



Crl.R.C.No.11 of 2020
and
Crl.M.P.No.7641 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :05.06.2023

Pronounced on :20.06.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.11 of 2020
and
Crl.M.P.No.7641 of 2023

R.Mani .. Petitioner/Accused

/versus/

P.S.Deivaraj .. Respondent/Complainant

Prayer: Criminal Revision Case has been filed under Section 397 & 401 of Cr.P.C., to call for the records pertaining to the judgment dated 04.11.2017 made in C.A.No.30/2017 on the file of the Principal Sessions Judge of Namakkal reversing the judgment dated 30.11.2010 made in S.T.C.No.707 of 2010 on the file of the Judicial Magistrate Court No.1, Namakkal and set aside the same.

For Petitioner :Mr.A.Padmanabhan

For Respondent :Mr.M.Vignesh



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ORDER

The Revision Petition is filed by the accused in the private complaint filed against him for issuing a cheque for Rs.2,00,000/-, without arranging with his bank to honour the same. The trial Court acquitted him. Being aggrieved, the complainant preferred appeal before the High Court, same was transferred to the District Sessions Court. The Sessions Court allowed the appeal. Being aggrieved, the accused is before this Court.

2. Before advertizing into the main petition, it is necessary to first deal with the Criminal Miscellaneous Petition No.7641 of 2023 filed by the respondent P.S.Deivaraj, seeking leave of this Court to transpose him as the Criminal Revision Case. Also, to convert it into Criminal Appeal against the order of acquittal dated 30.11.2010 made in S.T.C.No.707 of 2010 on the file of the Judicial Magistrate Court No.1, Namakkal and treat his grounds of appeal in Crl.A.No.30 of 2007 laid before the Sessions Court as grounds of revision. In the light of the judgment rendered by the Hon'ble Full Bench of this Court in ***K.Rajalingam v. Suganthalakshmi*** vide order dated 28.05.2020 reported in /2020



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SCC Online Mad 1052/ and the clarifying order by the Hon'ble Division Bench dated 16.07.2021.

3. Now, reverting back to the facts, P.S.Deivaraj filed a private complaint before the Judicial Magistrate Court No.1, Namakkal stating that R.Mani borrowed a loan of Rs.2,00,000/ from him on 01.02.2006 with a promise to repay the said loan amount with interest at the rate of 18% within five months and gave a post-dated cheque bearing No.866295 dated 01.07.2006. When the said cheque was presented for collection, it was returned with an endorsement “funds insufficient”. When R.Mani was put to notice about the return of the cheque and to pay the cheque amount within 15 days, he did not pay the money. Hence, R.Mani is to be tried for the offence under Section 138 of the Negotiable Instruments Act, 1881.

4. The Judicial Magistrate No.1, Namakkal, took cognizance of the offence and the complaint taken on his file as S.T.C.No.707 of 2010. The complainant (P.S.Deivaraj) subjected himself for examination as PW-1 and



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marked 7 exhibits. The accused (R.Mani) subjected himself for examination as DW1 and marked 5 exhibits.

5. The trial Court dismissed the complaint and acquitted the accused vide order dated 30.11.2010. Being aggrieved, the complainant preferred an appeal before the High Court along with a petition to grant leave to prefer an appeal against the order of acquittal. This Court granted leave and took the appeal on file as C.A.No.400 of 2011, by admitting the appeal on 10.04.2012.

6. At this point of time, one of the learned Single Judge of this Court opined that under the Code of Criminal Procedure, appeal filed against the order of acquittal in a private complaint, a complicated question of law is involved regarding the jurisdictional Court for the victims, who lost the complaint before the trial Court. The doubt whether the victim to approach the High Court obtaining leave under Section 378(4) of Cr.P.C., or got a right of appeal as provided in proviso to Section 372 of Cr.P.C. There are conflicting judgments of this Court. One judgment holding that the victim complainant has got no right to file an



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appeal under proviso to Section 372 of Cr.P.C., and to another judgment holding otherwise by declaring the remedy open to the victim, private complainant is to resort Section 378(4) of Cr.P.C., by preferring appeal on getting leave of the Court. Hence, the said learned Judge framed the following questions for a decision by a Larger Bench.

“(1)Whether the 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 the 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?



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(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 Vs. Venkatachalapathy, reported in MANU/TN/1313/2014: 2015(1) MWN (cr)DCC 26 (Mad.) reflects correct exposition of law or the same requires to be overruled?"

7. The Hon'ble Chief Justice constituted a Bench consisting of three Judges to answer the reference, the consequence arising out of the same. The Hon'ble Full Bench of this Court in ***G.Ganapathy v. N.Senthilvel*** reported in ***[(2016) 4 CTC 119]*** held that the appeal by the victim in a private complaint against the order of acquittal dismissed by the Judicial Magistrate Court ought to be filed before the Sessions Court under proviso to Section 372 of Cr.P.C and not before the High Court under Section 378 (4) of Cr.P.C.



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8. The Hon'ble Full Bench answered the reference as below:-

(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 Satyapal Singh.

(4)The term “victim”has been correctly interpreted by the Full Bench of the Delhi High Court in Rampha 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 is 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



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under Section 372 of Cr.P.C.

9. For easy reference, the Full Bench Judgement herein after be referred as earlier judgment or In Re ***S.Ganapathy***.

10. In view of this judgment, the Criminal Appeal No.400 of 2011 which was pending before this Court, after obtaining leave under Section 378 (4) of Cr.P.C., was transferred to the District Court, enabling the complainant/victim to pursue the appeal before the District Court. The said appeal was renumbered as C.A.No.30 of 2017. After hearing both side, the said appeal was allowed on 04.11.2019.

11. The law regarding the forum for the victim, who lost his case before the Court of first instance, again came up for consideration, when another learned Single Judge of this Court doubted the decision rendered by the Hon'ble Full Bench. In Re ***S.Ganapathy***. Hence, the matter was again referred to the Hon'ble Full Bench to look into the issue. The Full Bench in ***Rajalingam v.***



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Suganthalakshmi reported in ***[2020 SCC Online Mad 1052]*** pointing the judgment rendered by the Hon'ble Supreme Court in ***Damodar S.Prabhu v. Sayed Babala H [(2010)5 CC 663]***, which was omitted to consider by the earlier Full Bench, concluded that the decision rendered in ***S.Ganapathy*** case is per-incuriam, since it has been decided without reference to the binding authority in ***Damodar S.Prabhu*** case and no longer a good law by virtue of the judgment of the Hon'ble Supreme Court in ***Mallikarjun Kodagali (d) through legal representatives v. State of Kanataka [(2019) 2 SCC 752]***.

12. The Hon'ble Full Bench issued the following directions in paragraph No.28 of its judgment, which reads as below:-

“28.Accordingly, we answer the reference as under.

1. 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. The first question in the order of reference is answered accordingly.

2. By virtue of the answer given to the first



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question, the questions 2 to 6 raised in the order of reference becomes more academic and therefore, there is no need to undertake the exercise of answering those questions.

3. The decision rendered in S.Ganapathi case is declared as a judgement per-incuriam, since it has been decided without reference to the binding authority in Damodar S.Prabhu and Subash Chand. That apart it is no longer a good law by virtue of the judgement of the Hon'ble Supreme Court in Mallikarjun Kodagali. We answer the 7th question in the order of reference accordingly and proceed to issue the following directions :-

(a) An appeal which was pending before this Court and which was remanded to the Sessions Court pursuant to S.Ganapathi (Supra) and the same is pending, the same should be transferred back to the file of the High Court and should be considered to be pending before the High Court. The same effect will be given even for cases where the original appeal was filed before the Sessions Court and is pending.

(b) In cases where the Sessions Court has confirmed the order of acquittal passed by the Magistrate and a revision petition has been filed before this Court by the complainant and the



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same is pending, the order of Sessions Court must be disregarded and the revision petition filed before this Court by the complainant must be treated as an Appeal by virtue of Section 401(5) of Cr.PC. Those revision petitions must be renumbered as Criminal Appeals by the Registry.

(c) In cases, where, the order of acquittal has been confirmed by the Sessions Court and it has not become final or it has not been acted upon by the parties and the complainant wants to challenge the same, he shall file a Criminal Appeal before this Court against the order passed by the Magistrate, disregarding the order passed by the Sessions Court, within the limitation period prescribed for filing Appeal and which shall be calculated from the date on which the Sessions Court order was made ready. In such cases, the complainant has to seek for a Special leave under Section 378 (5) of Cr.PC.

(d) In cases, where, the Sessions Court has reversed the order of acquittal passed by the Magistrate and the same has been challenged by the accused before this Court by way of revision petition and the same is pending, the same should be treated as an Appeal pending before this Court against the order of Acquittal passed



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by the Magistrate, by **disregarding** the order passed by the Sessions Court. In all those cases, the complainant must file a **transpose** petition and the Registry must convert the same as Criminal Appeals by showing the complainant as the Appellant and the accused as the respondent. The Memorandum of grounds of Criminal Appeal filed before the Sessions Court will be considered as the memorandum of grounds of appeal in the renumbered Criminal Appeal.

(e) In cases, where the Sessions Court has reversed the order of acquittal passed by the Magistrate and convicted the accused and this order has not become final or the same has not been acted upon, the accused person has to necessarily challenge the said order by filing a criminal revision petition before this Court by quoting this Full Bench judgement. After notice is served on the complainant and he enters appearance, the same should be treated as an Appeal pending before this Court against the order of Acquittal passed by the Magistrate, by disregarding the order passed by the Sessions Court. In all those cases, the complainant must file a transpose petition and the Registry must convert the revision as Criminal Appeal by showing the complainant as the Appellant and



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the accused as the respondent. The Memorandum of grounds of Criminal Appeal filed before the Sessions Court will be considered as the memorandum of grounds of appeal in the renumbered Criminal Appeal.

(f) In all those cases, where, either after remand or by means of filing, an Appeal has been finally decided by the Sessions Court and the same has not been challenged or it has been acted upon, the order passed by the Sessions Court will be final inter-partes and it cannot be re-opened by virtue of this judgement.

(g) In all those cases, where, the order of the Sessions Court was put to challenge before this Court, either by the complainant or by the accused, as the case may be, and final orders have been passed by this Court and it has become final inter-partes or has been acted upon, it cannot be re-opened by virtue of this judgement”.

13. After pronouncing this judgment on 28.05.2022, the Hon'ble Full Bench sat again to clarify para No.47(19)(2) of the judgment, pursuant to the note circulated by the Hon'ble Mr. Justice P.N.Prakash, vide order dated 16.07.2021,



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the Hon'ble Full Bench clarified para No.47(19)(2) as below:-

“We Therefore reiterate and clarify that as against the judgment of the Sessions Court reversing the judgment of acquittal passed by Magistrate, the complainant has been provided with the right of appeal under Section 378 of Cr.P.C., before the High Court. The Registry must number such petitions only as an appeal and not as a revision petition. If the Registry has until now numbered such petition as revision petition, it must be immediately renumbered as Criminal Appeals.”

14. For easy reference, paragraph No.47(19)(2) for which the clarification sought is extracted below:-

Sl. No.	Magistrate's Court (trial Court)	Court of Session	High Court	Supreme Court
1.	Conviction	Appeal under Section 374(3)(a) Cr.P.C., against the conviction-In such an appeal, the conviction by the Magistrate's Court can either be confirmed or reversed (i.e. the accused is acquitted) Appeal under Section 372 Cr.P.C seeking enhancement of sentence-In such an appeal, the	Revision under Sections 397 r/w 401 of Cr.P.C, against confirmation of conviction or <u>acquittal by the Court of Sessions.</u>	SLP under Article 136 of Col.against the order passed by the High Court.



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Sl. No.	Magistrate's Court (trial Court)	Court of Session	High Court	Supreme Court
		sentence.- In such an appeal, the sentence by the Magistrate's Court could be enhanced or the appeal dismissed.		

15. Criminal Miscellaneous Petition mentioned above is the consequence of the above said decision with a prayer to transpose himself as appellant and treat the revision case as appeal.

16. While considering the Miscellaneous Petition filed by the complainant in this case to get himself transpose in the revision petition filed by the accused against the order of conviction by the Sessions Court, reversing the order acquittal by the trial Court, this Court went through the background legal history of the application and found the above facts which has been culled out for easy reference. The reading of the direction found in paragraph No.28(3)(d) gives an impression that,

(a) the order passed by the Sessions Court convicting the accused by reversing the order of acquittal passed by the



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Magistrate has to be disregarded.

(b)The complainant must file a transpose petition.

(c)The Registry must convert the same as Criminal Appeal by showing the complainant as the appellant and the accused as the respondent.

(d)The Memorandum of grounds of Criminal Appeal filed before the Sessions Court will be considered as the Memorandum of grounds of appeal in the renumbered Criminal Appeal.

17. In the case in hand, pursuant to the direction passed by the Hon'ble Full Bench of this Court in S.Ganapathi case, the Sessions Court as the Court of appeal decided the appeal filed by the complainant/victim under Section 372 of Cr.P.C, the decision by the Sessions Court is dated 04.11.2017. Against the said judgment of conviction reversing the order of acquittal, the accused, being aggrieved, has filed the Revision Petition and the same is taken on file on 19.12.2019 in Crl.R.C.No.11 of 2019. Thereafter, another Full Bench of this Court has issued the direction mentioned in para 28 of the judgment on 28.05.2020. As per the direction mentioned in paragraph No.28(3)(d), the order of the Sessions Judge passed in Crl.A.No.30 of 2017 dated 04.11.2019 has to be disregarded.



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18. Can the higher Court disregard the judgment of the immediate lower Court which had jurisdiction to hear the appeal as on the date of its disposal and specifically the said jurisdiction been conferred by a judicial pronouncement consisting of three Hon'ble Judges, even if the said judgment is later held to be per-incuriam. With reference to the facts of the case in hand, can the judgment of the Sessions Judge in Crl.A.No.30 of 2017 be disregarded?. For this query, this Court on search, finds answer in Section 461 of Cr.P.C., which enumerates circumstances under which the proceedings of the Court get vitiated for its irregularity.

19. The Section 461 of Cr.P.C. throws light, that if any Magistrate, not being empowered by law in this behalf, does any of the following things, namely-

- (a) attaches and sells property under Section 83;
- (b) issues a search-warrant for a document, parcel or other thing, in the custody of a postal or telegraph authority;
- (c) demands security to keep the peace;
- (d) demands security for good behaviour;
- (e) discharges a person lawfully bound to be of good behaviour;
- (f) cancels a bond to keep the peace;



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- (g)makes an order for maintenance;
- (h)makes an order under Section 133 as to a local nuisance;
- (i)prohibits, under Section 143, the repetition or continuation of public nuisance;
- (j)makes an order under Part C or part D of Chapter X;
- (k)takes cognizance of an offence under clause (c)of sub-section (1) of section 190;
- (l)tries an offender;
- (m)tries an offender summarily;
- (n)passes a sentence, under Section 325, on proceedings recorded by another Magistrate.
- (o)decides an appeal.

His proceedings shall be avoided.

20. No where in the Code, the higher Courts are empowered to disregard the order passed by the Courts below for want of jurisdiction by later declaration of law. Any order passed by the Courts below ought to be tested judicially in an appeal or revision but, cannot simply be disregarded or brushed aside. When the Code does not confer such power, the order of the Principal Sessions Judge, Namakkal in Crl.A.No.30 of 2017, dated 04.11.2019 based on the jurisdiction conferred on him and clarified by the Hon'ble Full Bench of this Court which was law binding on him cannot be disregarded for the reason, the subsequent Full



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Bench had declared the earlier judgment as per-incuriam. The decision taken by the competent Court based on the law prevailing at the time of taking decision should always be protected and if at all any interference is required, it can be only by the higher Court exercising its supervisory power conferred under the Constitution or the appellate power or revisional power or the inherent power conferred under the Code by testing the reasoning in the judgment. At no circumstances, the lower Courts order, which had been vested with jurisdiction on the date of its decision, can be disregarded by the higher Court.

21. Insofar as, the term 'transpose', in common parlance, means "change the place". The said procedure of transposing the position is common in civil proceedings where a plaintiff or a defendant may change his position with leave of the Court. As far as Criminal cases are concerned, there are two sides. One the victim and another the perpetrator of the crime. In general, the victim is called as "complainant" and perpetrator of the crime is called as "accused". Criminal law can be set in motion through a complaint by the individual directly to the Court wherever it is permitted or to the law enforcing agency which is



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empowered and authorised to investigate. Since the offences though against the individual, in most of the offences, it is against the State. Hence, offences are broadly classified into cognizable and non-cognizable. Criminal case, which is first tried by the trial Courts by Magistrate or in Sessions Judge, gets escalated to the higher Court either as an appeal or a revision as the case may be. At no stage of criminal proceedings, there can be transpose of parties.

22. Code of Criminal Procedure permits the change is position, in case during the trial, when the accomplice granted pardon under Section 306 of Cr.P.C., and treat as a witness or under Section 319 of Cr.P.C, any person not being an accused be added as an accused. The expression 'any person' in Section 319 of Cr.P.C., includes a person who is shown as witness for prosecution also, if it appears from evidence, he has committed offence. These are possibilities contemplated under the Code of Criminal Procedure, where a witness become an accused or an accused became a witness. There is no other provision under the Code to transpose the respondent as appellant or the petitioner or vice versa.



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23. Being aggrieved by the conviction rendered by the Sessions Court, necessarily, the complainant ought to be the respondent and he cannot get transpose as appellant in the grounds of revision filed by the accused nor the High Court can take the grounds of appeal filed before Sessions Court which has been decided by a Judge who had power and jurisdiction to decide. So, the direction found in the judgment of the Hon'ble Full Bench in paragraph No.28(3)(d), compelling the complainant to file a transpose petition by showing him as the appellant and the accused as the respondent is an unwanted exercise. If the revision petition filed by the aggrieved accused is converted into criminal appeal, the object gets satisfied and will go in tune with the Code of Procedure as declared by the Full Bench.

24. The reason to treat the criminal revision petition as appeal is obvious. It is needless to explain in detail. It will provide a larger canvas for the aggrieved to paint his grounds. By converting the revision petition filed by the aggrieved accused as criminal appeal, it will satisfy his requirements without much ado. The memorandum of grounds of revision filed by the accused if treated as grounds of



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appeal with liberty to the accused to file additional grounds if necessary, the right of the respondent/accused gets protected.

25. In view of this Court, even a formal conversion not required, the inherent power conferred to the High Court under Section 482 Cr.P.C and supervisory power of the High Court conferred under Article 227 of the Constitution if exercised, in the case of this nature, the complex and time consuming procedure can be easily avoided. To buttress the view, it is profitable to refer a batch judgment of the Hon'ble Supreme Court in Nawab Shaqafathali Khan and others v. Nawab Imdad Jah Bahardur and others reported in [(2009)5 SCC 162], wherein at paragraph No.48, the Hon'ble Supreme Court has held:-

“48.if the High Court had the jurisdiction to entertain either an appeal or a revision application or a writ petition under Articles 226 and 227 of the Constitution of India, in a given case it, subject to fulfilment of other conditions, could even convert a revision application or a writ petition into an appeal or vice versa in exercise of its inherent power. Indisputably, however, for the said purpose, an appropriate case for exercise of such jurisdiction must be made out.”

26. Though the above judgment is in respect of the revisional power of the High Court under Section 115 of the Code of Civil Procedure vis-a-vis



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superior power and the inherent power conferred to the High Court. The reason and logic squarely applies to Criminal Procedure Code also. That apart, under Code of Criminal Procedure, while exercising the revisional jurisdiction, the High Court to prevent miscarriage of justice has power to convert revision as appeal, the revisional power can be exercised in cases of error in correctness, legality or propriety of any finding of the Court below.

27. The order of the Sessions Judge which is impugned in the revision case was delivered before the Full Bench judgment dated 28.05.2020 passed in ***K.Rajalingam v. R.Suganthalakshmi*** declaring the earlier Full Bench judgment rendered in ***S.Ganapathy v. N.Senthilvel [2016(4)CTC 119]*** as 'per-incuriam'. It is a settled principle of law that the action of the Court should noway prejudice the parties. '*Actus Curiae neminem gravabit*' is a cordial principle of law scrupulously followed by the Courts at all level.

28. In the instant case, the aggrieved complainant initially came to the High Court and filed his appeal. He has adopted the procedure as contemplated under Section 378(4) of Cr.P.C. When the Hon'ble three Judges Bench of this



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Court held that the appeal should be preferred before the Sessions Judge, the Registry on its own transferred the appeal to Sessions Court, Namakkal and the same was taken on file as Crl.A.No.30 of 2017. The appeal was heard and decided when the Hon'ble three Judges Bench judgment in *S.Ganapathy case* holding the field.

29. The subsequent Full Bench, in the light of the Hon'ble Supreme Court judgement, had declared that an appeal against acquittal by the trial Court should be filed by the victim directly in High Court. Judicial discipline mandates a Single Judge to follow the dictum laid by a Bench of Higher strength. There cannot be no second opinion on this principle. However, the appeal, which was already heard by the Sessions Court, pursuant to the earlier Bench judgment and prior to the declaration of law by the subsequent Full Bench can by no means be disregarded or ignored as non est in law. The judgment duly rendered cannot be said as non est in law, unless it suffers incurable defect or irregularities mentioned under the Code of Criminal Procedure.



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30. It is also imminent to record at this juncture, that the order of the Hon'ble Supreme Court in *Vikram Mankal and others v. S.Srinivasan, Spl.L.P.(Crl.)No.11021 of 2019 dated 09.11.2021*, the Special Leave Petition preferred against the order of this Court dismissing the revision petition preferred by the accused by confirming the judgment of the conviction passed by the Sessions Court in the appeal by reversing the order of acquittal passed by the trial Court. In this case, the Hon'ble Supreme Court, after referring both the Full Bench judgments of this Court viz., In Re S.Ganapathy and In Re K.Rajalingam, on consent of the parties, the order of the Sessions Judge passed in the appeal preferred by the complainant and the order of the High Court passed in the Criminal Revision Case preferred by the accused were quashed and set aside. The complainant was permitted to prefer appeal before the High Court against the order of acquittal passed by the learned Magistrate and for the High Court to consider the said appeal on merits and in accordance with law. The order came to be passed as consent order and in exercise of plenary power conferred in Hon'ble Supreme Court.



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31. So, in view of this Court, the petition for transpose is not necessary though it has been filed in terms of the judgement of the Hon'ble Full Bench. It is suffice to exercise the inherent power and consider the grounds raised in the revision filed by the accused as ground of appeal.

32. This Court holds that since it was passed by the competent authority in accordance with law, as declared by the Hon'ble Full Bench of this Court, the Sessions Court judgment cannot be disregarded. It should either be set aside or confirmed. Transposing the parties is not in tune with Code of the Criminal Procedure. *Accordingly, Crl.M.P.No.7641 of 2023 is disposed with the above observation.*

33. The grounds of revision filed by the accused before this Court is treated as grounds of appeal and additional grounds were permitted to be placed before the Court during the course of argument. The learned counsels on either side present and put forth their arguments on law and on facts.



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34. Averments in the complaint and the defence of the accused:-

The crux of the complaint is that, the complainant and the accused known to each other for the past 15 years and they used to have money transactions. On 01.02.2006, for his urgent business expenses, the accused borrowed a sum of Rs.2,00,000/- from the complainant with a promise to repay the loan amount within 5 months with 18% interest. A post-dated cheque bearing Cheque No.866295, dated 01.07.2006 for the said amount was issued. On the date of the cheque, it was presented for collection. The cheque returned with a memo stating 'insufficient fund'. Hence, after causing statutory notice, the complaint was filed.

35. In the trial, the complainant mounted the witness box and subjected himself for examination as PW-1. The cheque, remittance challan, return memo, intimation memo, statutory notice, acknowledgement card, reply of the accused were marked as Exs.P1 to P7 respectively.

36. To disprove the case of the complainant, the accused got himself



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examined as DW-1 and marked his reply, copy of the representation to the Chief Minister Cell, Police officials and Human Rights Commission, acknowledgements received for the addressee of the Chief Minister Cell, Police officials and the Human Rights Commission, complaint to the bank officials with acknowledgement card were marked as Exs.D1 to D5.

37. Finding of the trial Court:-

The trial Court after considering the evidence placed before it by the complainant and the evidence placed by the accused, dismissed the complaint recording the admission of the complainant that he is not able to recollect the income tax he paid. He has not disclosed the loan of Rs.2,00,000/- advanced to the accused in his Income Tax Return and his admission that he has obtained promissory note while advancing the loan but not produced. The trial Court dismissed the complaint précised for the complainant failure to establish the foundational fact of passing of consideration and issuance of cheque for discharge of the legally enforceable debt.



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38. Grounds raised in the appeal by the complainant before the Sessions

Court:-

In the appeal, the complainant canvassed that the trial Court failed to note that the execution of the cheque not been denied by the accused and the rebuttal burden of the presumption arising under Section 118 and 139 of the Negotiable Instruments Act, 1881 not been discharged. Without testing the veracity of the defence, the trial Court had concluded that the accused holding the cheque Ex.P1 was not supported by consideration. On relying upon the over ruled judgement the trial Court erroneously dismissed the complaint.

39. The *ipse dixit* explanation of the accused ought not to have been considered by the trial Court and it ought to have been ignored. The dictum of the higher Courts regarding Sections 118 and 139 of the Negotiable Instruments Act, 1881, not been followed by the trial Court.

40. Finding of the Sessions Court:-

The lower appellate Court convinced by the above said submission made by



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the appellant/complainant allowed the appeal by setting aside the order of acquittal passed by the trial Court and sentenced the accused to undergo 6 months SI and to pay 20% of the compensation on the cheque amount and also to pay a fine of Rs.20% of the compensation amount in default, one month SI.

41. Plea of the Counsel representing the accused before this Court:-

The learned counsel appearing for the accused submitted that the blank cheque was given to a finance company in connection with hire purchase of a vehicle (Rig) bearing Reg.No.TCM 6669. The said finance companies by name 'Subalakshmi' and 'Yogalakshmi' run by its Partners Ramasamy, Mani @ K.K.Palaniappan and Kuppusamy. Since there was default in payment of instalments, those financiers with the help of police took him from his house at wee hours on 21.09.2005 with the help of police and he was confined in the police station till 01.00 p.m. In the presence of the police, the financiers forced to transfer the property held by him and his family members. When he refused, he was taken to a secluded place. The financiers and the police obtained his sign in six blank cheques. He was forced him to give an undertaking that he will



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surrender the vehicle and get back the cheques. In this connection, he gave a complaint to the Chief Minister Cell, police officials and Human Rights Commission. Copy of it is marked as Exs.D2. He deny the issuance of the cheques for discharging a liability. In his reply notice, he had denied his signature in the cheque. To substantiated his defence, the accused had marked the copies of the complaint sent soonafter the alleged forcible extortion of signed blank cheques.

42. Heard the learned counsel appearing for the accused and the learned counsel appearing for the complainant and perused the records.

43. The complainant P.S. Deivaraj in his cross examination had admitted that, he is a financier and also doing real estate business. He is an income tax assessee and he pay tax disclosing his income. However, he is not able to recollect his annual income and tax paid. He is not sure whether he had disclosed the loan transaction of Rs.2,00,000/- with the accused. He admits that as a financier he used to advance money after getting pro-note. According to his testimony, the transaction with the accused is concerned, the accused borrowed



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money on promise to repay the loan amount with 18% interest within 5 months, but had paid interest only for two months and stopped paying the interest. He admits that he has not stated in his complaint or his statutory notice about execution of pro-note or promise to repay the money with interest.

44. In the light of the above admission, if the evidence of the accused, who was examined as DW-1 is scrutinised, we find he had reiterated that the cheque was obtained from him under force with the help of the police and he has lodged the complaint to the police, Chief Minister Cell and Human Rights Commission about the crime of extortion. He has specifically admitted that he had money transaction with the finance company by name 'Subalakshmi' and 'Yogalakshmi' and he owe the money due and payable under the Hire Purchase Agreement.

45. When the complainant was cross examined about the two finance companies, he had denied knowledge about the existence of those two finances company till he received the reply notice from the accused. The complainant has



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also denied about knowledge regarding the complaints made by the accused before the police, Chief Minister Cell and Human Rights Commission.

46. Point for consideration is, having admitted the signature found in the cheque marked as Ex.P1? whether the accused had discharged his onus of rebutting the presumption.

47. The case of the complainant not accepted by the trial Court, but the decision of the trial Court been reversed by the Sessions Judge accepting the case of the complainant that he advanced Rs.2,00,000/- to the accused and on presentation of the cheque given to discharge the loan, the same was returned for want of fund.

48. The foundational fact is that Ex.P1-cheque bearing Reg.No.866295, dated 01.07.2006 drawn in favour of the complainant P.S.Deivaraj signed by R.Mani, the accused, though denied in the reply notice, but admitted during trial by DW-1 marking Ex.D1 to Ex.D5. Though the complainant had not produced his



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income tax details and failed to produce the pro-note, which he admits that he received from the accused, this can not be the ground to disbelieve his case, when other evidence substantiate his case.

49. The accused claims that his signed cheque was given in blank to some third parties under threat in connection with the hire purchase agreement with them, to probablise the defence he had not produced proof for the said hire purchase transaction. Except the copy of the complaint to the police, Chief Minister Cell and Human Rights Commission, he has not placed any other document to show that he had purchased a vehicle under hire purchase agreement from 'Subalakshmi' and 'Yogalakshmi' finance. He also failed to produce document to show that those two finance companies have any connection with the complainant.

50. The complaint purport to have been given to the police, Chief Minister Cell, Human Rights Commission are all dated 25.07.2006 or thereafter. However, the acknowledgement card indicates that they were delivered to the addressee long thereafter, the postal seal on the acknowledgement card also



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indicates that they were not posted on the date of the complaint. In his complaints to the authorities, the accused had alleged, he was forcibly taken from his house by the police and the financiers. Six Indian Overseas Bank Cheques signed in blank were obtained from him by force. He had not mentioned the cheque numbers in these complaint. These complaints dated 25.07.2006 apparently lodged after presentation of the cheque on 01.07.2007. Therefore, it is very obvious from the defence exhibits that the cheque marked as Ex.P1 ought to have been with the complainant on or before 01.07.2006. The complainant averment that it was a post dated cheque given to him on 01.02.2007 when the accused borrowed Rs.2 lakhs from him, thus, gets probalised. Whereas, the complaints to authorities by the accused were sent much after the presentation of the cheque and it being bounced for want of funds. The defence documents, which are subsequent to the return of the cheque and after 25 days from the date of the cheque, without any details about the cheque render the defence taken by the accused improbable.

51. The accused has failed to *prima facie* show that he had transaction with the finance company by name 'Subalakshmi' 'Yogalakshmi'. He had failed to



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prove that the signature in the cheque was obtained under threat and force. The self serving documents Ex.D1 to Ex.D5 does not probabalise the case of the accused regarding the Hire Purchase loan with some other third party and in connection with the said dealing the subject cheque was obtained with the help of police.

52. This Court take also note of the fact that the accused has alleged in the reply notice that the signature found in the cheque are forged and fabricated, but later sent the complaint to police authorities that he was forced to sign in the blank cheque under threat. For neither of his defence, he has let evidence to probabalise. A belated complaint much after issuance of the cheque alleging that it was obtained under force cannot be taken as an evidence probabalising the case of the accused.

53. For the said reasons, the Criminal Revision Case, which is taken as an appeal exercising inherent power, after giving due consideration to the points raised by the learned counsels for the accused and the complainant, holds that the complainant has proved his case against the accused. The offence under Section



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138 of the Negotiable Instruments Act, 1881 is made out.

54. Hence, *this Criminal Revision Case heard as Appeal is dismissed as devoid of merit.* In the result, the judgment of the Lower Appellate Court viz., the Principal Sessions Judge of Namakkal in C.A.No.30 of 2017, dated 04.11.2019 is confirmed. The period of sentence already undergone by the accused if any shall be set off. The accused be secured and remand to judicial custody to undergo the remaining period of sentence.

20.06.2023

Index:yes/no
speaking order/non speaking order
ari

To:

- 1.The Judicial Magistrate Court No.1, Namakkal.
- 2.The Principal Sessions Court, Namakkal.



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DR.G.JAYACHANDRAN,J.

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Delivery Order made in
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20.06.2023