**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: **23.12.2014**

CORAM

**THE HONOURABLE MR.JUSTICE S.NAGAMUTHU**

**Crl.R.C.No.684** of **2014**

E.Kalivarathan

... Petitioner

**-Versus-**

The State Rep. by
The Sub-Inspector of Police,
Pudupet Police Station,
Cuddalore District.

... Respondent

**Prayer:**- Criminal Revision Petition filed under Section 401 of the Code of Criminal Procedure to convert the acquittal in C.C.No.12 of 2010 on the file off the learned Judicial Magistrate No.II, Panruti dated 31.12.2012 as an honourable acquittal as far as the petitioner is concerned.

For Petitioner **:** Mr.V.Raghavachari for
Mr.Ma.P.Thangavel

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

**ORDER**

The petitioner was the fifth accused in C.C.No.12 of 2010 on the file of the learned Judicial Magistrate No.II, Panruti. He stood prosecuted along with eight others for alleged offences under Sections 147, 148 and 323 of IPC. During trial as many as 12 witnesses were examined and 16 documents were exhibited on the side of the prosecution. But, no witness had implicated the petitioner in any manner with the alleged crime. The learned Magistrate by order dated 31.12.2012, acquitted all the accused including the petitioner. The said order of the learned Magistrate has become final.

2. Subsequently, the petitioner made an application for the post of Grade II Police Constable governed by the "Tamil Nadu Subordinate Police Service Rules". After the written examination and the physical test, he was selected for the said post. Then police verification of his antecedence was ordered and on such verification, it was found that the petitioner was an accused in the above case and he was acquitted by the learned Magistrate. However, the Recruitment Board rejected his candidature on the ground that the acquittal of the petitioner in

the above case is not an **"honourable acquittal"**.

3. Now the petitioner is before this Court with this criminal revision with the following prayer:

> *"It is therefore most humbly prayed that this Hon'ble Court may be pleased to convert the acquittal in C.C.No.12 of 2010 on the file of the Judicial Magistrate Court No.II, Panruti dated 31.12.2012 as an honourable acquittal as far as the petitioner is concerned by allowing the present criminal revision petition and thereby render justice."*

4. I have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent. I have also perused the records.

5. At the outset, the learned Additional Public Prosecutor raised objections regarding the maintainability of this revision petition. According to him, a revision petition under Section 397 and 401 of Cr.P.C would not lie at the instance of an acquitted accused. The learned Additional Public Prosecutor

would point out that the lower Court had acquitted him by giving benefit of doubt. As against the same, neither a revision would lie nor in such a situation the inherent powers of this Court under Section 482 of Cr.P.C. could be invoked to convert the said acquittal into one of a honourable acquittal, he contended.

6. His further contention is that the concept of honourable acquittal is unknown to criminal jurisprudence and therefore the request of the petitioner to convert the acquittal into one of honourable acquittal is not at all maintainable. In support of his contention, the learned Additional Public Prosecutor relies on a Division Bench Judgment of this Court in **M.Krishnan Vs. The State of Tamil Nadu reported in 2014 (3) MWN (Cr.) 203 (DB)**.

7. Mr.V.Raghavachari, the learned counsel appearing for the petitioner would submit that when a finding recorded in an order is adverse to his interest and contrary to law, the aggrieved should not be left in lurch without a remedy. He would further submit that the judgment of the Division Bench in M.Krishnan's case [cited supra] is contrary to the specific

statutory provisions contained in the Cr.P.C. as well as various judgments of the Hon'ble Supreme Court. According to him, not only an order of acquittal or conviction or any other order could be challenged, but the correctness, legality or propriety of any finding could also be challenged by way of revision.

8. It is his further contention that, in the instant case, though there was no evidence on record, the learned Magistrate has acquitted him by giving him the benefit of doubt which amounts to a finding contrary to the facts. Thus, according to him, this finding can be challenged in a revision.

9. Since much reliance has been placed on the Division Bench judgment of this Court in M.Krishnan's case (cited supra) by the learned Additional Public Prosecutor, let us begin our discussions from that judgment.

10. Prior to the said judgment, in many cases, a number of learned Single Judges of this Court had taken the consistent view that a revision is maintainable to convert a finding of the Trial Court acquitting an accused by giving benefit

of doubt into one of honourable acquittal. When a similar request came up before yet another learned Single Judge, sitting in Madurai Bench [Hon'ble Justice P.N.Prakash], the learned Judge had doubt about the correctness of such course adopted by various other Hon'ble Judges. Therefore, the learned Judge referred the matter to a Division Bench for an authoritative pronouncement. In paragraph 4 of his order the learned Judge had observed as follows:

> *"4. I gave my anxious consideration to the arguments advanced by the learned counsel appearing for the revision petitioners. No judgment of the Hon'ble Apex Court has been placed before me in support of the contention of the revision petitioners that a criminal court can employ the expression "Honourable Acquittal" while acquitting the accused. Therefore, I am of the opinion that for an authoritative pronouncement on this aspect, it would be in the fitness of things to place the matter before a Division Bench."*
>
> *[Emphasis supplied]*

11. On such reference, the Hon'ble Chief Justice placed the matter before the Division Bench. The Division Bench framed

the following two questions:-

> *"(i) When Sections 232, 235, 248 and 255 of the Code of Criminal Procedure use only a simple expression namely "acquittal", without any adjectives, is it open to the Criminal Courts to use the expression such as "benefit of doubt" and " beyond reasonable doubt" etc. ? and*
>
> *(ii) Whether this Court has power in terms of Section 401(1) read with Section 386(d) and (e) of the Code, to alter or amend the order of "acquittal" of the Trial Court into one of "honourable acquittal".*

12. The Division Bench, after having had elaborate discussion on the said questions and after having referred to various judgments of the Supreme Court of U.S.A., the Supreme Court of Canada as well as the Hon'ble Supreme Court of India, answered the first question as follows:

> *"40. Therefore, our answer to the first question is that there is no prohibition in law for the criminal Courts to use the expressions such as 'benefit of doubt' and 'beyond reasonable doubt', despite the fact that Sections 232, 235, 248 and 255 of the Code of Criminal Procedure use only*

*a simple expression namely 'acquittal' without any adjectives. But, these adjectives or expressions such as 'benefit of doubt' and 'beyond reasonable doubt' will have no meaning or significance insofar as criminal jurisprudence is concerned. In civil law and service jurisprudence, there is a world of difference between 'not proved' and 'disproved'. In criminal jurisprudence, there is no distinction between these expressions namely 'not proved' and 'disproved', as both would result only in one consequence, namely acquittal. Consequently, an acquittal is an acquittal and there are not different forms nor different degrees of acquittal in so far as criminal jurisprudence is concerned. The different adjectives used by various courts, to the acquittals granted by them, actually indicate the process of reasoning through which they arrive at the decision to acquit a person. 'Proof beyond reasonable doubt' and 'Benefit of doubt' are actually tools that guide the subjective mind of the Judge to arrive at a finding whether the accused is guilty or not."*

13. Referring to the above answer given by the Division Bench, the learned Additional Public Prosecutor would submit that since the adjectives or expressions “benefit of doubt” or “beyond reasonable doubt” will have no meaning or significance in so far as criminal jurisprudence is concerned, the accused who has got the benefit of acquittal will have no grievance and therefore he cannot challenge the same.

14. Mr.V.Raghavachari, the learned counsel appearing for the petitioner would vehemently challenge the said contention of the learned Additional Public Prosecutor. According to him, it is true that in the Code of Criminal Procedure the language used is only "acquittal" and the said term has not been qualified by any adjectives or expressions such as “benefit of doubt” or “beyond reasonable doubt”. But when the accused is entitled for a simple acquittal, adding the adjective that he is acquitted by giving him “benefit of doubt”, carries a stigma to his dignity and the same has got other consequences also. Thus in an appropriate case, when the accused is entitled for simple acquittal, if the Trial Court acquits him by "giving benefit of doubt", the party aggrieved has a

legal right to get it rectified by approaching the Higher Criminal Court by way of Revision or by way of a petition under Section 482 of the Code, he contended.

15. I have considered the above submissions.

16. Before embarking upon the legal issues, at the outset, I wish to state that, sitting single, I cannot either disagree or raise any doubt about the correctness of the views expressed by the Division Bench on various issues in M.Krishnan's case, provided such contrary views have not been expressed either by a larger Bench or by the Hon'ble Supreme Court. I respect this judicial discipline as an essential feature of administration of justice. Therefore, I make it clear that the views expressed by me in this order by making reference to the Division Bench judgment would undoubtedly fall within the frame of judicial discipline.

17. With great respect to the Division Bench, which has decided M.Krishnan's case [cited supra], I wish to, at the first, articulate on the legal position in respect of the powers of a

larger Bench to which reference has been made by a smaller Bench. At the first blush, this articulation may appear to be unnecessary for the facts of the present case, but, in due course of articulation, I am sure that the said cloud would disappear and it would certainly emerge that this articulation is not unwarranted. As I have already extracted, the learned single Judge [P.N.PRAKASH.J.,] who made the reference had a singular doubt in his Lordship's mind, requiring an authoritative pronouncement by a larger Bench. The doubt, as it could be found from the referral order of the learned single Judge, is as to whether a criminal court can employ the expression "honourable acquittal" while acquitting the accused. The Hon'ble The Chief Justice, while constituting the Division Bench, apparently did not refer any more question to the Division Bench. But, the Division Bench, on its own, had framed two questions to answer, that, with great respect to the Division Bench, I apprehend, that the Division Bench lacked jurisdiction to do so. The first question framed by the Division Bench was as to whether a criminal court can employ the expressions such as “benefit of doubt” or “beyond reasonable doubt” etc., while acquitting the accused. In my understanding, with respect, I

have to state that the referral judge, as it is reflected from the referral order itself, had no such doubt as to whether the criminal courts while acquitting the accused could employ the adjectives “benefit of doubt” or “beyond reasonable doubt” etc. The doubt raised by the learned Judge was whether the expression “honourable acquittal” could be employed by the criminal courts.

18. Similarly, the second question framed by the Division Bench was whether the High Court has power under Section 401(1) and Section 386 (d) and (e) of the Code to alter or amend the order of "acquittal" of the trial court into one of "honourable acquittal" ?. With respect, I have to state that this question was also not referred to the Division Bench for answer by the referral Judge.

19. In this regard, let us now survey as to how the Hon'ble Supreme Court has dealt with such situations. In **Kesho Nath Khurana vs Union Of India [AIR 1982 SC 1177]** the question which was referred to a Division Bench of the High Court by a learned single Judge was whether the

order dated January 21, 1963 made by the Chief Settlement Commissioner was final and binding in the present appeal, and if so, what is its effect upon the point in controversy in the present appeal? But, the Division Bench of High Court, on such reference, having answered the above question, proceeded further and disposed of the second appeal itself. When the matter came up before the Hon'ble Supreme Court, the Hon'ble Supreme Court reversed the order of the High Court on the ground that the Division Bench ought to have sent the appeal back to the single Judge with the answer rendered by them to the question referred by the single Judge and left it to the single Judge to dispose of the second appeal according to law.

20. The above said judgment came to be again considered by the Hon'ble Supreme Court in **Kerala State Science & Technology Museum Vs. Rambal Co. and Others, reported in (2006) 6 SCC 258** wherein in para 9 the Hon'ble Supreme Court has held as follows:-

> "It is fairly well settled that when reference is made on a specific issue either by a learned Single Judge or Division Bench to a larger Bench i.e. Division Bench or Full

> Bench or Constitution Bench, as the case may be, the Larger Bench cannot adjudicate upon an issue which is not the question referred. [See: Kesho Nath Khurana v. Union of India and Others [1981 (Supp.) SCC 38], Samaresh Chandra Bose v. The District Magistrate, Burdwan and Others [1972 (2) SCC 476] and K.C.P. Ltd. v. State Trading Corporation of India and Another [1995 Supp. (3) SCC 466]."
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> [Emphasis supplied]

21. In yet another judgment in ***T.A. Hameed vs. M. Viswanathan reported in (2008) 3 SCC 243*** the Hon'ble Supreme Court, after having referred Kesho Nath Khurana and Kerala State Science & Technology Museum cases [cited supra] reiterated the law in the following words:-

> "11. In the case at hand also, almost an identical situation had taken place that a reference was made by the learned Division Bench of the Kerala High Court to the Full Bench and the Full Bench after answering the reference went on to decide the revision petition itself on merits, which the Full Bench had no jurisdiction to do as the revision petition

> was not referred to the Full Bench for decision. Since, only reference was made to the Full Bench, the Full Bench should have answered the question referred to it and remitted the matter to the Division Bench for deciding the revision petition on merits. Consequently, we set aside that part of the impugned order dated 31.1.2003 whereby the Full Bench has dismissed the revision petition filed by the appellant herein.....”

22. Very recently, in **State Of Punjab vs Salil Sabhlok and others, Manu/SC0166/2013** the Hon'ble Supreme Court had to deal with the similar situation. In the said case, the Hon'ble Supreme Court was to deal with the contention that the Full Bench had exceeded its jurisdiction by enlarging the scope of reference and deciding matters which were not referred to it by the order dated 13.07.2011 of the Division Bench. While deciding the said question, the Supreme Court has taken note of the Rule 4 of the Punjab High Court Rules which states that Save as provided by law or by these rules or by special order of the Chief Justice, all cases shall be heard and disposed of by a Bench of two Judges. The Hon'ble

Supreme Court further observed that there was no order of the Chief Justice making a reference but there was only the order of the Division Bench of the High Court making a reference to the Full Bench of three Judges of the High Court. Therefore, the Hon'ble Supreme Court had to look at the order dated 13.07.2011 of the Division Bench to find whether the Division Bench of the High Court had referred only specific questions to the Full Bench or the entire case to the Full Bench. Ultimately, in para 28, the Hon'ble Supreme Court has held in the following terms:-

> "28. ... ... ... I, therefore, do not agree with Mr. Lalit that the Division Bench referred the entire case to the Full Bench by the order dated 13.07.2011. I further find that although the aforesaid specific questions relating to the procedure for identifying persons of competence and integrity for appointment as the Chairman of the Public Service Commission only were referred by the Division Bench of the High Court, the Full Bench, instead of deciding these specific questions referred to it, has given directions to the State of Punjab and the State of Haryana to follow a particular procedure for appointment of

> Members and Chairman of the Public Service Commission till such time a fair, rational, objective and transparent policy to meet the mandate of Article 14 of the Constitution is made. I, therefore, agree with Mr. Rao that the Full Bench of the High Court has decided issues which were not referred to it by the Division Bench of the High Court and the judgment dated 17.08.2011 of the Full Bench of the High Court was without jurisdiction."
>
> [Emphasis supplied]

23. In view of the above settled position of law declared by the Hon'ble Supreme Court that a larger Bench to which certain specified questions are referred for answer draws jurisdiction only from out of reference or on the order of the Hon'ble Chief Justice and therefore, the larger Bench cannot travel too long so as to answer any question or issue which was not referred to it at all. If this law, which is a binding precedent, is applied to the judgment of the Division Bench, with respect, I apprehend that the answers given by the Division Bench to the two questions which were not at all referred to by the learned single Judge will have no binding force on this court. However,

I do not wish to travel more on this matter since I do not have a much of different view than the view taken by the Division Bench in many respects.

24. Now, let us go to the issues. So far as the adjective phrases “beyond reasonable doubt” or “benefit of doubt” to be added to the expression "acquittal" are concerned, the Division Bench has rightly referred to the principle laid down in **Woolmington vs. Director of Public Prosecutions (1935 ALL E.R.Page 1).** At this juncture, it is worth referring to certain Articles of "The Universal Declaration of Human Rights. Article 11 (1) provides that everyone charged with penal offences has a right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. Article 14(2) states that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. Article 6(1) of "Convention on Civil and Political Rights" states that every human being has the inherent right to life. This right shall be protected by law; No one shall be arbitrarily deprived of his life. Article 9(1) says that everyone has the right to liberty

and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as is established by law. Article 14(2) envisages that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law and shall be entitled to minimum guarantees detailed therein.

25. The Hon'ble Supreme Court in **Bachan Singh vs State Of Punjab,** 1980 (2) SCC 684 has held that "the above requirements of these clauses are substantially the same as the guarantees or prohibitions contained in Articles 19 and 21 of our Constitution. India's commitment, therefore, does not go beyond what is provided in the Constitution and the Indian Penal Code and the Criminal Procedure Code."

26. In **P.N.Krishna Lal v. Government of Kerala,** 1994 Suppl. (5) SCR 526 after having referred to the above position, the Hon'ble Supreme Court has held as follows:-

> "It is true and indisputable, as contended by Sri A.Raghuvir, the learned senior counsel that the golden rule that runs through the web

> of all the civilised criminal jurisprudence is that the accused is presumed to be innocent unless he is found guilty of the charged offence. The burden to prove all the facts constituting the ingredients of the offence against the accused beyond reasonable doubt rests on the prosecution. If there is any reasonable doubt the accused gets the benefit of acquittal. But the rule gets modulated with the march of time. ....."

27. Thus, the Hon'ble Supreme Court has recognized the **Woolmington** principle to Indian Criminal Law Jurisprudence as well. The Hon'ble Supreme Court in **P.N.Krishna Lal's case** has made a thorough survey of the legal position into the contours of comparable jurisdiction in U.K., Hong Kong, Malaysia, U.S.A., Australia and Canada to find the permissive limits of the burden of proof on the accused. In that judgment, the Hon'ble Supreme Court, referring to Woolmington's case, wherein Lord Sankey held: "throughout the web of the English criminal law the golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory

exception.....No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained. This ratio was further explained in the speech of Viscount Simon L.C. in Mancini v. Director of Public Prosecutions, (1942) A.C. 1 at 11, Woolmington's case was explained and reinforced that the prosecution must prove the charge beyond reasonable doubt, and, consequently, that if, on the material before the jury, there is a reasonable doubt, the prisoner Should have the benefit of it."

28. Then, the Hon'ble Supreme Court referred to **Jayesena v. The Queen, (1970) A.C. 618**, wherein Lord Devlin speaking for the Privy Council, commenting upon Woolmington's case at p. 623 stated that the House laid it down that, save in the case of insanity or of a statutory defence, there was no burden laid on die prisoner to prove his innocence and that it was sufficient for him to raise a doubt as to his guilt.

29. The Hon'ble Supreme Court also took note of the

position in Singapore Court and referred to **Ong Ah Chuan v. Public Prosecutor, (1981) A.C. 648** and then **Regina v. Hunt (Richard), (1987) A.C. 352** wherein while explaining the declared burden of proof to prove his innocence, the Singapore Court has held as follows:-

> "whenever burden of proof is placed upon a defendant by statute the burden should, be an evidential burden and not a persuasive burden. "

30. The Hon'ble Supreme Court in **P.N.Krishna Lal's case** took note of the judgments from Canadian Supreme Court, Supreme Court of Unites States and various other courts and discussed the legal position in terms of Ss.5, 6 and 101 of The Indian Evidence Act. After having referred to various previous judgments, the Hon'ble Supreme Court has held as follows:-

> "The definition of the word 'proved' says that a fact is said to be proved when, after considering matters before it the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to

act upon the supposition that it exists. A fact is said to be not proved when it is neither proved nor disproved. A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. It is the cardinal rule of our criminal jurisprudence that the burden in the web of proof of an offence would always lie upon the prosecution to prove all the facts constituting the ingredients beyond reasonable doubt. If there is any reasonable doubt, the accused is entitled to the benefit of the reasonable doubt. At no stage of the prosecution case, the burden to disprove the fact would rest on the defence. However, exceptions have been provided in sections 105 and 106 of the Evidence Act, as stated herein before."

[Emphasis supplied]

31. In **Harbhajan Singh v. State of Punjab, [1965] 3 SCR 235**, the Hon'ble Supreme Court has further clarified that the test of proof beyond reasonable doubt does not apply to the accused and if he proves his defence by preponderance of

probabilities, the burden shifts to the prosecution which has still to discharge its original burden. Considering the Woolmington's ratio this Court held that the principle of common law criminal law jurisprudence would be a part of the criminal law in our country.

32. From the above judgments, it is crystal clear that Woolmington principle has become a part of the criminal jurisprudence of India. Though in Indian Evidence Act the adjectives "proof beyond reasonable doubt" and "benefit of doubt" have not been statutorily provided for, the Hon'ble Supreme Court has imported the Woolmington principle into the Indian Criminal Law Jurisprudence, and thus has recognized the said principle for its application while dealing with any criminal case. Therefore, there can be no doubt that the criminal courts while acquitting the accused, can add the adjectives like "beyond reasonable doubt" and "benefit of doubt" Thus, I am in full agreement with the answer given by the Division Bench to the first question.

33. But, in the instant case, the question involved is

slightly different. It is not the contention of the petitioners that these adjectives cannot be added to the expression “acquittal” when the criminal court acquits the person who was facing the prosecution. All that is contended before this court is that the trial court has inappropriately used the term “benefit of doubt” while acquitting the accused giving the impression that there was some evidence against the accused. In other words, according to the petitioner,the trial court should have acquitted the accused without adding the adjectives “by giving benefit of doubt”. Undoubtedly, there is a vast difference between "an acquittal" in simple terms and an acquittal by extending the "benefit of doubt". The judgment of the Division Bench has not dealt with this difference. Therefore, it is open for this court now to deal with the said difference. This difference could be perceived by simply referring to Sections 232 and 235 of the Code which read as follows:-

> "**232. Acquittal –** If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the judge shall

record an order of acquittal.

> **235. Judgment of acquittal or conviction -** (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.
>
> (2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360 hear the accused on the question of sentence, and then pass sentence on him according to law."

34. A simple comparative reading of these two provisions would make it very clear that in a trial before the court of session, after the evidence on the side of the prosecution is completed, the court has to find whether there is any evidence at all against the accused that he has committed the offence for which he stands charged. If the court finds that there is no evidence at all against the accused in support of the charge, it is mandatory for the court to record an "order of acquittal".

35. On considering the evidence let in by the

prosecution, if the court finds that it is not a case of no evidence against the accused and if the court does not acquit the accused under section 232 of the Code then, the court shall call upon the accused to enter upon his defence and adduce evidence, if any, he may have in support there of. Under Section 234 of the Code, thereafter, the prosecution as well as the accused or his pleader shall make their arguments. Then comes Section 235 of the Code. Under this provision, after hearing the arguments and points of law, if any, the Judge shall give a "judgment" in the case. The said judgment may be a "judgment of acquittal" or "judgment of conviction". An accused against whom there is some evidence in support of the charges, but, the evidence is not either sufficient to hold him guilty or there is any reasonable doubt in the evidence let in by the prosecution in support of the charges, then, the court may acquit the accused either by saying that the charges have not been proved beyond reasonable doubt or by saying that by giving benefit of doubt he is acquitted. If the accused is acquitted under Section 235 of the Code, the inference is that there was evidence against him, but he was acquitted either because the charges were not proved beyond reasonable doubt or that he was extended the

benefit of certain doubts in the case of the prosecution.

36. In a case where there is no evidence at all against the accused, if the court, instead of acquitting him under Section 232 of the Code acquits him under Section 235 of the Code, then, though there is acquittal favourable to him, the accused is still aggrieved, because the acquittal under Section 235 of the Code will have a different civil consequences upon him. Similarly, while acquitting the accused rightly under Section 232 of the Code because there is no evidence, if the court inappropriately uses the expression that the acquittal is because charges have not been proved beyond reasonable doubt or that the acquittal is by extending the benefit of doubt even then, the accused is aggrieved. Similarly, in the trial of warrant-cases by the Magistrates or trial of summons-cases by the Magistrates or in a summary trials, though the criminal court can use the expressions "beyond reasonable doubt" or "giving benefit of doubt" they are not free to use these terms inappropriately when the accused is acquitted on the ground that there is no evidence at all against him.

37. "Proof beyond reasonable doubt" or "giving benefit of doubt" relate to evidential burden and not a persuasive burden. Thus, the finding is on the evidence let in by the prosecution and not on the character or innocence of the accused. If there is no evidence against the accused, there is no occasion for the court to raise any doubt at all because, as we have already pointed out, the doubts relate to the evidence and not to the innocence or guilt of the accused. Thus, it is crystal clear, that though the criminal court has got freedom to use the expressions "benefit of doubt" or "not proved beyond reasonable doubt" these expressions cannot be used inappropriately by the criminal court when the accused is entitled for an acquittal simpliciter.

38. The next question which arises for consideration is, a criminal court, instead of acquitting an accused simpliciter when there is no evidence at all against him, if inappropriately employs the term "acquittal by giving benefit of doubt" or "acquittal as there is no proof beyond reasonable doubt", "What is the remedy available for the accused?"

39. In this regard, I have to agree with the Division Bench in M.Krishnan's case cited supra that there is no right of appeal available to an accused, who has been acquitted, inasmuch as the right of appeal for the accused is only against conviction and sentence. As against acquittal or for enhancement of punishment, the right of appeal is vested only with the State and the victim. Therefore, to rectify the above inappropriate expressions such as "benefit of doubt"or "not proved beyond reasonable doubt" employed by the court the aggrieved cannot make any appeal at all.

40. Now, in such a situation, let us examine, as to whether the revisional remedy is available to the accused. Section 401 (4) of the Code prohibits a revision at the instance of the party who has got right of appeal. The converse is that when there is no right of appeal, the remedy for the aggrieved is to file a revision provided it falls within the parameters enshrined in Section 397 of the Code. Now, let us have a look into S.397 of the Code which reads as follows:-

> **"397. Calling for records to exercise powers of revision.**— (1) The High Court or any Sessions Judge may call

for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

**Explanation.—** All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the

> High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

41. A plain reading of S.397 of the Code would make it very clear that revision would like only in the following circumstances:-

"(i) To test the correctness, legality or propriety of any finding;

(ii) to test the correctness, legality or propriety of sentence or order, recorded or passed; and

(iii) as to the regularity of any proceedings of such inferior Court"

42. Thus, the correctness or legality or propriety of any finding is also revisable. The Division Bench, while answering the question No.2, has held in para 49 as follows:-

> "49. .... .... .... If a revision filed by an accused, who is acquitted by the Trial Court, is not maintainable either as an appeal under any of the provisions of Sections 373 to 380 or as revision under

> Section 397, the power under Section 401(1) read with Section 386(d) cannot be invoked."

43. In para 52, again the Division Bench, after having referred to Pranab Kumar Mithra v. State of West Bengal [AIR 1959 SC 144], has held as follows:-

> "Moreover, in any case, an order of acquittal will not come within the definition of the expression 'any other order' appearing in Clause (d) of Section 386. Judgments are given under Chapter XXVII of the Code and a judgment of acquittal will not come within the definition of the expression 'any other order' in Section 386(d). Therefore, the revisions filed by acquitted persons, are not maintainable."

44. The Division Bench, with great respect, I should say, was not apprised of the difference between an order of acquittal and judgment of acquittal. Under Section 232 of the Code when there is no evidence against the accused, the court shall record an order of acquittal . If an accused is acquitted under s.235 of the Code, the court shall give a judgement of acquittal. So far as the trial of a warrant-case by the Magistrate

is concerned, under s.248 of the Code, the Magistrate shall record an order of acquittal. Here the language used is not judgment of acquittal. In respect of trial of summons-cases by the Magistrate under S.255 of the Code, the Magistrate shall record an order of acquittal. In summary trial under s.264 of the Code, the Magistrate shall record a judgment of acquittal.

45. As has been held by the Division Bench in M.Krishnan's case cited supra, there can be no doubt that an order of acquittal or judgment of acquittal will not fall within the definition of expression "any other order" for the purpose Section 386 (d) of the Code. Therefore, an acquitted person cannot file revision challenging the acquittal.

46. But, if there are findings in the order or judgment of acquittal, which are adverse to the interest of the accused, as an aggrieved person, he should have the remedy to get the adverse findings set aside. For illustration, though in a criminal trial, the bad character of an accused is not relevant [vide S.132 of the Evidence Act], in a given case under Section 304-A of IPC relating to motor vehicle accident, suppose, despite the

objection raised by the accused, evidence relating to bad character of the accused that he is a fraud is let in by the prosecution and the same is also recorded by the trial court, then at the time of argument, quite naturally, the accused would request the court to eschew the said evidence relating to his bad character from consideration. But, the court either inadvertently or illegally goes into the said evidence and gives finding about the bad character of the accused holding him as a fraud, though the accused is acquitted as there is no evidence against him, it cannot be said that the accused has no remedy and that he should carry the stigma for ever. If the accused does not get this finding expunged, he may have to carry the stigma about his character throughout his life. This would certainly result in civil consequence as it relates to his moral character. Similarly, let us assume that in a case of rape, the accused pleads that he never had sexual intercourse with the victim, who is pregnant. The trial court, however, gives a finding that he had sexual intercourse with the victim and he is the cause for her pregnancy. The trial court, eventually, acquits him on the ground that the said sexual intercourse was with the free consent of the victim and thus, it is not an offence of rape.

True, that he can not challenge the acquittal either by way of appeal or revision. But, if he does not challenge the finding that he is the father of the child in the womb, it will be a stigma in his life resulting in civil, moral and social consequences. Therefore, it is incumbent for him to get such adverse findings expunged.

47. In my considered view, in such a situation, the remedy available for the accused is in the form of revision under Ss.397 and 401 of the Code, for S.397 of the Code, states that any finding could also be challenged by the aggrieved. The Division Bench has not adverted to this aspect of Ss.397 and 401 of the Code. The Division Bench simply has held that like "any other order", an acquittal cannot be challenged by an acquitted person. But, the grounds upon which he was acquitted; the adverse remarks made against him; and the adverse findings made against him; are all matters, which fall under the term "findings" as employed in Section 397 of the Code and therefore they are all revisable.

48. Nextly, assuming for a moment without conceding,

that the finding of the trial court that the acquittal on giving benefit of doubt is not a finding in terms of S.397 of the Code, even then, the accused cannot be shown the door to go without remedy. Such power, in my considered opinion, lies at least under section 482 of the Code inasmuch as the opening words of S.482 of the Code "nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court" would go to show that the non availability of Appeal or Revision is not a bar for the High Court to exercise the inherent power.

49. Now comes the question as to whether the criminal court can use the expression “honourable acquittal”while acquitting an accused. This question is no more *res integra* in view of the judgment of the Hon'ble Supreme Court in **Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal, (1994) 1 SCC 541** wherein, the Supreme Court has held as follows:-

> “The expressions "honourable acquittal" "acquitted of blame" "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial

> pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

50. Thus, the expression “honourable acquittal” is relevant to service law jurisprudence or other jurisprudence and not for criminal law jurisprudence. Therefore, the criminal court while acquitting the accused, undoubtedly, cannot employ the term "that the accused is/are honourably acquitted". But at the same time, in all cases where there is no evidence at all against the accused as I have already concluded, the criminal court should simply say "acquitted". The criminal court may say that there is no evidence against the accused. But, the criminal court in such kind of cases, where there is no evidence at all against the accused, shall not employ the expressions "not proved beyond reasonable doubt" or "accused is acquitted by giving benefit of doubt".

51. The Division Bench has held under Question No.2 that a revision would not lie to convert an order of acquittal as an order of honourable acquittal as the term "honourable acquittal"is unknown to criminal law. Regarding this proposition also there can be no second opinion, for the criminal court, while acquitting an accused, cannot use the expression "honourable acquittal".

52. Now, turning to the facts of the present case, a perusal of the judgment of the trial court would go to show that no one has spoken to anything incriminating him. Therefore, the trial court should have acquitted him by recording an order of acquittal without adding any adjectives such as "not proved beyond reasonable doubt" or "by giving the benefit of doubt". However, a perusal of the judgment of the trial court would go to show that the trial court has acquitted the accused on the ground that the charges have not been proved beyond reasonable doubt. This finding, in my considered opinion, needs to be set aside by this court. The trial court should have acquitted the accused simpliciter without adding any qualification to the word "acquittal". Of course, the term

"honourable acquittal" is foreign to the criminal law jurisprudence and so this court cannot covert the order of acquittal into one of honourable acquittal. Therefore, this court only converts the order of acquittal on benefit of doubt into one of acquittal simpliciter. In the context of service law jurisprudence, if the petitioner seeks employment, it is for the appointing authority to consider the judgment of the trial court in its entirety and to find whether the acquittal is honourable or not for the purpose of employment in the light of the judgment of the Hon'ble Supreme Court in **Management of Reserve Bank of India v. Bhopal Singh Panchal [1994 (1) SCC 541]**.

53. At this juncture, I wish to mention that in W.P.No.9954 of 2010 dated 02.09.2014 [**Lakshmanaperumal v. State rep. by The Chairman, Tamil Nadu Uniformed Service Recruitment Board, Chennai - 600 002 and another**], I found that an youth, who was punished for an offence under Section 75 of the Madras City Police Act was denied employment as a police constable. Having taken note of the plight of him and following the recommendation made by the Larger Bench of this court in **J.Alex Ponseelan v. State *2014 (2) CTC 337,*** I suggested to the Government to consider to amend Rule 14 of the Tamil Nadu Police Subordinate Service Rules. But, the Division Bench in **M.Krishnan's case** [cited supra] has observed that the State as well as the Director General of Police should discard all suggestions for an amendment to the Rules in the larger interest of the society. I wish to further mention here that the Division Bench, I apprehend, was not apprised of the recommendation made by the Larger Bench in **J.Alex Ponseelan's case** cited supra, wherein, in paragraph 19, the Larger Bench has made the following recommendation:-

> "19. In so far as the present case is concerned, the explanation to Rule 14(b)(iv) indicates that it is not exhaustive but it specifies certain instances, which would explain the term "involvement in a criminal case". In any event, assuming without admitting that there is some confusion in the understanding of the language by which the Explanation has been stated, that issue can however be appropriately addressed by the Government by suitably amending the Tamil Nadu Special Police Subordinate Service Rule, on the lines of the Delhi Police Rules and its Standing Order No.398/2010, which is reproduced in Paragraph 20 of the judgment in Mehar Singh's case (Supra). Such a recommendation is made taking cue from the decision of the Hon'ble Apex Court in Pawan Kumar vs. State of Haryana and another - AIR 1996 SC 3300."
>
> [Emphasis supplied]

Therefore, the recommendations made by the larger Bench in **J.Alex Ponseelan's case** cited supra holds good.

54. Before parting with this order, I wish to mention that the incidence of false criminal cases is on the increase. The National Crime Records Bureau, in its Report on Crime in India for the year 2000, has stated that 7.55% of the total cases registered in the Country are false cases. The latest report on Crime in India for the year 2012 has been released by National Crime Record Bureau, which shows roughly 48% of complaints were frivolous as the accused were either acquitted by the court or the complaints were found to be false at the investigation stage itself. For example, so far as the crimes against the women are concerned, the statistics shows that in rapes, dowry deaths, harassment to married women, and outraging of modesty of women, the percentage of false cases are 7.4%, 6.6%, 9.6% and 5.8% respectively.

55. The above statistics, if compared to the statistics of the year 2000, would go to show that the registration of false cases is phenomenally on the increase. Those who are implicated in these false cases suffer in terms of humiliation, loss of money, loss of working hours, loss of mental peace and at last, loss of employment as well. Most of the accused

implicated in these false cases hail from poor strata of the society for whom some hearts bleed.

56. In the result, the criminal revision petition is allowed, the finding recorded by the learned Judicial Magistrate No.II, Panruti in his order dated 31.12.2012 made in C.C.No.12 of 2010 to the effect that the acquittal is because charges have not been proved beyond reasonable doubt is set aside and instead, it is ordered that the acquittal shall be a simple order of acquittal.

Index : yes. 23..12..2014
Internet : yes.
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To

1.The Principal Secretary to Government, Home Department,
Fort St. George, Cennai 600 009.
2.The Sub-Inspector of Police, Pudupet Police Station,
Cuddalore District.
3. The Public Prosecutor, Madras High Court.

**S.NAGAMUTHU,J.**

kmk

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