
(1989) 02 MAD CK 0007

In the Madras High Court

Case No : Criminal R.C. No. 801 of 1985 and Criminal M.P. No. 9737 of 1985

The Assistant Collector of Customs, (Prosecution), Preventive
Department

APPELLANT

Vs

Nandikara Kumaran

RESPONDENT

Date of Decision : 17-02-1989

Acts Referred:

Citation : (1995) 1 LW(Cri) 403

Hon'ble Judges : S.T. Ramalingam, J;Janarthanam, J;David Annoussamy, J

Bench : Full Bench

Advocate : P. Rajamanickam, for the Appellant; K.A. Panchapagesan, for the
Respondent

Judgement

David Annoussamy, J.—This is a Reference arising out of the order dated 20.12.1985 passed by a learned single Judge of this Court,

Sengottuvelan, J., in Criminal Revision Case No. 801 of 1985 and Criminal Miscellaneous Petition No. 9737 of 1985.

2. The revision petition was on the ground that the lower court had failed to impose the minimum sentence and the reliefs prayed for in both the

above petitions and that the lower court's orders should be set aside and the minimum sentence prescribed under the Customs Act should be

imposed on the respondent. Before the learned Judge, the learned Counsel appearing for the accused had placed a decision of a Division Bench of

this Court in Krishnamoorthy and Elumalai In re (1983 L.W.(Cri.) 166) as per which the complainant has no say in the matter of sentence and

therefore is not entitled to file a revision petition praying for enhancement of sentence The complainant relied on two decisions of the Supreme

Court namely the one in Bachan(sic) Singh etc. v. State of Punj (1980(1) SC 645

and the other in Pratap(sic) State of U.P (1973 (1) SCWR 740)

in which a contract view has been affirmed. In the circumstances the learned single Judge felt that the decision of Division Bench required re-

consideration and that the same can be done only by a Full Bench.

3. No doubt, if there are conflicts between two or more decisions of this Court respect of a matter, and if there is no view expressed by the

Supreme Court, then a reference has to be made necessarily to a Division Bench or a Full Bench, according to case, for settling it finally. But,

when a decision of the Division Bench of this Court contrary to a ruling of the Supreme Court, the view of the Division Bench is not good law As

per Article 141 of the Constitution, the law declared by the Supreme Court is binding all Courts including High Courts. In this matter the decisions

of the Supreme Court a clearly to the effect that a revision petition for enhancement of sentence by a private party possible, there is no controversy

subsisting an that view has to be followed. The Reference is answered accordingly.

4. Papers shall be placed before the concerned Court for disposal of the cases in accordance with law.