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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.09.2026

PRONOUNCED ON : 22.09.2026

CORAM

THE HONOURABLE MR.JUSTICE S.KARTHIKEYAN

Crl.A(MD)No.1066 of 2026

Kapildev ... Appellant/Defacto Complainant/
Injured Witness

Vs.

1.The State,
Represented by its,
The Inspector of Police,
Kadayam Police Station, Tenkasi District.
Crime No.158 of 2014. ... 1st Respondent/Complainant

2.Shankar
3.Suryakala
4.Ashok
5.Selvaraj
6.Veeman
7.Vasantha
8.Dharma
9.Bharath ... Respondents 2 to 9

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PRAYER : Criminal Appeal filed under Section 419 of BNSS, to call for the records of the Judgment in S.C.No.851 of 2016 dated 17.06.2026 passed by the learned Assistant Sessions Judge cum Chief Judicial Magistrate, Tenkasi and to set aside the same.

For Appellant : Mr.S.Vairamuthu

For Respondents : Mr.G.Ganesh Kumar (R1)
Government Advocate (Crl. Side)

JUDGMENT

This appeal is posted today under the caption “For Maintainability”.

2.The appellant/de facto complainant/victim has preferred the present appeal against the order of acquittal passed by the learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Tenkasi, in S.C.No.851 of 2016, dated 17.06.2026.

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3.The Registry has returned the papers with a direction to present the same before the appropriate forum. However, the said papers were re-presented by the appellant herein stating that, as per Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "the BNSS")/Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C."), the appeal would lie before this Court. Therefore, this case is posted before this Court for deciding the maintainability of the appeal.

4.The learned counsel for the appellant and the learned Government Advocate (Criminal Side), appearing for the first respondent, are heard.

5.According to the learned counsel for the appellant, as per proviso to Section 419 of the BNSS, the victim shall have the right to prefer an appeal against any order of acquittal passed by the Trial Court. Therefore, according to him, as per Section 378 of the Cr.P.C./Section 419 of the BNSS, the appeal would lie before this Court.

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6.Section 419 of the BNSS deals with “Appeal in case of acquittal”. Section 419 of the BNSS corresponds to Section 378 of the Cr.P.C. Section 419 of the BNSS, per se, does not provide for an appeal by the victim. Sub-section (1) of Section 419 provides for an appeal by the State. Sub-section (2) of Section 419 provides for an appeal where the investigation has been conducted by an agency empowered to investigate an offence under any Central Act other than the BNSS. Therefore, under sub-sections (1) and (2) of Section 419 of the BNSS, only the State Government or the Central Government can prefer an appeal against an order of acquittal.

7.Sub-section (4) of Section 419 deals with an order of acquittal passed in any case instituted upon a complaint. The present case was not instituted upon a complaint, but on a police report. Therefore, sub-section (4) does not provide any appellate remedy to the appellant herein.

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8.The learned counsel for the appellant relied upon the decision of the Hon'ble Apex Court in ***M/s. Celestium Financial v. A. Gnanasekaran & Others***, reported in ***2025 INSC 804***. The said decision arose out of a complaint case instituted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. In the said decision, the Hon'ble Apex Court discussed the right of the complainant vis a vis the victim to prefer an appeal. The said decision has no application to the case on hand, as the present case was instituted on a police report and not upon a complaint.

9.Further, Section 413 of the BNSS provides that no appeal shall lie from any judgment or order of a Criminal Court except as otherwise provided for by the BNSS or by any other law for the time being in force.

10.The proviso to Section 413 provides for an appeal by the victim in cases of acquittal. The proviso makes it clear that such an appeal shall lie to the Court to which an appeal *ordinarily* lies against an order of conviction of

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such Court. Therefore, for the purpose of determining the forum for an appeal against an order of acquittal preferred by the victim, the forum to which an appeal against an order of conviction would *ordinarily* lie has to be ascertained. Therefore, the relevant provision is not Section 419 of the BNSS, but Section 415 of the BNSS. Section 415 of the BNSS reads as follows:

> *"415. Appeals from convictions.—*
>
> *(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.*
>
> *(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.*
>
> *(3) Save as otherwise provided in sub-section (2), any person,—*
>
> *(a) convicted on a trial held by Magistrate of the first class, or of the second class; or*
>
> *(b) sentenced under section 364; or*
>
> *(c) in respect of whom an order has been made or a sentence has been passed under section 401 by any Magistrate,*

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may appeal to the Court of Session.

(4) When an appeal has been filed against a sentence passed under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023, the appeal shall be disposed of within a period of six months from the date of filing of such appeal."

As per the above provision, it is clear that sub-section (2) of Section 415 provides that where a person is convicted in a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, an appeal would lie to the High Court.

11.The offence under Section 307 of the I.P.C. is punishable with imprisonment for life. If the trial Court had convicted the accused and imposed a sentence of seven years or more, an appeal would lie to this Court. However, curiously, a legislative vacuum appears to when the Trial Court sentenced him below 7 years and above 3 years. As per sub section 3, from any order of conviction by the magistrate an appeal would lie to Court

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of Sessions. However, a magistrate cannot impose punishment beyond 3 years. Only the Chief Judicial Magistrate can pass sentence to the extent of 7 years.

12. However, under the earlier Code of Criminal Procedure, 1973 the provision analogous to Section 415 of the BNSS is Section 374 of the Cr.P.C., which is extracted hereinbelow for better understanding:

> *"374. Appeals from convictions.—*
>
> *(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.*
>
> *(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.*
>
> *(3) Save as otherwise provided in sub-section (2), any person,—*
>
> *(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or*

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(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate,

may appeal to the Court of Session.

(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filing of such appeal."

As per sub-section (3) of Section 374, it is clear that, subject to sub-section (2) of Section 374 of the Cr.P.C., where any person is convicted in a trial held by an Assistant Sessions Judge, an appeal would lie to the Court of Session. Therefore, under Section 374 of the Cr.P.C., the ordinary forum before which an appeal would lie against an order of conviction passed by an Assistant Sessions Judge is the Court of Session.

13.Section 10 of the Cr.P.C. deals with the subordination of Assistant Sessions Judges. All Assistant Sessions Judges are subordinate to the Sessions Judge in whose Court they exercise jurisdiction. Therefore, an

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appeal against an order of conviction passed by an Assistant Sessions Judge would ordinarily lie before the Court of Session, and only in cases where the Assistant Sessions Judge imposes a sentence of imprisonment for more than seven years an appeal would lie before this Court.

14.Therefore, on a conjoint reading of the proviso to Section 372 and Section 374 of the Cr.P.C., it is clear that an appeal against an order of conviction passed by an Assistant Sessions Judge would ordinarily lie only before the Court of Session.

15.However, the BNSS has omitted the category of "Assistant Sessions Judge". Consequently, Section 415 of the BNSS does not specifically provide for an appeal against a conviction by an Assistant Sessions Judge.

16.Section 531 of the BNSS deals with the effect of repeal and savings of the Cr.P.C. Sub-section (2) of Section 531 reads as follows:

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"531. (1) The Code of Criminal Procedure, 1973 is hereby repealed.

(2) Notwithstanding such repeal—

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be

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commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made by it for the extension of time."

From the above provision, it is clear that only an appeal, application, trial, inquiry or investigation that was pending as on the date of commencement of the Sanhita shall be disposed of, continued, held or made in accordance with the provisions of the Code of Criminal Procedure.

17.In the present case, though the judgment was pronounced on 17.06.2026, i.e., after the commencement of the BNSS on 01.07.2024, it can be seen that the offences were tried under the provisions of the Code of Criminal Procedure and the acquittal was recorded under Section 235(1) of the Cr.P.C.

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18.Once the appeal, application, trial, inquiry or investigation has come to an end, an appeal against the order, even though the order was passed under the old Code, would be maintainable only under the re-enacted Code, namely, the BNSS.

19.The Gauhati High Court in ***Akhtar Mirza v. State of Assam and others,*** reported in ***2019 SCC OnLine Gau 2295***, held that ordinarily an appeal would lie only before the Court of Session and not before the High Court.

20.Apart from the above, the Indian Penal Code was replaced by the Bharatiya Nyaya Sanhita, 2023, which came into force on 01.07.2024. Section 358 of the BNS deals with the effect of repeal of the Indian Penal Code. As per sub-section (2) of Section 358 of the BNS, any investigation or remedy in respect of any penalty or punishment, and any proceeding, investigation or remedy in respect of such penalty or punishment, may be instituted, continued or enforced, and any such penalty may be imposed, as

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if the repealed enactment had not been repealed.

21.Further, Section 6 of the General Clauses Act, 1897 also deals with the effect of repeal of a Central Act. As per clause (e) of Section 6, the repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

22.Therefore, the statutory remedy provided under the previous Code, namely, the Code of Criminal Procedure, would continue even after the repeal of the Cr.P.C., by virtue of Section 6 of the General Clauses Act, 1897 and Section 358(2) of the BNS.

23.In view of the aforesaid decisions, it is clear that, in the present case, the provision applicable is Section 374 of the Cr.P.C. and not Section 417 of the BNSS. Therefore, against an order of acquittal passed by the learned Assistant Sessions Judge, an appeal would ordinarily lie only before

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the Court of Session and not before this Court.

24.In the result, this Criminal Appeal is dismissed as not maintainable and the Appellant is given liberty to approach the appropriate forum.

(S.K.,J.)
22.09.2026

NCC : Yes/No
Index : Yes/No
ps

To

1.The Assistant Sessions Judge cum
Chief Judicial Magistrate,
Tenkasi.

2.The Inspector of Police,
Kadayam Police Station,
Tenkasi District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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Pre-Delivery Judgment made in Crl.A(MD)No.1066 of 2026

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