel appearing for the petitioner within a period of one week from the date of receipt of a copy of this order.

7.This criminal original petition is disposed of on these terms.

Sd/-

Assistant Registrar (CS-II)

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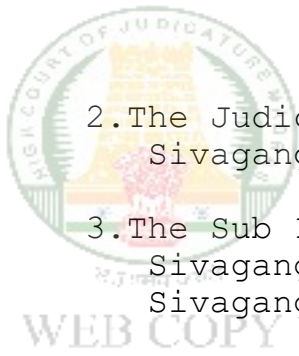
/ /2020

Sub Assistant Registrar(CS )

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To:

1.The District and Sessions Judge,  
Sivagangai.



2.The Judicial Magistrate No.I,  
Sivagangai.

3.The Sub Inspector of Police,  
Sivagangai Town Police Station,  
Sivagangai.

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

+1 CC to Mr.M.THIRUNAVUKKARASU, Advocate ( SR-104318[F] dated  
11/12/2019 )

+1 CC to Mr.K.MUTHUMALAI, Advocate ( SR-104452[F] dated 11/12/2019 )

**Cr1.O.P. (MD) No.22159 of 2015**  
**10.12.2019**

MK (24.03.2020) 4P 7C