

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2018

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

Crl.A.No.864 of 2008

C.Gopalakrishnan

.. Appellant/Complainant

Vs.

T.Ganeshamoorthy

.. Respondent/Accused

Criminal Appeal filed under Section 378 Cr.P.C. to set aside the Judgment dated 07.11.2008 made in C.C.No.202 of 2007 on the file of the Judicial Magistrate No.I, Erode.

For Appellant : M/s.V.Rajamohan

For Respondent : No Appearance

J U D G M E N T

This Criminal Appeal is filed by the complainant challenging the order of acquittal of the accused for the offence under Section 138 of Negotiable Instruments Act.

2. The appellant herein as a complainant preferred a private complaint before the Trial Court stating that the respondent/accused had borrowed Rs.1,28,000/- from him and when the said cheque was presented for collection through U.T.I.Bank, Erode Branch on 04.07.2006, the same was returned as "insufficient funds". The appellant issued statutory notice to the respondent on 24.01.2007 to discharge his liability, but he did not repay the amount and has committed the offence punishable under section 138 of the Negotiable Instruments Act.

3. When the matter was taken up for hearing on 07.11.2008 by the trial Court, the appellant called absent on that day and hence, the respondent-accused was acquitted and the order of the Trial Court, reads as follows:

" The case was called for hearing today to which it has been posted the complainant not being present, no representation for the accused

absent. NBW pending. No steps have taken to execute the NBW. No steps have taken by the complainant to recause the NBW. Complainant called absent, CW1 examined, accused is acquitted U/s.256 Cr.P.C."

4. The complainant as the appellant has filed the present appeal before this Court. Meanwhile, Section 372 of Cr.P.C. was amended and proviso to Section 372 initiated with effect from 31.12.2009 which reads as under :

" No appeal shall lie from any judgement or order of a Criminal Court except as provided for by this Code or by any law for the time being in force".

Therefore, this appeal has to be preferred before the said Court only and not before this Court. The issue is also now attained clarity following the conclusions arrived by the full Bench of this Court. This Court has referred the issue to a Full bench and the Full Bench of this Court by Judgment dated 05.04.2016 in S.Ganapathy vs. Senthil Vel reported in 2016 (4) CTC 119, has held as follows:

i) victim of crime who lodged a private complaint seeking action against the accused has a statutory right of appeal under Section 372 of Cr.P.C.

ii) the full Bench also held that even if the victim is not a complainant, he/she has a right to appeal under the proviso to Section 372 Cr.P.C., but only after seeking leave of the Court. Likewise the Full Bench concluded that a complainant in a private complaint who is not a victim, can file an appeal challenging the acquittal of the accused, after obtaining necessary leave to appeal under Section 378(4) Cr.P.C. The Full Court also concluded that a victim, even though is a complainant, can avail all the rights and privileges of the victim and he or she does not cease to be a victim only because he or she being a complainant himself.

This Court by order dated 09.01.2017 had disposed of the CrI.A.Nos.43 of 2010 & etc., batch, filed by various complainants and directed the Registry to transfer the aforesaid criminal appeals and other connected petitions to the respective Principal Sessions Court, for final disposal.

5. Following the above Judgment, this Court is inclined to pass the following orders:

i) This Criminal Revision stands disposed directing the Registry to transfer the case to the respective Principal Sessions Court forthwith.

ii) The learned Principal Sessions Judge, Erode is directed to pass appropriate orders on merits and in accordance with law, after affording due opportunity of hearing to the appellant as well as any of the interested parties, as expeditiously as possible.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd

To

1.The Principal Sessions Judge,
Erode.

2.The Judicial Magistrate No.I,
Erode.

Copy TO

The Section Officer,
Crimnal Section,
High Court, Madras-104.

+1cc to Mr.N.Mohideen Baskar, Advocate, S.R.No.87762

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SSD(CO)
GN(06/02/2019)

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