



Crl.R.C.Nos.1117 and 1119 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 08.07.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.Nos.1117 and 1119 of 2021

In Crl.R.C.No.1117 of 2021:-

James Albert Raj

.. Petitioner

Versus

State, Rep. by the SHO,
Grand Bazaar PS,
Through Public Prosecutor,
Puducherry.
(Crime No.209/2010)

.. Respondent

In Crl.R.C.No.1119 of 2021:-

Mohanraj @ Arumugam

.. Petitioner

Versus

State by
Station House Officer,
Grand Bazar Police Station,
Puducherry.
(Crime No.209/2010)

.. Respondent

Prayer in Crl.R.C.No.1117 of 2021 : Criminal Revision Case is filed under Sections 397 & 401 of Cr.P.C., to set aside the order passed by the



Crl.R.C.Nos.1117 and 1119 of 2021

learned III Additional Sessions Judge at Puducherry in C.A.No.12 of 2015, dated 12.11.2021 is hereby confirmed in S.T.R.No.329 of 2011, dated 25.02.2015 and order passed by the learned Chief Judicial Magistrate, Puducherry.

Prayer in Crl.R.C.No.1119 of 2021 : Criminal Revision Case is filed under Sections 397 r/w 401 of Cr.P.C., to set aside the judgment of dismissal passed in Crl.A.No.11 of 2015 on the file of the learned III Additional Sessions Judge, Pondicherry, dated 12.11.2021 as well as the judgment of conviction passed in S.T.R.No.329 of 2011 on the file of the learned Chief Judicial Magistrate, Puducherry, dated 25.02.2015 by allowing the Criminal Revision Petition.

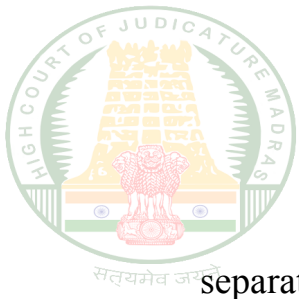
For Petitioner : Mrs.R.Renugadevi,
(in Crl.R.C.No.1117 of 2024) for Mr.P.Malaravan

For Petitioner : Mr.J.Arokhiaaraj
(in Crl.R.C.No.1119 of 2024)

For Respondent : Mr.K.S.Mohandoss,
(in both the cases) Public Prosecutor (Pondicherry)

COMMON ORDER

Both of these Criminal Revision Cases originate from the same judgment, dated 25.02.2015, in S.T.R.No.329 of 2011 on the file of the learned Chief Judicial Magistrate at Puducherry, which was upheld by two



Crl.R.C.Nos.1117 and 1119 of 2021

WEB COPY

separate judgments dated 12.11.2021 in Crl.A.Nos.11 & 12 of 2015 by the learned III Additional Sessions Judge at Puducherry. In these proceedings, both revision petitioners, as accused Nos.1 and 2, were found guilty of an offence punishable under Section 403 read with Section 34 of the Indian Penal Code and sentenced to two years of Simple Imprisonment, along with a direction to pay compensation of Rs.10,00,000/- (Rs.5,00,000/- each).

2. The prosecution's case is that on 24.07.2010, a complaint was received from the ING Vysysa Bank Limited (which has since merged with Kotak Mahindra Bank) indicating that on 15.06.2010, the first accused, *James Albert Raj*, deposited a cheque bearing No.025888, dated 09.03.2010, for Rs.10,00,000/-, issued in his favour by *Arumugam*. After depositing the cheque, since it was an instrument from another bank, it was sent for collection, and the core banking solution process usually sends an SMS to the concerned parties. Upon receiving the SMS, on 16.06.2010, the first accused, *James Albert Raj*, visited the branch with his employer *Mohanraj*, carrying two cheques: one bearing No.983316, made in the name of the second accused, *Mohanraj @ Arumugam*, and another bearing No.983314 for Rs.5,00,000/-, payable to the account holder himself.

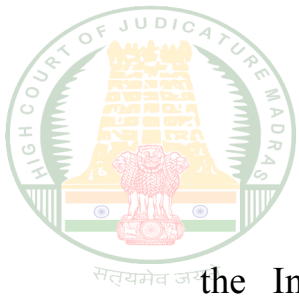


Crl.R.C.Nos.1117 and 1119 of 2021

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3. Without proper verification, the bank cashier, *Sathiyannarayanan*, upon seeing only the uncleared balance indicating a total of Rs.10,02,700/- in the account, while in reality only Rs.2,700/- was available, cleared both of the cheques and paid cash. Realising the mistake immediately, the cashier alerted *S.Jayakumar* to find out whether both the accused who received the cash were still in the bank. However, since they left immediately, bank officials went to the accused's shop, which remained closed. Attempts to contact them by phone also failed. The branch head, *Gopalakrishnan*, and another person, *Segar*, waited at the accused's shop and met them at 3.30 P.M., requesting them to return the cash. Their request was not complied with. By 3.30 P.M on the same day, the branch also received a memo stating that the cheque deposited by the first accused had been dishonoured for insufficient funds. Since the accused, fully aware that the money was wrongly paid and subsequently misappropriated for their own use, a complaint was filed.

4. Upon the said allegations, a case in Crime No.209 of 2010 was registered for alleged offences under Section 403 read with Section 34 of



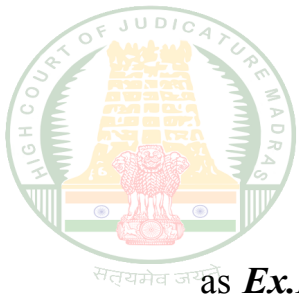
Crl.R.C.Nos.1117 and 1119 of 2021

the Indian Penal Code by *Gokulakrishnan*, Sub-Inspector of Police.

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Thereafter, the case was taken up for investigation, and a Final Report was filed by *P.W.5, Ganesh*. The case was registered as S.T.R.No.329 of 2011, and after issuing summons and questioning, the accused denied the charge and stood trial. To prove the allegation, the prosecution examined *R.Gopalakrishnan*, the head of the branch at that time, as *P.W.1*. He testified that the cheque for Rs.10,00,000/- was presented by the first accused, and by mistake, considering the uncleared balance reflected against the account, the amount was paid in respect of the two cheques for Rs.5,00,000/- each. He also stated that immediately after, the accused were contacted but failed and omitted to repay the money.

5. The cashier, *Sathiyannarayanan*, who also spoke about the said fact, was examined as *P.W.2*. Another official, *Segar*, who also testified about accompanying *Sathiyannarayanan* and the Manager to the accused's shop and demanding the amount, was examined as *P.W.3*. *Sriselvendiran*, who was also working at the bank during that time and generally testified about the incident, was examined as *P.W.4*. The Investigating Officer was examined as *P.W.5*. On behalf of the prosecution, the complaint was marked

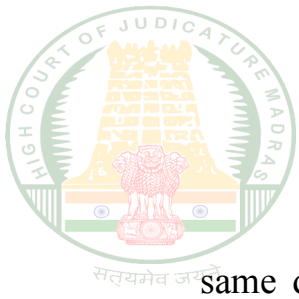


Crl.R.C.Nos.1117 and 1119 of 2021

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as **Ex.P-1**. A copy of the first accused's current account opening form was marked as **Ex.P-2**. A copy of the cheque issued to the first accused was marked as **Ex.P-3**. A return memo was marked as **Ex.P-4**. A challan copy was marked as **Ex.P-5**. The cheques showing the amounts paid to the first and second accused were marked as **Ex.P-6** and **Ex.P-7**. The CCTV footage from 16.06.2008, the date of the incident, was marked as **Ex.P-8**. The statement of account for the first accused's account was marked as **Ex.P-9**. The First Information Report was marked as **Ex.P-10**.

6. When questioned about the incriminating evidence on record under Section 313 of the Code of Criminal Procedure, both the accused denied the evidence as false. Thereafter, no evidence was presented on behalf of the defence. The Trial Court considered the arguments made by the prosecution and the learned Counsel for the petitioners and found the petitioners/accused guilty of an offence under Section 403 read with Section 34 of the Indian Penal Code. The Court imposed a punishment of two years of Rigorous Imprisonment and directed them to pay compensation of Rs.10,00,000/- within 60 days of the judgment. Aggrieved by this, the petitioners/accused filed appeals in Crl.A.Nos.11 and 12 of 2015. On the



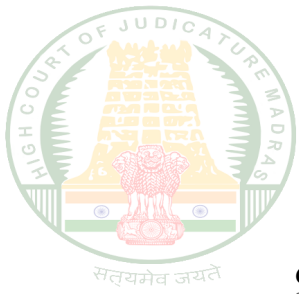
Crl.R.C.Nos.1117 and 1119 of 2021

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same day, in two separate judgments, the learned III Additional Sessions Judge, Puducherry, considered these appeals and upheld the conviction and sentence. The present Criminal Revision Cases are filed against this decision.

7. While granting suspension of sentence, this Court, by an order dated 06.01.2022, directed the petitioners/accused to deposit the amount that was wrongfully paid to them, i.e., Rs.5,00,000/- each. Both petitioners deposited this amount on 19.01.2022 and 21.01.2022, vide receipt Nos.5077 and 5078. Thereafter, the suspension of sentence was granted by this Court, and the matters are now taken up for final hearing.

8. Heard *Mrs.R.Renugadevi*, learned Counsel for the petitioner in Crl.R.C.No.1117 of 2021/first accused; *Mr.J.Arokhiaraj*, learned Counsel for the petitioner in Crl.R.C.No.1118 of 2021/second accused; and *Mr.K.S.Mohandoss*, learned Public Prosecutor (Pondicherry) for the respondent in both cases.

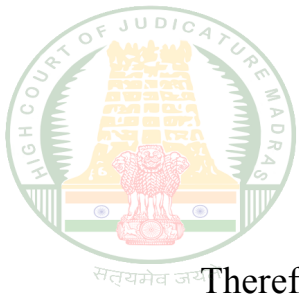


CrI.R.C.Nos.1117 and 1119 of 2021

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9. The learned Counsel for the first accused argues that the first accused genuinely believed the cheque they presented would be honoured. In fact, they only went to the bank to withdraw the amount after receiving the SMS the next day. Once they withdrew the money, they could not immediately repay it. Therefore, there was no intent to cheat the bank. When this Court directed the deposit of the amount, they deposited it. She contends that the offence under Section 403 of the Indian Penal Code is committed only if there is dishonest intent on the part of the accused. Therefore, she prays for an acquittal.

10. The learned counsel for the second accused submits that the first accused is liable to pay the second accused Rs.5,00,000/-. The learned counsel also states that a promissory note was produced before this Court but was not marked during the trial. Since the first accused was liable to pay Rs.5,00,000/- and issued a cheque that was presented and dishonoured, the fact that bank officials later contacted and claimed the money back does not make the second accused liable to repay. Doing so could allow the first accused to claim they already paid the money and refuse further payment.



Crl.R.C.Nos.1117 and 1119 of 2021

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Therefore, the second accused did not act dishonestly; he was justified in not repaying the money even after the bank officials made contact.

11. The learned Public Prosecutor (Puducherry) for the respondent argued that the prosecution has established the offence under Section 403 of the Indian Penal Code beyond any doubt. The bank officials clearly stated that the money was paid mistakenly due to an error in considering the clearing balance instead of the actual balance. Immediately, within minutes, the error was recognised, and from then onward, the bank officials pursued the petitioners. They were made to wait in their shop until 3.30 P.M, when the accused arrived, they seemed to know, and they were also expressly made aware of the mistake. However, they attempted to conceal the money and never paid back. Even after the accused promised to return the money within hours, they never did. Under these circumstances, *PW.1* to *PW.3* have unequivocally testified about the fraudulent intent of the accused to misuse the money, knowing they were not lawfully entitled to it. Therefore, the prosecution was conclusively proven. The dishonest intent and the act of unduly benefiting from a sum of Rs.10,00,000/- stood proved. Accordingly, the Trial Court and the Appellate Court rightly convicted the



Crl.R.C.Nos.1117 and 1119 of 2021

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petitioners. There is nothing for this Court to interfere with in the exercise of revisional jurisdiction.

12. I have reviewed the rival submissions from both sides and examined the material records of the case.

13. The argument of both the learned Counsel for the petitioners/accused is valid only up to the point that when the accused went to the branch on 16.06.2010 upon receipt of an SMS. Indeed, they did not have any pre-planned agenda or conspiracy to cheat the bank. Their argument that, upon receipt of the SMS, they genuinely believed that there was a sum of Rs.10,00,000/- in their account, cannot be rejected by this Court. Even then, within minutes after the cash was disbursed to them, when they were contacted over the phone, they were put on notice that the amount was wrongfully paid to them. The prosecution has presented credible evidence that *P.W.1* to *P.W.3* went to the shop and were made to wait until 3.30 P.M., and only thereafter did both the accused surface. They met the accused and disclosed to them the wrongful disbursement of the money. The accused had promised to return the money but failed to do so.



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14. Any person wrongfully entrusted with the bank's money, is also legally bound to return it. Section 72 of the Indian Contract Act, 1872, lays down in categorical terms that a person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it. Retaining the same, would amount to unjust enrichment and it is an obligation in law to repay the same. Useful reference in this regard can be made to the Judgment of the Hon'ble Supreme Court of India in ***Thomas Abraham and Ors. Vs. National Tyre and Rubber Co.***¹. Thus, in law or by sheer common sense, it cannot be pleaded on behalf of the accused that they thought it was fine for them not to return the amount. No evidence was presented on behalf of the accused that, by that time, they had disposed of the money or dealt with it in any manner. Therefore, their wrongful conduct begins from that moment onward, i.e., after knowing that the money was put into their possession without entitlement and after promising to return it, they failed to do so. Thus, dishonest intent is demonstrated by their actions of evading the bank officials initially, then promising to pay, and subsequently refraining from returning the unduly paid money. Even the contention of the learned Counsel for the second accused that if the second

¹ (1973) 3 SCC 458



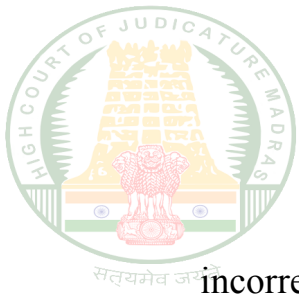
Crl.R.C.Nos.1117 and 1119 of 2021

WEB COPY

accused voluntarily returned the sum of Rs. 5,00,000/-, there might be a possibility for the first accused to claim that his liability is absolved, cannot be considered as grounds.

15. As a matter of fact, once the second accused was made aware that it was a human error on the part of the cashier in entrusting the money to the accused, it became their duty to return the money. The record shows ample evidence that he also promised to do so, but neither of the accused ever returned the money. Therefore, I am unable to accept the argument of the petitioners' learned counsel that the offence under Section 403 of the Indian Penal Code is not established. Consequently, the findings of guilt by both the Trial Court and the Appellate Court are upheld.

16. Now, regarding the question of the sentence, firstly, it can be seen that the entire amount that was wrongfully received has now been deposited to the credit of the crime number. The second point I consider is that the error was due to the cashier's judgment, and other explanations, such as it being crowd-related or the accused jumping the queue, are all unacceptable. It is a clear and outright mistake on the part of the bank officials to have



Crl.R.C.Nos.1117 and 1119 of 2021

WEB COPY

incorrectly disbursed the amount when the cheques were presented by the first and second accused. The third mitigating circumstance, especially for the second accused, is the fact that if the amount is owed by the first accused and has come to him via cheque presentation.

17. Further, the incident occurred solely due to a mistake by the bank officials in entrusting the money to the accused and the callous action on the bank's part sowed the seeds of dishonesty, tempting the accused, given the fact that they were walking a tightrope on their economic affairs. Therefore, the facts and circumstances of the case call for a lenient punishment. The offence under Section 403 of the Indian Penal Code can be punished with imprisonment for up to two years or with a fine, or both. Considering the overall facts and circumstances, I am inclined to impose a fine as the only penalty on both accused.

18. The amount of compensation as ordered by the Trial Court and already deposited to the credit of the crime number can be ordered to be repaid to the bank. I also consider the fact that the petitioners/accused money was paid only after the direction of this Court to pay the sum. They



Crl.R.C.Nos.1117 and 1119 of 2021

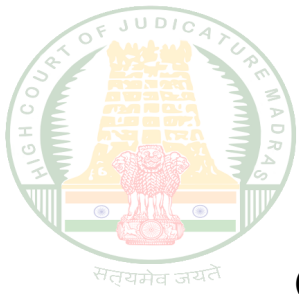
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had the money for a considerable period. In view thereof, the first accused can be imposed a fine of Rs.50,000/-, and in default, to undergo Simple Imprisonment for three months, while the second accused can be directed to pay a fine of Rs.25,000/-, and in default, to undergo Simple Imprisonment for two months. The fine must be paid within four weeks of receiving a certified copy of this order, failing which, a warrant shall be issued and the petitioners/accused will be committed to prison.

19. Accordingly the Criminal Revision Cases are allowed in part on the following terms:-

(i) The conviction of the appellants for an offence under Section 409 of the Indian Penal Code, by the judgment dated 25.02.2015, in S.T.R.No.329 of 2011 on the file of the learned Chief Judicial Magistrate at Puducherry, and upheld by the judgments dated 12.11.2021 in Crl.A.Nos.11 and 12 of 2015 by the learned III Additional Sessions Judge at Puducherry, is confirmed;

(ii) The sentence is modified. The punishment imposed to undergo Rigorous Imprisonment for three years is set aside.



Crl.R.C.Nos.1117 and 1119 of 2021

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(iii) The first accused shall pay a fine of Rs.50,000/-, and in default, undergo Simple Imprisonment for three months;

(iv) The second accused is directed to pay a fine of Rs.25,000/-, and in default, to undergo Simple Imprisonment for two months;

(v) The fine amounts must be paid within four weeks of receiving a certified copy of this order, failing which, warrants shall be issued and the petitioners/accused will be committed to prison.

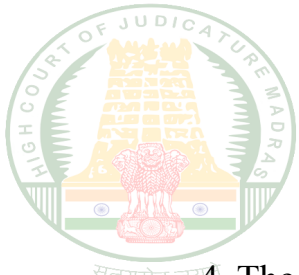
(vi) The amount of Rs.10,00,000/- deposited by the petitioners/accused shall be paid out to the victim, presently, being Kotak Mahindra Bank, Muthumariamman Koil Street, Puducherry.

08.07.2025

Neutral Citation : yes
grs

To

1. The III Additional Sessions Judge,
Puducherry.
2. The Chief Judicial Magistrate,
Puducherry.
3. The Station House Officer,
Grand Bazar Police Station,
Puducherry.



CrI.R.C.Nos.1117 and 1119 of 2021

4. The Public Prosecutor,
High Court of Madras.

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Crl.R.C.Nos.1117 and 1119 of 2021

D.BHARATHA CHAKRAVARTHY, J.,

grs

Crl.R.C.Nos.1117 and 1119 of 2021

08.07.2025