

Petitioner Vs. Respondent

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Court : Chennai Madurai

Decided On : Jun-22-2016

Judge : The Honourable Dr Justice P. Devadass

Appeal No. : CrI.A.(MD)Nos. SR 14384 & 14387 of 2016

Appellant : Petitioner

Respondent : Respondent

Judgement :

1. Order on maintainability.

These appeals together with Special Leave Petitions have been preferred by the Public Prosecutor for the State as against order of acquittal passed by the learned Judicial Magistrate, Melur in C.C.Nos.82 and 83 of 2013 on 29.03.2016 under Section 256 Cr.P.C.

2. On the anvil of decision of a Full Bench of this Court in S.GANAPATHY V. N.SENTHILVEL [2016 (4) CTC 119], the Registry raised objection as to how these appeals against order of acquittal recorded by a Magistrate can be maintained in this Court without approaching the Sessions Court, Madurai.

3. The appellant in its written endorsement replied that as per Section 378(4) Cr.P.C. such Appeals against order of acquittal after obtaining Special Leave of this Court could be maintained in this Court.

4. In the circumstances, this matter was posted for hearing on the maintainability of the appeals in this Court.
5. The learned Public Prosecutor submitted that the Full Bench decision in GANAPATHY (supra) with reference to the proviso to Section 372 Cr.P.C., which has been newly added through the Amendment Act No.5 of 2009 to deal with the right of crime victims (see Section 2wa Cr.P.C.) to prefer an appeal as against order of acquittal. However, the right of the appellant to prefer appeal as against order of acquittal after obtaining the Special Leave of this Court under Section 378(4) Cr.P.C. has been kept intact and that has not been taken away by the said amendment Act No.5 of 2009.
6. The learned Public Prosecutor would cite SUBHASH CHAND V. STATE (DELHI ADMINISTRATION) [2013 (2) MWN (Crl) 302] and would submit that the Hon'ble Apex Court went deep into the matter in a complainant case and held that the complainant can file an appeal to the High Court as against the order of acquittal passed by a Magistrate, however, after obtaining Special Leave of the High Court under Section 378(4) Cr.P.C. Thus, the learned Public Prosecutor would submit that this Criminal Appeal is maintainable in this Court, however, after obtaining the Special Leave of this Court contemplated under Section 378(4) Cr.P.C.
7. I have anxiously considered the said submissions of the learned Public Prosecutor, perused the decision cited and the appeal papers presented.
8. After the amendment made to Section 378 Cr.P.C. through the Amendment Act No.25 of 2005, the amended Section 378 runs as under:
378. Appeal in case of acquittal.- (1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), -
- (a) The District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Sessions from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
- (b) the State Government may, in any case, direct the Public Prosecutor to present an Appeal to the High Court from an Original or Appellate Order of acquittal

passed by any Court other than a High Court [or an order of acquittal passed by the Court of Session in Revision.]

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an Appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No Appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon Complaint and the High Court, on an Application made to it by the Complainant in this behalf, grants special leave to Appeal from the order of acquittal, the Complainant may present such an Appeal to the High Court.

(5) No Application under sub-section (4) for the grant of special leave to Appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the Complainant is a Public Servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the Application under sub-section (4) for the grant of special leave to Appeal from an order of acquittal is refused, no Appeal from that Order of acquittal shall lie under sub-section (1) or under sub-section (2).

(emphasis supplied by the Court)

9. In both the cases, the District Collector, Madurai District, Madurai, alleging contravention of the provisions under Sections 4 (1-A) of the Mines and Minerals (Development and Regulation) Act, 1957, (in short, MMDR Act), filed complaints under Section 200 Cr.P.C. for punishing the accused under Section 21(1) of the said Act. Evidence was recorded.

10. As stated, at the outset the learned Judicial Magistrate, Melur passed orders of acquittal under Section 256 Cr.P.C. The said offence under the MMDR Act has been made cognizable under Section 21(6) of the Act. As per Section 21(6) of the Act the offence under Section 21 has been made 'cognizable'. However, as per Section 22 of the said Act, to prosecute the offender, a written complaint has to be filed by the authorised person of the Government.

11. So, it is a complaint case. The maximum punishment for the said violation is up to 2 years or with fine up to Rs.25,000/- or with both. Though under the MMDR Act offences are made cognizable nowhere in the Act it is stated whether they are bailable or non-bailable. In such circumstances, as regards offences under laws other than the Indian Penal Code, to classify them, as bailable or non-bailable, Clause II of classification of offences under other laws appended to 1st Schedule to the Code of Criminal Procedure, 1973 has to be referred to. As per that, if the offence is punishable with less than 3 years or with fine only it is bailable. Thus, the offence complained of in the present complaint cases is cognizable but bailable.

12. In SUBHASH CHAND (supra), the question whether an appeal as against the order of acquittal passed by a learned Magistrate in a complaint instituted by a local Health Authority for the violation of certain provisions of Prevention of Food and Adulteration Act, 1954 and the Rules framed thereunder has to be filed before the Sessions Court under Section 378(1)(a) Cr.P.C. or to the High Court under Section 378(4) Cr.P.C. came up for the consideration of the Hon'ble Apex Court. It is pertinent to note that it is a complaint case filed by a Public Servant for the alleged violations of certain provisions of an other law.

13. The Hon'ble Apex Court considered the amended Section 378 Cr.P.C. which we have already extracted. Noticing here the following observations made in the said judgment are relevant:

17. Sub-section (4) of Section 378 makes provision for Appeal against an order of acquittal passed in case instituted upon Complaint. It states that in such case if the Complainant makes an Application to the High Court and the High Court grants special leave to Appeal, the Complainant may present such an Appeal to the High Court. This subsection speaks of special leave as against sub-section (3) relating

to other Appeals which speaks of leave . Thus, Complainant s Appeal against an order of acquittal is a category by itself. The Complainant could be a private person or a Public Servant. This is evident from sub-section which refers to Application filed for special leave by the Complainant. ...

18. ... Under the PFA Act, cases are instituted on filing of a Complaint before the Court of Metropolitan Magistrate as specified in Section 20 of the PFA Act and offences under the PFA Act are both cognizable and non-cognizable. Thus, whether a case is instituted on a Complaint depends on the legal provisions relating to the offence involved therein. But once it is a case instituted on a Complaint and an order of acquittal is passed, whether the offence is bailable or non-bailable, cognizable or non-cognizable, the Complainant can file an Application under Section 378(4) for special leave to Appeal against it in the High Court. Section 378(4) places no restriction on the Complainant. So far as the State is concerned, as per Section 378(1)(b), it can in any case, that is even in a case instituted on a Complaint, direct the Public Prosecutor to file an Appeal to the High Court from an original or Appellate Order of acquittal passed by any Court other than High Court. But there is, as stated by us hereinabove, an important inbuilt and categorical restriction on the State s power. It cannot direct the Public Prosecutor to present an Appeal from an order of acquittal passed by a Magistrate in respect of a cognizable and non-cognizable offence. In such a case the District Magistrate may under Section 378(1)(a) direct the Public Prosecutor to file an Appeal to the Session Court. This appears to be the right approach and correct interpretation of Section 378 of the Code.

14. Ultimately, in paragraph 21, the Hon'ble Apex Court held as under:

21. In view of the above, we conclude that a Complainant can file an Application for special leave to Appeal against an order of acquittal of any kind only to the High Court. He cannot file such Appeal in the Sessions Court. In the instant case the Complaint alleging offences punishable under Section 16(1)(1-A) read with Section 7 of the PFA Act and the Rules is filed by Complainant Shri Jaiswal, Local Health Authority through Delhi Administration. The Appellant was acquitted by the Metropolitan Magistrate, Patiala House Courts, New Delhi. The Complainant can

challenge the order of acquittal by filing an Application for special leave to Appeal in the Delhi High Court and not in the Sessions Court. ...

15. As rightly submitted by the learned Public Prosecutor in GANAPATHY (supra) the Hon'ble Supreme Court's decision in SUBASH CHAND (supra) also has been referred to and in paragraph 31 with regard to a complaint case, the Full Bench has held that in view of the proviso to Section 372 Cr.P.C. victims of Crimes as defined in Section 2(wa) Cr.P.C. can also prefer an appeal as against the order of acquittal passed by a Magistrate to the Court to which an appeal ordinarily lies as against the order of conviction, that is to say, the Sessions Court. However, the complainant in a private complaint case to file an appeal as against the order of acquittal passed by a Magistrate can file appeal only after getting Special leave under Section 378(4) Cr.P.C. from the High Court.

16. Thus, in view of the foregoing, the Full Bench decision in GANAPATHY (supra) will not stand in the way of the Public Prosecutor to present these two appeals as against orders of acquittal passed by the learned Judicial Magistrate, Melur after obtaining the Special Leave of this Court under Section 378(4) Cr.P.C.

17. In view of the foregoing as these appeals are maintainable in this Court, after obtaining Special Leave under Sections 378(4) Cr.P.C., the Registry is directed to number the Special Leave Petitions as Crl.O.Ps. and post them before the Court on 26.07.2016.

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