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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.07.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.373 and 374 of 2021
and Crl.M.P.Nos.6205 and 6208 of 2021

P.Parthiban ..Revision Petitioner in Crl.R.C.373/2021
/Accused No.1

Rajkumar ..Revision Petitioner in Crl.R.C.374/2021
/Accused No.2

Vs

State Rep. By its

The Inspector of Police

Dharapuram Police Station

Tiruppur District

(Crime No.591/2013) ..Respondent in both Crl.R.Cs./Complainant

PRAYER : Criminal Revision Petition filed u/s.397 and 401 of Cr.P.C., against the judgment passed in C.A.No.33 of 2014 and C.A.No.28 of 2014 dated 28.11.2018 on the file of III Additional District and Sessions Judge, Tiruppur, wherein, the order dated 16.06.2014 passed in C.C.No.386/2013 by the Judicial Magistrate, Dharapuram, was modified.

For Petitioners : Mr.B.Kumarasamy

For respondent : Mr.S.Sugendran,
Govt.Advocate [Criminal Side]

COMMON ORDER

The above Criminal Revision Petitions are filed against the judgment passed in C.A.No.33 of 2014 and C.A.No.28 of 2014 dated 28.11.2018 on the file of III Additional District and Sessions Judge, Tiruppur, wherein, the order dated 16.06.2014 passed in



C.C.No.386/2013 by the Judicial Magistrate, Dharapuram, was modified.

2. The respondent police registered the case in Crime No.591 of 2013 against three accused. After investigation, the respondent police laid the charge sheet before the Judicial Magistrate, Dharapuram. The learned Magistrate taken the charge sheet on file in C.C.No.386 of 2013. After trial, the learned Magistrate found guilt of the 1st accused/Revision Petitioner in CrI.RC.373/2021 for the offence u/s.392 IPC. The 2nd accused/Revision Petitioner in CrI.RC.374/2021 and 3rd accused were found guilty for the offence under Section 392 read with 34 IPC. The Revision Petitioners herein viz., 1st and 2nd accused are sentenced to undergo Rigorous Imprisonment for 3 years each and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for 3 months. A-3 was also convicted and sentenced to undergo 3 years rigorous imprisonment and to pay a fine of Rs.100/-, in default, to undergo 3 months simple imprisonment.

3. Challenging the judgment of conviction and sentence passed in C.C.No.386 of 2013 dated 28.11.2018, the accused 1 to 3 filed appeals before the Principal District and Sessions Judge, Tiruppur and the learned Principal Sessions Judge, taken the appeals on file in C.A.No.28, 33 and 37 of 2014 and made over to the III Additional District and Sessions Judge, Tiruppur at Dharapuram, for disposal.

4. The learned III Additional District and Sessions Judge, after hearing the arguments and after perusing the judgment of the trial court, independently recorded the findings and confirmed the judgment of conviction and modified the sentence in the appeals filed by the appellants/Accused 1 to 3. The learned III Additional District and Sessions Judge, after hearing all the three appeals, passed the common judgment, modifying the sentence as follows:-

"1st accused/Petitioner in CrI.R.C.373/2021 was found guilty of offence under Section 379 IPC and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 3 months simple imprisonment.

2nd accused/ Petitioner in CrI.R.C.374/2021 was found guilty of offence under Section 379 r/w.34 IPC and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 3 months simple imprisonment.



3rd accused was found guilty of offence u/s.379 r/w.34 IPC and sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.100/-, in default, to undergo simple imprisonment for one month."

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5. Challenging the above said judgment of the appellate court, A-1 filed Crl.RC.373 of 2021 and A-2 filed Crl.RC.374 of 2021 before this court.

6. Since both Revisions are arising out of the common judgment passed by the III Additional District and Sessions Judge, Tiruppur, they are taken up together for disposal by way of the common order.

7. The learned counsel for the Revision Petitioners would submit that the petitioners are not habitual offenders, they are the first time offenders and they have not committed any offence. Though originally charge was framed against the 1st accused for offence under Section 392 IPC and against A-2 and A-3, for offence under Section 392 read with 34 IPC, the Judicial Magistrate, found guilt of the 1st accused under Section 392 IPC and the 2nd and 3rd accused for the offence under Section 392 r/w.34 IPC, passed conviction and sentence by judgment dated 16.06.2014 in C.C.No.386/2013. He would further submit that the appellate court after hearing the arguments and on analysing the judgment of the trial court, modified the sentence. However, the 1st appellate court, without considering the materials and arguments put forth by the appellants before it, passed the judgment. The learned counsel for the petitioners would submit that since the Revision Petitioners herein are the first time offenders, some leniency may be shown in awarding sentence.

8. This court, carefully gone through the concurrent judgment of both the courts below. The Judicial Magistrate as well as Appellate court found the guilt of the accused and passed judgment of conviction and sentence. The scope of Revision is very limited. This court cannot sit in the arm chair of appellate court and cannot appreciate or re-assess the evidence and substitute its views on findings of facts. As a revision Court, this Court has to see if there is any perversity in appreciation of evidence in the Judgment passed by the Courts below. On a reading of the judgments of the Courts below, this Court does not find any perversity and there is no merit in the revision.

9. Considering the fact that there is no antecedent against the petitioners and they are only first time offenders, this court modifies the sentence of imprisonment alone. However, the conviction passed by the appellate court is confirmed.



Therefore, the period which undergone by the Revision petitioners, is to be treated as sentence and they are set at liberty, if their presence is not required in any other case. With the above modification, the criminal revisions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The III Additional District and Sessions Judge,
Tiruppur.
2. The Judicial Magistrate,
Dharapuram.
3. Do through The Chief Judicial Magistrate,
Dharapuram, Tiruppur District
4. The Principal District and Sessions Judge,
Tiruppur.
5. The Inspector of Police
Dharapuram Police Station
Tiruppur District
6. The Superintendent,
Central Prison,
Coimbatore.
7. The Public Prosecutor,
High Court, Madras.

Copy to :

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

+1cc to Mr.B.Kumarasamy, Advocate, S.R.No.33914

Cr1.R.C.373 and 374 of 2021

AJS (CO)
HS (03/08/2021)