



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1128 of 2017

S. Nachimuthu

... Appellant/Complainant

Vs.

Jawahar

... Respondent/Accused

PRAYER:- Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the order of discharge dated 21.03.2011 made in C.C.No.226 of 2011 on the file of the learned Judicial Magistrate No.1, Udumalpet.

For Petitioner : Mr.D.R.Arun Kumar

For Respondent : Mr.N.Umapathi

O R D E R

The matter is heard through "Video Conference".

2. This criminal revision case is filed against the order dated 21.03.2017 passed by the learned Judicial Magistrate No.1, Udumalpet, in C.C.No.226 of 2011.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the records.

4. In view of the judgment of a Full Bench of this Court in S.Ganapathy Vs. N.Senthilvel [(2016) 3 MLJ (Crl.) 641], 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. Further, in a private complaint, even if the victim is not a complainant, he has a right to file an appeal under the proviso to Section 372 of Cr.P.C., but he has to seek leave as held by the Hon'ble Supreme Court in the case of Satya Pal Singh Vs. State of Madhya Pradesh and others, reported in (2015) 15 SCC 613.



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5. The impugned order passed by the learned Judicial Magistrate No.1, Udumalpet, reads as follows:-

"Accused present. Complainant not present. Trial not taken. This court already sufficient time given. Till date complainant not taken the trial. Accused continuously present. Today complainant side no representation. Considering the above facts no use to adjourn the matter. Hence, it is ordered to stop the proceedings. Accused to be discharged from this case."

6. On a perusal of the order passed by the learned Magistrate, it is seen that for the continuous non appearance of the complainant, all further proceedings was stopped and consequently, the accused was discharged from the case. When the proceedings was stopped and accused was discharged from the case, it has effect of acquittal and hence, as held by the Full Bench of this Court in the judgment referred supra, only appeal will lie.

7. In this case, since the criminal revision case is filed treating it as a simple discharge, Registry is directed to issue notice to the learned counsel for the petitioner on the point of limitation and permit him to convert the above criminal revision case as criminal appeal, if it is within the period of limitation.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AT/jrl

To

1. The Judicial Magistrate No.1,
Udumalpet.

+1cc to Mr.V.Anandhamurthy, Advocate, S.R.No.39303

+1cc to Mr.N.Umapathi, Advocate, S.R.No.39195

CRL.R.C.NO.1128 OF 2017

MG (CO)

PBS/06/10/2021