

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
Crl.RC.No.467 of 2020

Natarajan

...Petitioner

Vs.

1. R.Kalpana

2. Duraisamy

3. State Rep. By

The Inspector of Police,
CCB Police Station,
Tiruppur.

...Respondents

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C, to set aside the order dated 28.01.2020 passed in CMP.No.1637 of 2019 on the file of the Principal Sessions Court, Tiruppur.

For Petitioner : Mr.K. Govi Ganesan

For Respondents : No appearance (for R1 & R2)
Mr.T.Shunmuga Rajeswaran (for R3)
Government Advocate (Crl.Side)

ORDER

This Criminal Revision has been filed by the complainant against the dismissal of the petition filed by him in CMP.No.1637 of 2019 on the file of the Principal Sessions Judge, Tiruppur dated 28.01.2020.

2. The petitioner herein has filed a private complaint alleging that the respondents 1 and 2 herein have committed the offences punishable under Sections 467, 468, 471, 447 and 423 of IPC. Based on the said complaint, the learned Judicial Magistrate No.1, Tiruppur has taken the case on file in CC.No.264 of 2010 and tried the case. After full trial, he has acquitted the accused Nos.1 and 2 (respondents 1 and 2 herein) by the judgment dated 06.02.2017. Aggrieved by the same, the petitioner herein has filed an appeal before the Principal Sessions Judge, Tiruppur along with a petition under Section 5 of the Limitation Act in CMP.No.1637 of 2019 to condone the

delay of 1011 days. The learned Principal Sessions Judge, Tiruppur by the order dated 28.01.2020 has dismissed the said petition. According to the learned Principal Sessions Judge, private complainant cannot file an appeal against the acquittal under Section 374 of Cr.PC., before the Sessions Court. Further, it has held that since the Sessions Court is not having jurisdiction to entertain the said appeal, the petition to condone the delay in filing an appeal also cannot be entertained. Aggrieved by the same, the complainant has filed the present revision.

3. Recently, a Hon'ble Full Bench in K.Rajalingam Vs. R.Suganthalakshmi (Crl.A.Nos.89 and 90 of 2020 and Criminal Revision Case Nos.497 and 536 of 2019 dated 28.05.2020) has answered the reference that as against an order of acquittal passed by a Magistrate on a complaint, an appeal will lie only before the High Court under Section 378 (4) of Cr.PC. In such cases, the complainant has to seek for special leave under Section 378 (5) of Cr.PC., Further, it has declared that the decision rendered in S.Ganapathy Vs. N. Senthilvel case as a judgment per-incuriam, since it has been decided without reference to the binding authority in Damodar S.Prabu Vs. Sayed Babalal H (2010) 5 SCC 663. Therefore, this court is of the view that the learned Principal Sessions Judge has rightly held that the appeal under Section 374 of Cr.PC., is not maintainable before the Sessions Court. Hence, this revision is liable to be dismissed.

4. In the result, this Criminal Revision is dismissed. However, a liberty is given to the petitioner to file an appeal before this court under Section 378 (4) of Cr.P.C., as held by the Hon'ble Full Bench.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv

To

1. The Principal Sessions Court, Tiruppur.
2. The Public Prosecutor,
Madras High Court,
Chennai.

Crl.RC.No.467 of 2020

VSN II (CO)
KKV/17/07/2020