

Bail Slip.

The Petitioner/Accused namely V. Janarthanan was released on bail in Crl.M.P.No. 2427, 2429, 2431, 2433, 2435/16, 2445, 2447/2016 in Crl.R.C.No.358 to 362/2016, Crl.R.C.No.367, 368/2016 dated 02.03.2016 and the Petitioner/Accused namely Mr.G. Thiyagarajan, was released on bail in Crl.M.P. No. 2439, 2441/2016 in Crl.R.C.No.364,365/2016 dated 02.03.2016 and the Petitioner/Accused namely Mr.V.Jayakumar was released on bail in Crl.M.P. No. 2437/2016, 2443/2016 in Crl.R.C.No.363, 366/2016 dated 02.03.2016.

That the accused namely Mr. Palani, S/o Elumalai was released on bail in Crl.M.P. No. 2587, 2558/2016 in Crl.R.C.No.390, 385/2016 dated 04.03.2016 and the Petitioner/Accused namely Mr. Nagappan S/o Ettiyappan was released on bail in Crl.M.P. No. 1601/2016 in Crl.R.C.No.234/2016 dated 23.03.2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

Crl.R.C.Nos.163 to 177 of 2016
and Crl.R.C.No.358 to 368 of 2016
and Crl.R.C.Nos.385, 390 & 234 of 2016

Crl.R.C.No.163 to 177 of 2016:

Varadhan

... Petitioner

Vs.

State by Inspector of Police,
CCIW CID,
Kancheepuram,
Kancheepuram District.
(Crime No.7 of 2000)

... Respondent

Prayer in Crl.R.C.No.163 to 177/2016: This Criminal revision is filed under Section 397 & 401 of Cr.P.C. prays to set aside the judgment of the lower Appellate Court made in C.A.No.85 of 2011 to C.A.No.99/2011 dated 30.11.2015 on the file of the learned Additional District Sessions Judge, Chengalpattu, confirming the conviction and sentence passed by the learned Judicial Magistrate No.1, Chengalpattu by judgment dated 28.11.2011 and made in C.C.No.258 of 2002 to 272/2002.

For petitioner: Mr.T.R.Ravi
For Respondent: Mr.C.Iyyapparaj
Additional Public Prosecutor

Crl.R.C.No.358 to 368/2016:

V. Janarthanan ..Petitioner in Crl.R.C.No.358 to 362/2016;
367,368/2016.

V. Jayakumar ..Petitioner in Crl.R.C.No.363/2016,
366/2016.

G. Thiyagarajan ..Petitioner in Crl.R.C.No.364,365/2016.
Vs.

The Inspector of Police
Kancheepuram
Kancheepuram District.

..Respondent in Crl.R.C.No.358 to 368/2016.

Prayer in Crl.R.C.No.358 to 368/2016:

This Criminal Revision is filed under Section 397 & 401 of Cr.P.C. prays to set aside the Judgment of Conviction and sentence passed by the Learned Judicial Magistrate I, Chengalpattu on 28.11.2011; in C.C. No. 269,268,270,272,266, 261,262,263,260, 271 and 267/2002 by convicting the Petitioner/Appellant/Accused No.1, herein ,which was confirmed by the Learned Additional District Sessions Judge at Chengalpattu on 30.11.2014 in Crl.A. No. 96,95,97,99,93,88,89,90,87,98 and 94/2011.

For Petitioner: Mr.P. Gurunathan in
Crl.R.C.No.358 to 368/2016.

For Respondents: Mr.C. Iyyapparaj (APP) in
Crl.R.C.No.358 to 368/2016.

Crl.R.C.No.385 & 390/2016:

Palani ..Petitioner in Crl.R.C.No.385 & 390/2016.

Nagappan ..Petitioner in Crl.R.C.No.234/2016.

Vs

State rep by
The Inspector of Police
C.C.I.W. CID
Kancheepuram.

..Respondent in Crl.R.C.No.385,390 and 234/2016.

Prayer in Crl.R.C.No.385,390 & 234/2016:

To set aside the Judgment passed by the Learned Additional District and Sessions Judge, Chengalpattu in C.A.No.91,92 & 85/2011 dated 30.11.2015 confirming the Judgment of conviction and sentence made in C.C.No. 264,265 & 258/2002, on the file of Judicial Magistrate I, Chengalpet dated 28.11.2011.

For petitioner:Mr.S.N. Arunkumar
in all Crl.R.Cs

For Respondent: Mr.C.Ayyapparaj
Additional Public Prosecutor
in all Crl.R.Cs

C O M M O N O R D E R

The Criminal Revision Case Nos.163 to 177 of 2016 were filed by the petitioner one Varadhan against the order passed by the trial Court, namely, Judicial Magistrate No.I, Chengalpattu made in C.C.Nos.258 to 272 of 2002 dated 28.11.2011 as confirmed by the learned Additional District and Sessions Judge, Chengalpattu, made in C.A.Nos.85 to 99 of 2011 dated 30.11.2015, respectively.

2. The petitioner in Crl.R.C.No.163 of 2016 was A1 in C.C.No.258 of 2002 calendar case, where he has been tried for the offence punishable under Sections 408, 477(A) r/w. 109 I.P.C. In respect of other C.C.Nos.259 to 272 of 2002 are concerned the said Varadhan, the petitioner herein in these 14 criminal revision cases referred above, was tried as A2 for the offence punishable under Section 408 r/w. 109 I.P.C. Alone.

3. Like that, Crl.R.C.Nos.358 to 362 of 2016 and Crl.R.C.Nos.367 & 368 of 2016 were filed by the petitioner one Janardhana against the order passed by the trial Court namely Judicial Magistrate No.I, Chengalpattu made in C.C.Nos.269, 268, 270, 272 & 266 of 2002 dated 28.11.2011 as confirmed by the learned Additional District and Sessions Judge, Chengalpattu made in C.A.Nos.96, 95, 97, 99 & 93 of 2011 dated 30.11.2015, respectively.

4. The Crl.R.C.Nos.364 & 365 of 2016 were filed by the petitioner one Thiyagarajan against the order passed by the trial Court namely Judicial Magistrate No.I, Chengalpattu made in C.C.Nos.262 & 263 of 2002 dated 28.11.2011 as confirmed by the learned Additional District and Sessions Judge, Chengalpattu made in C.A.Nos.89 & 90 of 2011 dated 30.11.2015, respectively.

5. The Crl.R.C.Nos.363 & 366 of 2016 were filed by the petitioner one Jayakumar against the order passed by the trial

Court namely Judicial Magistrate No.I, Chengalpattu made in C.C.Nos.261 & 260 of 2002, dated 28.11.2011 as confirmed by the learned Additional District and Sessions Judge, Chengalpattu made in C.A.Nos.88 & 87 of 2011 dated 30.11.2015 respectively.

6. The Crl.R.C.Nos.385 & 390 of 2016 were filed by the petitioner one Palani against the order passed by the trial Court namely Judicial Magistrate No.I, Chengalpattu made in C.C.Nos.264 & 265 of 2002 dated 28.11.2011 as confirmed by the learned Additional District and Sessions Judge, Chengalpattu made in C.A.Nos.91 & 92 of 2011 dated 30.11.2015, respectively.

7. The Crl.R.C.No.234 of 2016 was filed by the petitioner one Nagappan against the order passed by the trial Court namely Judicial Magistrate No.I, Chengalpattu made in C.C.No.258 of 2002 dated 28.11.2011 as confirmed by the learned Additional District and Sessions Judge, Chengalpattu made in C.A.No.85 of 2011 dated 30.11.2015.

8. Except the petitioner, namely, Varadhan in Crl.R.C.No.163 of 2016 and the petitioner one Nagappan in Crl.R.C.No.234 of 2016, in respect of all other cases the charges framed against the respective petitioners/accused were under Section 408 r/w.109 I.P.C. In so far as the said Varadhan and Nagappan are concerned, only in respect of Crl.R.C.No.163 of 2016 and Crl.R.C.No.234 of 2016 the charges were under Sections 408 and 477(A) r/w.109 I.P.C.

9. Totally there were 15 judgments by the trial Court where the respective accused persons have been convicted. In all the 15 cases the said Varadhan is the accused along with him in the first case i.e. in Crl.R.C.No.163 of 2016, the Nagappan was the second accused, who is the petitioner in Crl.R.C.No.234 of 2016 and in all other criminal revision cases the respective petitioners other than Varadhan had been A1. In respect of C.C.No.259 of 2002 against which the said Varadhan filed Crl.R.C.No.164 of 2016, the first accused one Ramesh died during trial therefore, in respect of the said C.C.No.259 of 2002 only Varadhan had been the accused and against whom only conviction was made in that case.

10. In the first case i.e. C.C.No.258 of 2002 against both the said Varadhan and Nagappan who are the petitioners in Crl.R.C.Nos.163 and 234 of 2016 respectively, punishment of one year Rigorous Imprisonment with fine of Rs.300/- in default to undergo two weeks Simple Imprisonment was awarded for the offenses under Section 477(A) r/w.109 I.P.C. For the offenses punishable under Section 408 r/w.109 I.P.C., the punishment of one year Rigorous Imprisonment and Rs.300/- fine in default two weeks Simple Imprisonment was awarded and both the punishments can run concurrently by the accused persons.

11. In respect of all other C.C.Nos. the charges framed against the respective accused persons is only related to the charge punishable under Section 408 r/w.109 I.P.C. Therefore, the punishment of one year R.I with Rs.300/- fine in default two weeks Simple Imprisonment was awarded in all other cases.

12. Against these said punishments in the said 15 cases all respective petitioners/accused persons filed appeals before the Appellate Court, namely, Sessions Court, Chengalpattu. The Sessions Court also, after having considered the judgment of the trial Court, has confirmed the said punishment in separate judgment. As against each of these judgments of the Appellate Court confirming the conviction imposed against the petitioners by the trial Court, these 29 Criminal Revision Cases have been filed by the respective petitioners. The following table would reveal the basic factor in respect of the 15 cases. Hence, the same is extracted hereunder.

S. No	Name of the Accused	Charge	Conviction + Sentence	Amount	Check Period	C.C.No. in JM 1 Chengalpattu	C.A.No. In A.D.J Chengalpattu	Judgment in C.A.
1.	1. Varadhan 2. Nagappan	408,477 (A) r/w 109 IPC	(1) 477 (A) r/w 109 1 yr R.I. + Rs.300 I.D. 2 weeks S.I.	Rs.30,106/-	Doc. 20.8.97 27.12.93 to 05.01.1994	258/2002	85/2011	Confirmed
			(2) 408 r/w 109 1 yr R.I. +Rs.300 I.D. 2 weeks S.I. concurrently					

S. No	Name of the Accused	Charge	Conviction + Sentence	Amount	Check Period	C.C.No .in JM 1 Chengal pattu	C.A.No. In A.D.J . Chengal pattu	Judgment in C.A.
2.	1. Ramesh (died) 2. Varadhan	408 r/w 109 IPC	A1 died A2-408 r/w 109 IPC 1 yr R.I. + Rs.300 I.D. 2 weeks S.I.	Rs.15,208.20	27.12.93 to 05.01.1994	259/2002	86/2011	Confirmed
3.	1. Jayakumar 2. Varadhan	408 r/w 109 IPC	A1+A2 - 408 r/w 109 IPC 1 yr R.I. +Rs.300 I.D. 2 weeks S.I.	Rs.86,644.75	31.12.97 to 10.02.98	260/2002	87/2011	Confirmed
4.	1. Jayakumar 2. Varadhan	408 r/w 109 IPC	A1+A2 - 408 r/w 109 IPC 1 yr R.I. +Rs.300 I.D. 2 weeks S.I.	Rs.21,277.60	03.06.98 to 25.06.98	261/2002	88/2011	Confirmed
5.	1. Thiagarajan 2. Varadhan	408 r/w 109 IPC	A1+A2 - 408 r/w 109 IPC 1 yr R.I. +Rs.300 I.D. 2 weeks S.I.	Rs.53,875.30	03.07.97 to 10.02.98	262/2002	89/2011	Confirmed

S. No	Name of the Accused	Charge	Conviction + Sentence	Amount	Check Period	C.C.No .in JM 1 Chengal pattu	C.A.No. In A.D.J . Chengalpat tu	Judgment in C.A.
6.	1. Thiagarajan 2. Varadhan	408 r/w 109 IPC	A1+A2 - 408 r/w 109 IPC 1 yr R.I. +Rs.300 I.D 2 weeks S.I.	Rs.13,312.05	11.09.97 to 31.12.97	263/2002	90/2011	Confirmed
7.	1. Palani 2. Varadhan	408 r/w 109 IPC	A1+A2 - 408 r/w 109 IPC 1 yr R.I. +Rs.300 I.D 2 weeks S.I.	Rs.21,086.70	21.03.97 to 24.06.98	264/2002	91/2011	Confirmed
8.	1. Palani 2. Varadhan	408 r/w 109 IPC	A1+A2 - 408 r/w 109 IPC 1 yr R.I. +Rs.300 I.D 2 weeks S.I.	Rs.10,650.75	10.02.98 to 27.04.98	265/2002	92/2011	Confirmed
9.	1. Janardhana 2. Varadhan	408 r/w 109 IPC	A1+A2 - 408 r/w 109 IPC 1 yr R.I. +Rs.300 I.D 2 weeks S.I.	Rs.3,817.70	27.01.90 to 14.09.90	266/2002	93/2011	Confirmed

8.	1. Palani 2. Varadhan	408 r/w 109 IPC	A1+A2 - 408 r/w 109 IPC 1 yr R.I. +Rs.300 I.D 2 weeks S.I.	Rs.10,65 0.75	10.02.98 to 27.04.98	265/20 02	92/20 11	Confir med
10	1. Janardh ana 2. Varadhan	408 r/w 109 IPC	A1+A2 - 408 r/w 109 IPC 1 yr R.I. +Rs.300 I.D 2 weeks S.I.	Rs.11,84 8.92	25.03.98	267/20 02	94/20 11	Confir med
11	1. Janardh ana 2. Varadhan	408 r/w 109 IPC	A1+A2 - 408 r/w 109 IPC 1 yr R.I. +Rs.300 I.D 2 weeks S.I.	Rs.2,305 .30	1989	268/20 02	95/20 11	Confir med
12	1. Janardh ana 2. Varadhan	408 r/w 109 IPC	A1+A2 - 408 r/w 109 IPC 1 yr R.I. +Rs.300 I.D 2 weeks S.I.	Rs.5,697 /-	18.09.90 to 12.08.91	269/20 02	96/20 11	Confir med
13	1. Janardh ana 2. Varadhan	408 r/w 109 IPC	A1+A2 - 1 yr R.I. +Rs.300 I.D 2 weeks S.I.	Rs.5,769 .75	05.09.91 to 10.06.92	270/20 02	97/20 11	Confir med

S. No	Name of the Accused	Charge	Conviction + Sentence	Amount	Check Period	C.C.No. in JM 1 Chengalpattu	C.A.No. In A.D.J. Chengalpattu	Judgment in C.A.
14	1.Janardhana 2. Varadhan	408 r/w 109 IPC	A1+A2 - 1 yr R.I. +Rs.300 I.D 2 weeks S.I.	Rs.76.40	13.08.92 to 26.07.93	271/2002	98/2011	Confirmed
15	1.Janardhana 2. Varadhan	408 r/w 109 IPC	A1+A2 - 1 yr R.I. +Rs.300 I.D 2 weeks S.I.	Rs.603.60	05.08.93 to 01.10.93	272/2002	99/2011	Confirmed

13. I have heard Mr.T.R.Ravi, learned counsel for the petitioner in the respective revision cases and also Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

14. The sum and substance of the charge even according to the prosecution, against these petitioners is as follows:

15. A1 in C.C.No.258 of 2002 (Crl.R.C.No.163 of 2016), was the Secretary of Paiyambadi Primary Agricultural Co-operative Bank, for the period from 1990 to 1998. The second accused in the said C.C.No.258 of 2002, namely, Nagappan (Crl.R.C.No.234 of 2016) was the President of the Said Society during the relevant period.

16. All other accused persons who are the respective petitioners herein in these criminal revision cases are the salesmen of various branches of the said society.

17. While so, A1 and A2 in C.C.No.258 of 2002 i.e. the said Varadhan and Nagappan, have recorded in the record as if that they have paid the salary to an employee of the society without actually paying the salary to him. In so far as the other accused persons, who are the salesmen of the society concerned, the charge was that, though they have collected the amount of selling items, they have not remitted the said amount

with the society then and there.

18. These facts and circumstances since had subsequently been unearthed during the inspection/audit, it was reported to the respondent police and accordingly, after having investigated the matter charges had been laid in all these cases against the offenders punishable under Sections 408, 477(A) r/w.109 I.P.C.

19. The learned counsel appearing for the petitioners state that even though 15 cases were filed against all these persons, the total amount according to the charge sheet, cumulatively in all cases, allegedly short in the account was, only Rs.2,92,282/- (Rupees Two lakhs Ninety Two thousand Two hundred and Eighty Two only).

20. At the time of hearing the revision cases this Court by order dated 15.09.2016 has passed the following order:

At request of both parties, the accused are permitted to deposit the amount, without prejudice to the case, allegedly misappropriated by them.

The petitioners are permitted to deposit the amount in the relevant criminal revisions, mentioning the C.C.Nos., before the concerned Court.

Registry is directed to receive the amount without insisting for any order copy and directed to verify the order from the case bundle.

Post on 21.09.2016.

21. Pursuant to the said order passed by this Court, all these petitioners herein joined together and collectively deposited the said amount of Rs.2,92,282/- in this Registry.

22. The learned counsel for the petitioners would also state that the non- remittance of the amount collected by the respective salesman in time is because of various factors and the same had been explained to the president incharge of the society during the relevant point of time. They also state that in so far as the charge framed against the President and Secretary of the society, who are the petitioners in CrI.R.C.Nos.234 & 163 of 2016 respectively, the main charge thrust upon them were that, they have abutted the salesmen not to remit the amount in the society in time. These charges though had been framed against these petitioners, the petitioners cannot be punished for those alleged charges with a conviction as has been imposed by the trial Court in each of the cases.

23. They also submit that, in so far as the petitioner in CrI.R.C.No.163 to 177 of 2016 is concerned i.e. the said Varadhan, who was the Secretary of the society in each case, a punishment of one year rigorous imprisonment was imposed and in the first case two counts of one year punishment was imposed for

offence under Sections 408 r/w.109 I.P.C. and 477(A) r/w.109 I.P.C. These 15 convictions against the said Varadhan had been made separately and there is no order that the said accused/petitioner has to undergo these punishments concurrently.

24. That apart, the learned counsel would state that, since the short of money in the account, as alleged by the complainant/prosecution, for which, though these petitioners were not responsible, in order to show their bonafide, since they have come forward to paid the entire amount of Rs.2,92,282/-, ofcourse after getting permission from this Court, the present punishment against these petitioners can either be compounded or be set aside.

25. Mr.C.Iyyapparaj, learned Additional Public Prosecutor would submit that though the punishment under Section 408 r/w.109 I.P.C. is compoundable, the punishment awarded under Section 477 (A) is non compoundable. Moreover, since the complainant is the society, where the short of money in the account was unearthed, it is the public money and therefore, neither the society nor the prosecution can come forward for compound the offence committed by these petitioners.

26. The learned Additional Public Prosecutor would also state that with regard to the quantum of punishment imposed against the petitioner though this minimum punishment was contemplated in the Penal Code it is for this Court to take a decision depending on the facts and circumstances of the case.

27. I have considered the said submissions made by the learned counsel appearing for the petitioners as well as the respondent/State.

28. Except in the first case i.e. C.C.No.258 of 2002 (Corresponding CrI.R.C.Nos.163 & 234 of 2016), in all other cases the punishment was awarded for the offence punishable under Section 408 r/w.109 I.P.C. Though these offences are compoundable and at any stage such kind of compounding is possible, in view of Sub-section 6 of Section 320 of the Code of Criminal Procedure (hereinafter referred as Code), unless the respondent come forward for such compounding of offence, this Court cannot expect them to come forward for such compounding of offence.

29. However, in so far as the veracity of the charge framed against these petitioners are concerned, it is the case of the prosecution that the petitioner in CrI.R.C.Nos.163 to 177 of 2016 i.e. Varadhan was the Secretary of the society during the relevant time and therefore, he has to take responsibility for the shortage of money in the account.

30. However, in respect of the other accused persons, who are salesmen of the respective branches of the society, the

charges framed against them was that they did not remit the amount collected, after sale, immediately with the society.

31. Though these charges framed against them have been proved during the trial and in this regard though the learned counsel appearing for the petitioners were trying to raise some points or grounds that the charges have not been proved, those defences are not appealing or impressing this Court to come to a conclusion that those charges have not been proved.

32. At the same time their alternative plea through the respective counsel is that, the total shortage of money, even according to the prosecution, is only Rs.2,92,282/- in all these 15 cases and the said money was in toto deposited pursuant to the permission given by this Court in the order referred above. Their further plea is that, all these petitioners are aged persons as this occurrence taken place 20 years back. Therefore, they made a plea before this Court that, their age and present situation may also be taken into account by this Court apart from their bonafide and good conduct, and in order to show the same their action of seeking permission from this Court to deposit the entire amount shall be the testimony.

33. All these aspects, as has been projected by the learned counsel appearing on behalf of the petitioner, have been considered by this Court. Since the charges have been proved against the petitioners, this Court cannot say that judgment of the trial Court as confirmed by the Appellate Court is liable to be set aside.

34. However, considering the nature of the offences and facts and circumstances of the case and also considering the age of the petitioners, this Court feel that the quantum of the punishment imposed against these petitioners can be interfered with in the interest of justice.

35. Accordingly, the following orders are passed in all these Criminal Revision Cases:

(i) That the punishment of imprisonment awarded by the trial Court in the respective cases as confirmed by the first Appellate Court in the respective appeals against each of the petitioner is modified to the effect that, each of the petitioners shall undergo the punishment of one day imprisonment till the raising of the Court (ITRC).

(ii) Since the fine amount/Recoverable amount imposed by the Courts below have already been paid, the above punishment modified by this Court in this order would met the ends of justice.

36. Accordingly, these Criminal Revision Cases are disposed of with the modified punishment as indicated above. Also in the interest of justice, all these petitioners shall pay a sum of Rs.5,000/- (Rupees Five thousand only) each as fine in the credit of C.C.Nos.258 to 272 of 2002 on the file of the Judicial Magistrate No.1, Chengalpattu, within a period of four weeks from the date of receipt of a copy of this order. If there is any default in payment of fine within the time stipulated, the petitioners shall undergo Simple Imprisonment for one week.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

rsi

To

1. State by Inspector of Police,
CCIW CID, Kancheepuram,
Kancheepuram District.
(Crime No.7 of 2000)
2. The Judicial Magistrate No.I,
Chengalpattu.
3. The Additional District and Sessions Judge,
Chengalpattu.
4. The Public Prosecutor
High Court, Madras 104.

+11 Ccs to Mr.P. Gurunathan, Advocate sr
64698, 64699, 64700, 64701, 64702,
64703, 64704, 64705, 64706, 64707, 64697.

+3 Ccs to Mr.S.N. Arunkumar, Advocate sr 65076, 65077, 65078

+1 CC to Mr.T.R. Ravi, Advocate sr 63035.

CrI.R.C.Nos.163 to 177 of 2016
and CrI.R.C.No.358 to 368 of 2016
and CrI.R.C.Nos.385, 390 & 234 of 2016

RK(CO)
SP(29/06/2018)