



WEB COPY



CrI.R.C.No.889 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 11.03.2025

Orders Pronounced on : 25.03.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.889 of 2023

B.A.Chandrashekar Setty, S/o Aswantha Narayana Setty
Joint Managing Director, M/s.Vivek Limited,
No.150, Luz Church Road, 2nd floor,
Mylapore, Chennai-600 004.

.. Petitioner

Vs.

1. State by:
Inspector of Police,
Crime Branch CID, Metro Wing,
Egmore, Chennai-600 008.
2. Shella Anand, W/o A.R.Anand
3. B.Yuvaraj, S/o Balasundaram
4. R.Hari Prasad, S/o N.Sundaramurthy
5. P. Karthikeyan, S/o Pandian
6. L.Gerard, S/o Louis
7. D.Ravichandran, S/o D.Dhandapani

.. Respondents

Page No.1/17



Crl.R.C.No.889 of 2023

WEB COPY

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to set aside the order passed by the Principal Session Judge, Chennai in Crl.M.P.No.800 of 2023, dated 30.03.2023 in Crl.A.SR.No.630 of 2023 and direct the Principal Sessions Judge, Chennai to number the Criminal Appeal.

For petitioner : Mr.A.Nagarajan

For respondents: Mr.S.Sugendran, Addl.P.P. for R-1

Mr.V.Ramamurthy for RR-2, 3, 5 and 6

Mr.R.Sankara Kutralingam for R-7

R-4 - Private notice returned unserved
with endorsement "no such person"

ORDER

This Criminal Revision Case is filed challenging the order dated 30.03.2023 passed by the Principal Sessions Judge, Chennai in Crl.M.P.No.800 of 2023 in Crl.A.SR.No.630 of 2023, in dismissing the condone-delay-petition filed for condoning the delay of 15 days in filing appeal against the judgment passed in C.C.No.391 of 2017, dated 15.11.2022 by the Metropolitan Magistrate for CCB and CB-CID cases, Egmore, Chennai.

2. The petitioner is the Joint Managing Director of the Company, namely

Page No.2/17



Crl.R.C.No.889 of 2023

M/s.Vivek Limited, and he lodged a complaint against the accused before the Commissioner of Police, Chennai. The said complaint was forwarded to the Deputy Commissioner of Police, CCB, Chennai and it was again forwarded to the CCB, Egmore, Chennai, for investigation. After conducting preliminary enquiry, the Sub-Inspector of Police, CCB, Egmore, Chennai registered a case in Crime No.607 of 2009 for the offences under Section 408, 420, 465 and 468 IPC against (i) Raja, Manager (A1), (ii) Tmt.Sheela Anand, Operations Head (A2); (iii) Karthikeyan, Mobile Phone in-charge (A3) and others of Vivek Ltd, Chennai. Even while the investigation was progressing, on the basis of the order passed by this Court in Crl.O.P.No.7176 of 2010, dated 01.04.2010, the investigation was transferred from Central Crime Branch (i.e. CCB), Chennai to the first respondent/Inspector of Police, Crime Branch CID, Metro Wing, Egmore, Chennai-600 008, and in turn, the first respondent-Inspector of Police, after completion of the investigation, laid charge-sheet before the Metropolitan Magistrate for Exclusive Trial of CCB Cases, Chennai, in respect of a cheating case in Chennai and CB-CID, Metro Cases, Chennai. The same was taken on file in C.C.No.391 of 2017. The Metropolitan Magistrate, after framing charges and after completing the trial, found that the respondents 2 to 7 herein colluded and sentenced all the accused as follows:

(i) Under Section 120-B IPC - six months rigorous imprisonment and fine

Page No.3/17



Crl.R.C.No.889 of 2023

of Rs.2,000/-, in default, to undergo one month rigorous imprisonment;

WEB COPY (ii) Under Section 408 IPC - 3 years rigorous imprisonment and fine of

Rs.5,000/-, in default, to undergo three months rigorous imprisonment;

(iii) Under Section 465 read with Section 109 IPC - one year rigorous imprisonment;

(iv) Under Section 468 IPC - three years rigorous imprisonment and fine of Rs.5,000/- each, in default, three months rigorous imprisonment;

(v) Under Section 471 read with Section 109 IPC - three years rigorous imprisonment and fine of Rs.5,000/- each, in default to undergo three months rigorous imprisonment.

The trial Court ordered the sentences imposed on all the accused to run consecutively by order dated 15.11.2022.

3. On being dis-satisfied with the inadequacy of the sentence and fine, the revision petitioner/P.W.1 filed an appeal before the Principal Sessions Court, Chennai in Crl.A.SR.No.630 of 2023 with a delay of 15 days in filing the said appeal before the Sessions Court. The learned Principal Sessions Judge, Chennai dismissed the petition filed for condoning the delay, in Crl.M.P.No.800 of 2023 in Crl.A.SR.No.630 of 2023, holding that the said condone-delay-petition is not maintainable, and thereby, the said Crl.M.P. was dismissed on 30.03.2023,

Page No.4/17



CrI.R.C.No.889 of 2023

against which, the present revision petition is filed before this Court by P.W.1.

WEB COPY

4. Learned counsel for the petitioner submitted that on reviewing the financial statement for the quarter ending 30.06.2009 by the Manager (Accounts), Jainsons Head Office, it came to know that the revision petitioner's Luz (Chennai) Branch had made a gross loss of 22.50% below their cost when compared with the other Branch Offices. The physical stock verification was done at the petitioner/P.W.1's Branch and it was found that there was huge shortage of stocks and the stock deviation report confirmed huge loss of stock items, namely, Air-conditions (i.e. A/c), refrigerators, washing machines, televisions, LCD, Audio systems and DVD micro-wave ovens, mobile phones and stabilizers and the loss was in accordance with the loss reflected in the financial documents.

5. Learned counsel for the revision petitioner further contended that the private respondents herein have misappropriated the stocks by creating false accounts of the revision petitioner's company relating to Jainsons Luz Branch, Jainsons - T.Nagar Branch, Jainsons - Tambaram Branch and Jainsons Regional Distribution Centre (Go-down), wherever it is required by forging the concerned records as and when occasions arose as per the direction of the second respondent/A1 who was the Operation Head of Jainsons Branches, Chennai,

Page No.5/17



CrI.R.C.No.889 of 2023

thereby, resulting in misappropriation of Rs.1.30 crores and caused huge loss to the revision petitioner's Company. Hence, the petitioner/PW1 lodged a complaint before the Police and on completion of investigation in CCB-X Crime No.607 of 2009, final report had been filed under Section 173(2) Cr.P.C. before the XI Metropolitan Magistrate, Saidapet, Chennai, for the alleged offences under Sections 120-B, 408, 465, 468 and 471 read with Section 109 IPC against Sheela Anand, R.Raja, B.Yuvaraj, R.Hari Prasad, P.Karthikeyan, L.Gerard, D.Ravichandran and V.S.Kumar.

6. Learned counsel for the petitioner/P.W.1 further contended that after trial, the trial Court convicted the private respondents herein (accused persons) and sentenced them as indicated above.

7. As against the above conviction and sentence imposed by the trial Court in C.C.No.391 of 2017, the revision petitioner/PW1 filed an appeal under Section 372 Cr.P.C. with a delay in filing the said appeal and the first appellate Court, in CrI.M.P.No.800 of 2023 in CrI.A.SR.No.630 of 2023, dismissed the condone-delay-petition on merits, holding that "... As per Sec.372 Cr.P.C., the de-facto complainant have a right to prefer an appeal against the acquittal or conviction for a lesser offence or for inadequate compensation. However, in the



CrI.R.C.No.889 of 2023

present case, this appeal has been preferred by the defacto complainant for enhancement of punishment, which is not maintainable before this Court. ..."

8. Stating as above, the learned counsel for the petitioner argued that the first appellate Court failed to note the prayer made in the appeal and without proper appreciation of the contentions, the condone-delay-petition was dismissed as not maintainable. Further, according to the learned counsel, the prayer in the appeal is clear that the appellate Court directed to award maximum compensation to the accused persons and the first appellate Court wrongly came to the conclusion that the first appellate Court has no jurisdiction to entertain appeal, and since the appeal filed by the de-facto complainant is not maintainable before the first appellate Court, the petition filed to condone the delay of 15 days in filing the first appeal, resultantly could not be entertained before the first appellate Court, merely because the first appellate Court dismissed the condone-delay-petition for want of jurisdiction.

9. In the above context, the learned counsel for the revision petitioner/P.W.1 relied on Section 372 Cr.P.C., which reads as follows:

"Section 372: No appeal to lie unless otherwise provided- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in



WEB COPY



CrI.R.C.No.889 of 2023

force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

10. Learned counsel for the revision petitioner/P.W.1 also relied on the proviso Clause in Section 372 Cr.P.C., and stated that the proviso clearly shows that the victim has got every right to file appeal against acquittal and for enhancement of the sentence or for compensation.

11. Learned counsel for the revision petitioner/P.W.1 further contended that the appellate Court mis-interpreted Section 372 Cr.P.C. and dismissed the case and therefore, the findings of the learned Magistrate are erroneous.

12. Learned counsel for the private respondents herein submitted that based on the complaint given by the petitioner, the first respondent Police laid charge-sheet and the learned trial Judge framed the charges for the above said offences and after trial, the trial Court convicted and sentenced the accused with fine, as stated above.

Page No.8/17

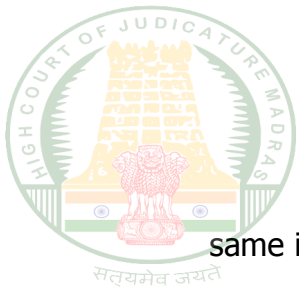


CrI.R.C.No.889 of 2023

WEB COPY 13. Learned counsel for the private respondents further contended that the petitioner preferred appeal before the appellate Court with delay of 15 days, but however, the learned Judge of the first appellate Court rightly dismissed the the appeal preferred by the revision petitioner as not maintainable. The appeal filed by the revision petitioner does not fall under Section 372 Cr.P.C.

14. The scope and object of Section 372 Cr.P.C. and the proviso clause therein, gives a right to the victim, which is entirely different from the appeal preferred by the revision petitioner. The revision petitioner had filed the appeal to enhance the sentence imposed on the private respondents and also for awarding the compensation invoking Section 372 Cr.P.C., whereas, the proviso to Section 372 Cr.P.C. gives a right to the victim to file appeal against any order passed by the trial Court acquitting or convicting for lesser offence or imposing inadequate compensation, only for which, the appeal shall lie to the Court to which the appeal ordinarily lies against the order of conviction, whereas, the revision petitioner has preferred an appeal not challenging the acquittal or conviction or for lesser offence or inadequate compensation. Therefore, the appellate Court rightly dismissed the petition on the ground of maintainability and also jurisdiction. Therefore, there is no merit in the revision petition and the

Page No.9/17



CrI.R.C.No.889 of 2023

same is also liable to be dismissed.

WEB COPY

15. Heard both sides and perused the materials available on record.

16. Admittedly, the revision petitioner filed a complaint and based on the complaint, the first respondent registered a case and filed charge-sheet before the learned Metropolitan Magistrate and the same was taken on file in C.C.No.391 of 2017. After framing of charges and trial, the learned Metropolitan Magistrate convicted the respondents 2 to 7 herein and sentenced them for the charged offence(s) with fine, as stated above.

17. Challenging the conviction and sentence, the revision petitioner who is the de-facto complainant and who is the so-called victim, preferred appeal before the Principal Sessions Court, Chennai, with a delay of 15 days in filing the appeal, and the condone-delay-petition in CrI.M.P.No.800 of 2023 came to be dismissed on the ground that the de-facto complainant preferred appeal for enhancement of punishment, which is not maintainable before the appellate Court, and therefore, the first appellate Court dismissed the petition, against which, the de-facto complainant has preferred the present revision petition.

Page No.10/17



CrI.R.C.No.889 of 2023

WEB COPY

18. It is seen from the records and on a reading of Section 372 Cr.P.C., it is clear that the victim shall have a right to prefer appeal against the order passed by the Court acquitting or convicting for lesser offence or imposing inadequate compensation, whereas, on a reading of the relief sought for in the appeal preferred before the first appellate Court by the revision petitioner to enhance the sentence imposed on respondents 2 to 7 herein and further award the maximum compensation to the revision petitioner under Sections 357 Cr.P.C. and 357-A Cr.P.C. by imposing fine, is that no amount of compensation was awarded by the Court.

19. Therefore, the language used in Section 372 Cr.P.C. is clear that the victim can prefer appeal only against the order of acquittal or conviction for the lesser offence or imposing inadequate compensation. The result of the trial Court is otherwise, and therefore, the appellate Court found the accused guilty and the appeal preferred by the revision petitioner invoking Section 372 Cr.P.C. is not maintainable.

20. It is pertinent to refer Section 377 Cr.P.C., which deals with the appeal by the State Government against the sentence, and Section 377 Cr.P.C. reads as follows:

Page No.11/17



WEB COPY



CrI.R.C.No.889 of 2023

Section 377: Appeal by the State Government against sentence :

(1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy- (a) to the Court of Session, if the sentence is passed by the Magistrate; and (b) to the High Court, if the sentence is passed by any other Court.

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy- (a) to the Court of Session, if the sentence is passed by the Magistrate; and (b) to the High Court, if the sentence is passed by any other Court.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or, as the case may be the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filing of such appeal."



WEB COPY 21. The Legislature has used the language stating that when an appeal may be filed against an inadequate sentence, it does not extend to a conviction for a lesser offence. Awarding an inadequate sentence and granting inadequate compensation are entirely different from convicting someone for the lesser offence.

22. Further, it is pertinent to refer Section 222 Cr.P.C., and Sub-clause (2) of Section 222 Cr.P.C. is clear and illustration (a) to Section 222 Cr.P.C., all of which reads as follows:

"Section 222 : When offence proved included in offence charged: (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it

(2) When a person is charged with an offence and facts are proved which reduce it to minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.(4)Nothing



WEB COPY



CrI.R.C.No.889 of 2023

in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Illustrations: (a) A is charged under Section 407 of the Indian Penal Code (45 of 1860), with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under Section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said Section 406.

(b) A is charged, under Section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under Section 335 of that Code."

23. Therefore, on a combined reading of the above extracted provisions of law and also the conviction and sentence imposed by the trial Court on the accused persons and also on a reading of the prayer sought for by the revision petitioner in the appeal filed before the first appellate Court, it is clear that the prayer sought for in the appeal is beyond the scope of Section 372 Cr.P.C.

24. In this case, the trial Court has not convicted the respondents 2 to 7

Page No.14/17



CrI.R.C.No.889 of 2023

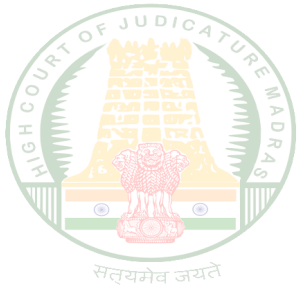
for the minor offences than the charged offences and it is held by the trial Court that the charged offences have been proved by the prosecution and they have imposed sentence and fine, which is purely the discretionary power of the Magistrate. However, if the prosecution feels that it is inadequate, they can file appeal.

25. As far as the victim is concerned, he can file appeal only against the accused acquitting or convicting for the lesser offence or with compensation awarded, which is inadequate.

26. In this case, none of the ingredients mentioned in the proviso clause to Section 372 Cr.P.C., is applicable to the petitioner and therefore, the appellate Court had rightly dismissed the petition.

27. In the appeal, if any application to condone the delay in filing the appeal is filed, the Court normally shall not go into the merits of the case and the Court has to see the reason for the delay. If the appellate Court feels that the appeal itself is not maintainable under Section 372 Cr.P.C., the appellate Court has no jurisdiction to entertain the appeal, and therefore, the application to condone the delay was dismissed.

Page No.15/17



Crl.R.C.No.889 of 2023

WEB COPY 28. On a reading of the entire materials and also the language used in the provisions of law, this Court does not find any merit in this revision petition. Hence, the revision petition is dismissed, with liberty to the petitioner to work out his remedy in the manner known to law.

25.03.2025

CS

To

1. The Principal Sessions Judge, Chennai.
2. The Inspector of Police,
Crime Branch CID, Metro Wing,
Egmore, Chennai-600 008.
3. The Public Prosecutor, High Court, Madras.

Page No.16/17



WEB COPY



Crl.R.C.No.889 of 2023

P.VELMURUGAN, J

CS

Pre-delivery Order in
Crl.R.C.No.889 of 2023

Orders pronounced on 25.03.2025

Page No.17/17