

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.Nos.1198, 1234 and 1245 of 2013

Jayakumar
Prop. Sri Suresh Trader
No.11, Peddunaicken Street
Kondithope
Chennai 79

.. Petitioner/Complainant
in all Criminal Revisions

Vs

S.Somasundaram
Prop. Poornima Starch Products
Mammara Thottam
Ammapalayam
Athoor Post
N.A. District

.. Respondent/Accused
in all Criminal Revisions

Criminal Revisions preferred under Sections 397 r/w
401 Cr.P.C. to set aside the judgments and orders dated
31.10.2001 passed by the VIII Metropolitan
Magistrate, George Town, Chennai in C.C.Nos.1140 of 1997, 1138
of 1997 and 1139 of 1997 respectively.

For Petitioner : Mr.Hari G.Ramasubramanian
in all Crl.R.C.s Amicus Curiae

For Respondent : No appearance
in all Crl.R.C.s

C O M M O N O R D E R

For the sake of convenience, the petitioner and the
respondent will be referred to as complainant and accused
respectively.

2.It is the case of the complainant that, the accused
had borrowed monies from him on various dates and the total
amount due was Rs.10,00,000/- as on 31.12.1996, towards which,
the accused gave nine cheques, all dated 31.12.1996, for
various amounts in favour of the complainant; the complainant
presented the said cheques on 02.01.1997 and they were
dishonoured with the endorsement "funds insufficient"; the
complainant issued a statutory demand notice dated 11.01.1997
to the accused; since the accused did not comply with the

demand, the complainant initiated three prosecutions each covering three cheques under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), in C.C.Nos.1138 of 1997, 1139 of 1997 and 1140 of 1997 before the VIII Metropolitan Magistrate, George Town, Chennai.

3. In all the three cases, judgments were delivered by the trial Court on 31.10.2001, wherein, the accused was convicted and sentenced to undergo six months simple imprisonment and pay a fine of Rs.1,000/-, in default to undergo one month simple imprisonment. The trial Court had directed that the substantive sentence of imprisonment shall be undergone by the accused concurrently in all the three cases.

4. Aggrieved by the quantum of sentence, the complainant filed the present three criminal revisions on 26.06.2002 with a delay of 25 days, to condone which, he filed three miscellaneous petitions under Section 5 of the Limitation Act. The condonation of delay petitions were pending on the file of this Court from 2002 to 2013. In 2013, this Court condoned the delay and directed the Registry to number the criminal revisions. Accordingly, these three criminal revisions were numbered and admitted in the year 2013. Till date, notice has not been served on the accused.

5. When these criminal revisions came up for final hearing on 28.08.2019, learned counsel for the complainant represented that he has no instructions and therefore, this Court directed the Registry to delete the name of the counsel for the complainant and print the name of the complainant in the cause list. Accordingly, the name of the complainant was printed in the cause list and the case was posted for final hearing.

6. On 20.01.2020, when these criminal revisions were taken up for hearing, there was no representation for the complainant. Therefore, this Court appointed Mr. Hari G. Ramasubramanian, Advocate (E.No. MS1416/2008) as Amicus Curiae to take up the case of the complainant and copies of the typed set of papers were furnished to him. The case was adjourned to today i.e., on 24.01.2020.

7. Heard Mr. Hari G. Ramasubramanian, learned counsel for the complainant.

8. Mr. Hari G. Ramasubramanian contended that the trial Court ought to have awarded compensation to the complainant, bearing in mind the object of the Section 138 of the NI Act. He also placed reliance on the judgment in *Bir Singh Vs. Mukesh Kumar* [(2019) 4 SCC 197].

9. This Court gave its anxious consideration to the submissions of Mr. Hari G. Ramasubramanian and perused the records.

10.It is not known whether the accused had filed any appeal in the Court of Session challenging his conviction and sentence imposed by the trial Court.

11.It is the case of the complainant that the accused had executed promissory notes at the time of taking the loans, but those promissory notes were not exhibited in the trial Court. The judgments and orders in these csas were passed in the year 2001 and at that time, the law governing Section 138 of the NI Act was nascent and evolving. That apart, the accused had pleaded leniency, when he was questioned by the trial Court on sentence. The trial Court has observed as under :

"The accused was questioned about the sentence. The accused prayed for leniency given the nature of offence and the mitigating circumstances under which the offence is seen to have been committed this Court is inclined to take a lenient view."

The trial Court could have even sentenced him to a fleabite fine, but had chosen to impose the sentence of imprisonment on him. Now, the NI Act has been amended with effect from 06.02.2003, whereby, the offence can be compounded under Section 147 of the NI Act at any time. In such view of the matter, this Court is of the opinion that this is not a fit case to interfere with the quantum of sentence imposed by the trial Court.

In fine, these criminal revisions are dismissed. This Court places on record its appreciation to Mr.Hari G.Ramasubramanian for presenting the case of the complainant. The Tamil Nadu State Legal Services Authority, Chennai, is directed to pay a sum of Rs.4,000/- and other costs, if any, as remuneration to Mr.Hari G.Ramasubramanian, Amicus Curiae. The Registry is directed to transmit the original records, if any, to the trial Court forthwith.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.VIII Metropolitan Magistrate
George Town, Chennai

2.The Member Secretary
Tamil Nadu State Legal Services Authority
High Court Buildings
Chennai 104

3.The Deputy Registrar
Criminal Side
High Court, Madras

CRL.R.C.Nos.1198, 1234 and 1245 of 2013

GMR(CO)
GN(11/03/2020)