

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN  
Crl.R.C.Nos.992, 993, 1111 and 1112 of 2017  
and  
CRL.MP.NO.9378 of 2017 & 1919 of 2018

D.Gunasekaran

...Petitioner in Crl.RC.992 & 993/2017

R.Gowrisankar

..Petitioner in Crl.RC.1111 & 1112/2017

-Vs-

R.Gowrisankar

...Respondent in Crl.RC.992 & 993/2017

D.Gunasekaran

..Respondent in Crl.RC.1111 & 1112/2017

Prayer in all the Crl.RCs: All the above criminal revision cases have been filed under Section 397 r/w 401 of Cr.P.C. against the common order dated 07.07.2017 made in Criminal Appeal Nos.201 and 220 of 2016 by the learned IInd Additional District and Sessions Judge, Erode, modifying the sentence imposed in judgment dated 24.10.2016 made in S.T.C.No.12 of 2015 by the learned Judicial Magistrate, Fast Track Court No.2, Erode.

For Petitioner : Mr.N.Manokaran in  
Crl.R.C.992 & 993 of 2017

Mr.C.Girish Babu in  
Crl.R.C.1111 & 1112 of 2017

For Respondent : Mr.C.Girish Babu in  
Crl.R.C.992 & 993 of 2017

Mr.N.Manokaran in  
Crl.R.C.1111 & 1112 of 2017

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COMMON ORDER

The petitioner in Crl.R.C.Nos.992 & 993 of 2017 is accused and respondent in the same criminal revisions is complainant. For the sake of convenience, the parties in this proceedings will be referred to as the accused and complainant respectively.

2 The complainant has filed a private complaint before the learned learned Judicial Magistrate, Fast Track Court No.II,

Erode, in S.T.C.No.12 of 2015 against the accused for the offence punishable under Section 138 of Negotiable Instruments Act for dishonour of a cheque dated 27.09.2013 drawn on City Union Bank Limited for Rs.3,00,000/-. Pending the above case, the accused has filed a petition before this Court under Section 482 of Cr.P.C. to quash the case in S.T.C.No.12 of 2015, after making payment of Rs.3,00,000/- before the Court below and this Court by order dated 06.10.2016, disposed of the petition by directing the Court below to take into consideration the payment made by the accused, while deciding the case in S.T.C.No.12 of 2015 on merits. The learned Magistrate, after advertng to the materials placed on record and after hearing both the parties, by judgment dated 24.10.2016 convicted the accused and sentenced to undergo till raising of the Court and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for 3 months and further to pay a sum of Rs.4,00,000/- towards compensation under Section 357 of Cr.P.C after deducting the amount of Rs.3,00,000/-, which has already been paid.

3 As against the above judgment, the accused has preferred an appeal in Criminal Appeal No.201 of 2016 and the complainant has preferred an appeal seeking to enhance the period of imprisonment in Criminal Appeal No.220 of 2016 before the IInd Additional District and Sessions Court, Erode. The learned Sessions Judge, decided the both the appeal by common judgment dated 07.07.2017 and cancelled the sentence imposed by the trial Court and directed the accused to pay double the cheque amount as compensation.

4 Aggrieved against the enhancement of compensation, the accused has preferred two criminal revision cases in CrI.R.C.Nos.992 & 993 of 2017 and the complainant has filed two revision cases in CrI.R.C.Nos.1111 & 1112 of 2017 seeking to increase the punishment awarded by the lower appellate Court, before this Court.

5 According to the learned counsel for the accused, pending trial, only to show bona fide of the accused, he has made payment of Rs.3,00,000/-. The lower appellate Court has awarded compensation of Rs.6,00,000/- i.e. double the cheque amount, which is contrary to the criminal law. He has placed his reliance on the decisions rendered by this Court reported in 2004 (1) MWN (Cr.) DCC (Mad.) 55 (P.Noohukhan vs. Paul Raj). The complainant has failed to prove the loss caused to him, in which event, the lower appellate Court ought not to have awarded double the cheque amount. Hence the judgment passed by the lower appellate Court is liable to interfered with.

6 According to the learned counsel for the complainant, believing the accused, the appellant had given money, when he

made demand for repayment, he issued cheque and when the same was presented twice, it was returned with an endorsement "insufficient fund". Hence the complainant issued legal notice, for which the accused neither replied nor repaid the amount and hence he instituted a complaint against the accused. When the accused himself admitted the liability and paid the amount, the lower appellate Court ought to have imposed higher punishment, instead of increasing the compensation amount. Hence the complainant prays to increase the period of imprisonment by allowing the revisions filed by him.

7 Heard the learned counsel appearing on either side and perused the materials available on record.

8 Admittedly the accused had made payment of Rs.3,00,000/- i.e. cheque amount to show his bona fide. The trial Court by appreciating the evidence properly and taking into consideration the payment made by the accused, had imposed imprisonment to undergo till the raising of the Court and to pay a sum of Rs.4,00,000/- as compensation to the complainant, in which the accused has already paid Rs.3,00,000/- through the trial Court. This Court does not find any illegality or infirmity in the order of the trial Court. The lower appellate Court has not given any valid reason for increasing the compensation amount, when the accused himself admitted the liability and paid the amount. The complainant has failed to establish the factum of loss caused to him in order to increase the compensation amount.

9 In the result, the order dated 07.07.2017 made in Criminal Appeal Nos.201 and 220 of 2016 by the learned IInd Additional District Sessions Judge, Erode, is hereby set aside and the order dated 24.10.2016 made in S.T.C.No.12 of 2015 made by the learned Judicial Magistrate, Fast Track Court No.2, Erode, is hereby confirmed and restored. All the criminal revision cases are disposed of accordingly. Consequently connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The IInd Additional District and Sessions Judge, Erode.
2. The Judicial Magistrate, Fast Track Court No.2, Erode.

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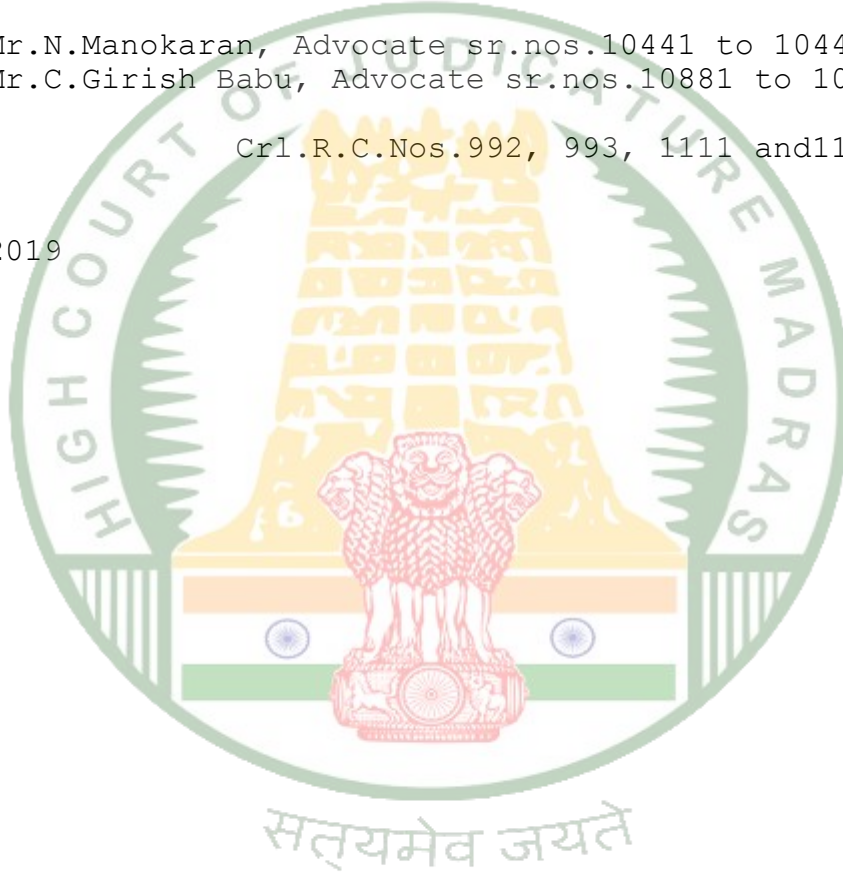
The Section Officer,  
Criminal Section,  
High Court,  
Madras.

+4cc to Mr.N.Manokaran, Advocate sr.nos.10441 to 10444

+4cc to Mr.C.Girish Babu, Advocate sr.nos.10881 to 10884

Cr1.R.C.Nos.992, 993, 1111 and 1112 of 2017

vsni(co)  
nr 19/03/2019



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