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IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 24TH DAY OF FEBRUARY, 2025
BEFORE
THE HON'BLE MR JUSTICE S RACHAIAH
CRIMINAL REVISION PETITION NO. 851 OF 2016

BETWEEN:

THOMAS MANI S/O THOMAS,
AGED ABOUT 69 YEARS,
R/O BEGUR VILLAGE, MUTTUR POST
PERIYAPATNA TALUK
MYSORE DISTRICT - 571 107.

PRESENTLY R/O AMABALATHURUTHEL
MANICHIRA, POOMALA P.O.
SULTHAN BATHERY, WAYNAD DISTRICT
KERALA - 673 592.

...PETITIONER

(BY SRI. SYED AKBAR PASHA, ADVOCATE)

AND:

G. SHANKAR
S/O GIRIGOWDA
AGED ABOUT 59 YEARS
R/O ANECHOWKUR ROAD
PERIYAPATNA TOWN
MYSORE DISTRICT - 571 107.

...RESPONDENT

(BY SRI. SUYOG HERELE E, ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING TO SET ASIDE THE JUDGMENT PASSED BY THE VIII ADDITIONAL DISTRICT AND SESSIONS JUDGE AT MYSURU SITTING AT HUNSUR, IN CRL.A.NO.166/2013, DATED 04.05.2016 AND THE JUDGMENT PASSED BY THE CIVIL JUDGE AND JMFC, PERIYAPATNA IN C.C.NO.106/2007 DATED 16.05.2013 AND ETC.,

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 17.02.2025, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:





CORAM: HON'BLE MR JUSTICE S RACHAIAH

CAV ORDER

This revision petition is filed by the petitioner being aggrieved by the judgment and order dated 04.05.2016 passed in CrI.A.No.166/2013 on the file of VIII Addl. District and Sessions Judge, Mysuru sitting at Hunsuru wherein the Appellate Court dismissed the appeal as not maintainable against the acquittal order dated 16.05.2013 passed in C.C. No. 106/2007 by the Trial Court.

2. The appellate Court while dismissing the appeal as not maintainable relying on the judgment of this Court passed by the Co-ordinate Bench in CrI.P.No.6074/2014 held that the complainant under provisions of Section 142 of N.I. Act and victim under Section 2(wa) of Cr.P.C., are not one and the same. Therefore, held the said appeal was not maintainable.

3. In this context, it is relevant to refer Section 378 (1) and (4) which reads 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 Session 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 [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]

(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."

4. The aforesaid provisions would indicate that the appeal in case of acquittal sub section (1) and (2) deals with directions must be given to the public prosecutor to file an appeal against acquittal. Sub Section (3) deals with no appeal to the High Court under sub section (1) or sub section (2) shall be entertained except with the leave of the High Court. Sub section (4) deals with, if such an order of acquittal is passed in any case, instituted upon the complaint and the High Court on



an appeal made to it by the complainant in this behalf grants special leave to appeal order of acquittal, the complainant may present such appeal to the High Court.

5. The word, the complainant may present such appeal to the High Court would indicate that the complainant need not file an appeal against acquittal to the High Court directly where an appeal lies to the Sessions Court against order passed by the Trial Court or Magistrate.

6. Now, it is relevant to refer Section 2(wa) of Cr.P.C., which reads as under:

"2. Definitions.—*In this Code, unless the context otherwise requires,—*

[(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;]"

7. On reading of the aforesaid definition it makes it clear that the victim is a person who suffers loss or injury from the accused person.



8. In this context, it is also relevant to note Section 372 of Cr.P.C., which reads as under:

"372. No appeal to lie unless otherwise provided.—*No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force:*

[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]"

9. On reading of the aforesaid provisions, it makes it clear that the victim can file an appeal against the order of acquittal before the Appellate Court or Sessions Court. Nowhere in the above said provisions mentioned about a particular case. The complainant or the victim can file an appeal as against the order of acquittal passed by the Magistrate before the Court an appeal ordinarily lies against the order of conviction of such Court.



10. The above said definition would indicate that if any orders of conviction passed by the Magistrate Court, an appeal shall lie before the Sessions Court or Appellate Court. Similarly, in a case filed under Section 138 of N.I. Act, if conviction is passed, the appeal shall lie to the Sessions Court. Such being the fact, asking the complainant to file an appeal before this Court, in my considered view is not appropriate after enacting Section 372 of Cr.P.C. Thus, the order passed by the appellate Court in dismissing the appeal as not maintainable, cannot be sustained.

11. In the light of the observation made above, I proceed to pass the following:

:ORDER:

- i. The revision petition is allowed.
- ii. The judgment and order dated 04.05.2016 passed in Crl.A.No.166/2013 by the learned VIII Addl. District and Sessions Judge, Mysuru sitting at Hunsuru is set aside and the matter is remanded to the Appellate Court for fresh consideration.



- iii. The Trial Court is directed to issue notice to the respective parties and fix a date for their appearance either personally or through their respective counsels.
- iv. Having considered the time elapsed in approaching this Court and also considering the date of filing of the complaint, it is appropriate to request the Appellate Court dispose of the matter at the earliest not later than six months from the date of receipt of this order.

The Registry is directed to transmit the records to the Appellate Court forthwith for consideration.

**Sd/-
(S RACHAIAH)
JUDGE**