

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 13.07.2017**

**DELIVERED ON : 18.05.2018**

**CORAM :**

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR**

**Crl.R.C.Nos.1242 & 1243 of 2015**

1.R.Chinnadurai ... Revision Petitioner/Accused-1  
in Crl.R.C.No.1242 of 2015

1.Devendiran  
2.Manimaran  
3.Rajendran ...Revision Petitioners/Accused-2,3 & 4  
in Crl.R.C.No.1243 of 2015

Vs.

State rep. by  
The Inspector of Police,  
Irumpulikurichi Police Station,  
Irumpulikurichi,  
Sendurai Taluk,  
Ariyalur District.  
(Crl.No.9 of 2012)

... Respondent in  
both the Crl.R.Cs.

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Prayer in Crl.R.C.No.1242 of 2015: Petition filed under Sections 397 and 401 of Cr.P.C against the judgement dated 23.09.2015 passed by the Additional Sessions Judge-cum-Chief Judicial Magistrate, Ariyalur in Criminal Appeal No.10 of 2015 confirming

the compensation passed by the learned Judicial Magistrate, Jayamkondam in order dated 23.10.2013 in C.C.No.305 of 2012.

Prayer in Crl.R.C.No.1243 of 2015: Petition filed under Sections 397 and 401 of Cr.P.C against the judgement dated 23.09.2015 passed by the Additional Sessions Judge-cum-Chief Judicial Magistrate, Ariyalur in Criminal Appeal No.5 of 2013 confirming the compensation passed by the learned Judicial Magistrate, Jayamkondam in order dated 23.10.2013 in C.C.No.305 of 2012.

For Petitioner  
in Crl.R.C.No.1242/15 : Mr.N.Rajavannian

For Petitioner  
in Crl.R.C.No.1243/15 : Mr.C.S.Dhanasekaran

For Respondent  
in both the Crl.R.Cs. : Mr.R.Sekar,  
Govt. Advocate (Crl.side)

सत्यमेव जयते

**COMMON ORDER**

In C.C.No.305 of 2012 on the file of the Judicial Magistrate Court, Jayamkondam there were 13 accused. Among the 13, charge sheet was filed against A1 and A5 to A13 for the

alleged offences under Sections 147, 294(b), 323 and 506(ii) of IPC. Against A2 and A4, charge sheet was filed for the alleged offences under Sections 148, 294(b), 324, 506(ii) of IPC. Against A3, charge sheet was filed under Sections 148, 294(b), 324, 326 and 506(ii) of IPC. After trial, the learned Magistrate, by judgement dated 23.10.2013, acquitted A5 to A13 under Section 248(1) of the Code of Criminal Procedure. The Trial Court admonished A1 for the proven charge under Section 323 of IPC. However, the trial Court even though admonished A1 under Section 360 of Cr.P.C., had directed payment of compensation of a sum of Rs.5,000/- to be paid to P.W.2 under Section 357 (3) of Cr.P.C.

(ii) As regards A2, the trial Court convicted and sentenced him to undergo three months simple imprisonment with fine of Rs.3,000/-, in default to undergo 15 days simple imprisonment.

(iii) In respect of A3, though initially on the date of judgement, i.e., on 23.10.2013, the judgement and conviction in respect of A3 was deferred or postponed in view of the juvenility

raised against A3, subsequently, by judgement dated 25.10.2013, the trial Court convicted A3 for an offence punishable under Section 326 of IPC and sentenced him to undergo one year simple imprisonment and imposed a fine of Rs.2,500/-, in default, one month simple imprisonment was ordered.

(iv) With regard to A4, the Trial Court convicted and sentenced him to undergo one month simple imprisonment and imposed a fine of Rs.1,000/-, in default, seven days simple imprisonment was ordered.

(v) As against the said conviction and order of compensation, A1 filed an appeal in Criminal Appeal No.10 of 2015; A2 to A4 filed Criminal Appeal No.5 of 2013 and the de-facto complainant filed an appeal in Criminal Appeal No.12 of 2014 before the First Appellate Court, i.e., Additional Sessions Judge-cum-Judicial Magistrate, Ariyalur. The First Appellate Court, on considering the said judgement and conviction made by the Trial Court, had come to the conclusion that the

compensation awarded against A1 was justifiable and that the sentence passed against A2 i.e., three months simple imprisonment was liable to be set aside and accordingly, that sentence was set aside. However, the fine imposed against A2 was confirmed. The First Appellate Court confirmed the conviction and fine imposed against all other accused i.e., A3 and A4. The First Appellate Court dismissed the appeal filed by the complainant. Thereby, the First Appellate Court dismissed the Criminal Appeal No.12 of 2014 as well as CrI.A.No.10 of 2015. Criminal Appeal No.5 of 2013 was partly allowed. As against the dismissal of Criminal Appeal No.10 of 2015 filed by A1 as well as the judgement passed in Criminal Appeal No.5 of 2013 filed by A2 to A4, they accepted setting aside three months imprisonment imposed against A2. However, as against the conviction and imposition of fine made by the Trial Court since having been confirmed, those accused persons i.e., A1 to A4 preferred these two Criminal Revision Cases before this Court. A1, i.e, the appellant in CrI.Appel No.10 of 2015 before the First Appellate Court, filed Criminal Revision Case No.1242 of 2015 and accused A2 to A4, who were the appellants in Criminal Appeal No.5 of

2014 before the First Appellate Court, preferred the Criminal Revision Case No.1243 of 2015. That is how, these two revision cases were filed before this Court.

2. I have heard Mr.N.Rajavannian, learned counsel appearing for the Revision Petitioners and Mr.R.Sekar, learned Government Advocate (Crl.Side) appearing for the prosecution/respondent.

3. Since the issue raised in these Criminal Revision Cases is common and since they have arisen out of the same occurrence and the same judgement and conviction made in C.C.No.305 of 2012 of the Trial Court, these two Criminal Revision Cases are taken up together and decided by this common order.

Crl.R.C.No.1242 of 2015:

4. This revision case was filed by A1 assailing the compensation awarded by the Trial Court as confirmed by the First Appellate Court. The Trial Court, after having taken into account the prosecution case, the supporting evidences as well as

the facts and circumstances of the case, ultimately had come to a conclusion that A1 deserved to be admonished. According to the Trial Court, even though the charge against him under Section 323 of IPC was proved, it was not a serious one and therefore, taking into account the situation faced by the said A1, instead of sentencing him, released him by admonishing under Section 360 of Cr.P.C.. Further, at the same time, the Trial Court ordered a compensation of a sum of Rs.5000/- to be paid by A1 to the victim, viz., P.W.2 by invoking Section 357(3) of Cr.P.C.. This imposition of compensation made against A1 has been assailed herein by the revision petitioner on the ground that, firstly, there had been no cogent evidence on the side of the prosecution to prove the case that the petitioner had been guilty of the offence punishable under Section 323 of IPC. Secondly, when A1 was admonished by the Trial Court invoking Section 360 of Cr.P.C., the compensation awarded by the Trial Court against A1 by invoking Section 357(3) of Cr.P.C. is unacceptable and therefore, on that ground also, the compensation awarded as against A1, i.e., Revision Petitioner herein, by the Trial Court as confirmed by the First Appellate Court, is assailed.

5. In order to dwell into the challenge made by this revision petitioner against the imposition of the compensation payable to the victim i.e., P.W.2, as to whether it was proper in the eye of law, this Court wishes to discuss the legal position in this regard.

6. Section 360 of Cr.P.C. empowers the Court to release an accused on probation of good conduct or after admonition. Here, in the case in hand, the learned Magistrate/Trial Court having invoked said Section, viz., Section 360 of Cr.P.C. has decided to admonish A1. On a perusal of Section 360 of Cr.P.C., this Court finds that, the Court, by virtue of Section 360(3) Cr.P.C., is vested with necessary power to admonish the accused in case of a proven charge. Section 360(3) Cr.P.C. reads thus:

"360. Order to release on probation of good conduct or after admonition

(1) .....

(2) .....

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed,



instead of sentencing him to any punishment, release him after due admonition."

7. In order to exercise the said power under Section 360(3) of Cr.P.C., we have to see whether the preconditions mentioned in the said sub section are fulfilled by the accused.

8. The alleged offence against the petitioner, which is punishable, is under Section 323 of IPC. The maximum sentence for the said offence is one year or fine which may extend to Rs.1,000/- or both. Therefore, since the punishment for the offence is not fine, but, imprisonment of less than two years though there was proof for conviction against A1, the decision taken by the Trial Court by invoking Section 360 of Cr.P.C. and admonishing him can be justified.

9. At the same time, after admonishing the accused, i.e., A1, whether the Court is empowered to direct him to pay compensation is another issue, which in fact, is questioned before this Court in this Revision Case.

10. In this regard, the relevant provision of the Code for compensation is Section 357, where, sub section (3) empowers the Court to order the accused persons to pay by way of compensation to the person who has suffered any loss or injury by reason of the act for which the accused person has been sentenced. The relevant portion of Section 357 of Cr.P.C. i.e., sub section (3) is extracted hereunder for easy reference:

357. Order to pay compensation:

(1) . . . . .

(2) . . . . .

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced."

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11. If we have a cursory reading of Sections 360(3) and 357(3) Cr.P.C., the following position would emerge:

(i) If any person is convicted for an offence in IPC punishable for not more than two years imprisonment, and in that case, if the Court thinks fit

having regard to the age, character, etc. of the accused and the nature of the offence, instead of sentencing him to any punishment, it may release him after due admonishing.

(ii) If a Court imposes a sentence where imposition of fine does not form part, the Court can order the accused to pay compensation to the person who suffered any loss or injury by the act of the accused person for which he has been so sentenced.

12. From the aforesaid emerging situation, it becomes necessary that a person, who has been found guilty and before conviction and imposing sentence, instead of sentencing him, he can be admonished, provided, the case meets the ingredients within the meaning of sub section 3 of section 360 of Cr.P.C.. Once admonition is ordered, it cannot be treated as if the person who has been admonished, has suffered with sentence.

13. However, as per Section 357(3)Cr.P.C., if the Court imposes a sentence, of which fine does not form part, only then,

the question of ordering compensation would arise. It means when a person is not sentenced, the scope of awarding compensation may not arise in view of the language used in sub section (3) of section 357 of Cr.P.C.

14. Therefore, if a person is sentenced, then only the court can decide about the imposition of compensation payable to the victim. In the case in hand, A1 has been admonished, which means, he has not been sentenced, because admonition itself is given only in lieu of the sentence, as the language used in sub Section 360 Cr.P.C., clearly states as follows:

"Instead of sentencing him to any punishment, release him after due admonition."

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15. After a person gets admonished, he cannot be treated to be a person who had suffered with sentence. He may be a convicted person, but has not been sentenced. When the court thinks to impose a sentence, in view of the language used in sub

section (3) of section 357, the Court does not have the power to impose compensation payable to the victim, on the person who has been admonished.

16. In the case in hand, A1 was completely admonished by invoking Section 360(3) of the Code and he was not sentenced to undergo any imprisonment and no fine was imposed against him. When that being the position, A1 can be treated only as a person who has been admonished and he cannot be treated as a person against whom sentence has been imposed for the offences punishable for the purpose of sub section(3) of Section 357 of Cr.P.C.

17. At the same time, A1 may be considered as a convicted person. If a person can be admonished, the same can be made by the court only in lieu of sentence and therefore, the person who has been admonished has not been sentenced. In that case, the imposition of compensation under section 357 (3) Cr.P.C.

does not arise. Therefore, such imposition of compensation made by the Trial Court against A1, who is the revision petitioner herein and confirmation of the same by the impugned judgement of the First Appellate Court is unjustifiable, as it goes against the spirit Section 360 (3) as well as section 357(3) of Cr.P.C. and therefore, this Court is of the considered view that such imposition of compensation of Rs.5,000/-made against the Criminal Revision Petitioner herein, who was A1 in the case before the Trial Court, is unlawful and therefore, the said compensation awarded by the Trial Court as confirmed by the First Appellate Court through the impugned judgement insofar as A1 is concerned is set aside.

Crl.R.C.No.1243 of 2015:

18. In this Criminal Revision Case, there are three petitioners, who are A2 to A4 before the Trial Court. The Trial Court in the judgement dated 23.10.2013 in C.C.No.305 of 2012, convicted A2 for simple imprisonment of three months with fine of Rs.2,000/-, in default, 15 days simple imprisonment, for the

offence punishable under Sections 324 of IPC. As against A4, the Trial Court sentenced him one month simple imprisonment and imposed a fine of Rs.1,000/-, in default, seven days simple imprisonment.

19. In respect of A3, though by judgement dated 23.10.2013, the Trial Court postponed the decision with regard to him, because of the claim made on behalf of him about his juvenility, subsequently, by judgement of conviction dated 25.10.2013, A3 also was sentenced for the offence punishable under Section 326 of IPC for one year simple imprisonment and imposed a fine of Rs.2,500/-, in default, one month simple imprisonment was imposed against him. When appeals were preferred by these three revision petitioners before the First Appellate Court, the First Appellate Court has set aside three months simple imprisonment imposed against A2 and further confirmed the imposition of fine and also the conviction imposed against A3 and A4. Only against this judgement, where the First Appellate Court, insofar as A2 is concerned, some modification

was made with regard to imprisonment and further confirmed the fine in respect of A2 and sentence of imprisonment and fine in respect of A3 and A4, this Criminal Revision Case had been filed by these petitioners, who are A2 to A4, before the Trial Court.

20. In order to appreciate the grounds urged on the side of the petitioners, the relevant portion of the evidence in support of the prosecution case as well as the contradictions in evidence as has been projected by the defence side are to be looked into.

21. First, let us deal with the evidence of P.W.1, who is the de-facto complainant. Though he has stated in his chief examination about the specific overt act about the accused persons who are the petitioners herein, in his cross examination, he has given the following deposition:

“rk;gtk; ele;j ,lj;jpy; 50 ngh;fs; ,Ue;jpUg;ghh;fs;  
vd;why; rhpay;y/ 25 ngh;fs; ,Ue;jpUg;ghh;fs;/ me;j  
rkaj;jpy; eh';fSk; vjphpfspd; tifauht[k; moj;Jf;bfhz;nlhk;  
vd;why; mth;fs; jhd; moj;jhh;fs;/ eh';fs; mof;ftpy;iy/ ehd;



b\$a';bfhz;lk; muR kUj;Jtkidf;F bry;tjw;F Kd;ghfnt 13tJ  
 vjphp rpfpr;irapy; ,Ue;jhh; vd;why; mJ rk;ge;jkhf vdf;F  
 bjhpahJ/

3?tJ vjphp ,Uk;g[ igg;ghy; vdJ thapy; moj;J gy;  
 cile;Jtpl;IJ vd;W kUj;Jthplk; brhy;ypapUf;fpnwd;/

nghyprhh; vd;id tprhhpj;jnghJ 1tJ vjphp kw;Wk;  
 12 vjphpfs; vdJ tPl;ow;F Kd;ghf te;jjhf  
 brhy;ypapUf;fpnwd; vd;why; rhpjhd;/ nghyPrhh; vd;id  
 tprhhpj;jnghJ vjphpfs; mhpths;. ,Uk;g[ igg;. cUl;L fl;il  
 nghd;w Ma[j];fSlid; te;jjhf brhy;ypapUf;fpnwd;/  
 nghyPrhh; vd;id tprhupj;jnghJ 1tJ vjphpa[k; mtiu  
 rhh;e;jth;fSk; vd;ida[k;. vdJ mg;ghita[k; jpl;oajhf  
 brhy;ypapUf;fpnwd;/ nghyPrhh; vd;id Kjypy;  
 tprhup[j;jnghJ 7 vjphpfis jhd; brhy;ypapUf;fpnwd;/  
 kWthf;FK:yj;jpy; jhd; 13 vjphpfis brhy;ypapUf;fpnwd;/  
 kWthf;FK:ykhdJ rk;gtk; ele;J 10 ehl;fs; fHpj;J  
 nghyPrhh; tprhhpj;jnghJ bfhLj;njd;/

3tJ vjphp tyJ nky;thapy; moj;J mjpy; vdf;F xU  
 gy; cile;J tpl;IJ vd;Wk;. xU gy; Ml;lk; fz;IJ vd;Wk;. .  
 nghyPrhh; tprhuizapy; brhy;ypapUf;fpnwd;/

ehd; 13?tJ vjphp j';fntYit moj;J fhag;gLj;jptpl;L

Xo tUk;ngHJ Rtw;wpy; nkhJk; ngHJ jhd; fhak; vd;W  
brhd;dhy; rhpay;y/ mnj neu;jjpy; 13tJ vjphp j';fnty;  
vd;gth; ehd;. vdJ mk;kh. mg;gh. kidtp Mfpnahh; moj;jjhf  
Fw;w vz;/8-2012 Mf gjpt[ bra;ag;gl;IJ vd;why; rhpjhd;/

,e;j rk;gtj;jpw;F Kd;ghf ehDk; 1tJ vjphpa[k;  
beU';fpa ez;gh; vd;why; rhpjhd;/"

The Chief examination of P.W.2 would reveal the following:

"gpwF 2?tJ vjphp njnte;jpud; 3?tJ vjphp  
kzpkhwd; ,Uk;g[ igg;ghy; tyJ gf;f fhjpy;  
moj;jhh;fs;/

vd;kfd; unkcp; vd;id rz;ilia tpyf;f te;jngHJ  
1?tJ vjphp rpd;dJiu mhpthshy; tyJ fz; g[Utj;jpy;  
btl;o tpl;lhh;/ btl;oaJk; uj;jk; fhak; MdJ/ 2?tJ vjphp  
njnte;jpud; ,Uk;g[ igg;ghy; cjl;oy; moj;J 1 gy;  
cile;Jtpl;IJ/ 1 gy; Ml;lk; fz;Ltpl;IJ/ 4?tJ vjphp  
uhn\$e;jpud; vd;id fl;og;gpoj;Jf; bfhz;lhh;/"

In his cross examination he has made the following:

"mnj rk;gtj;jd;W eh';fSk; vjphpfSk; moj;J bfhz;nlhk;  
vd;why; rhpay;y/ vjphpfs; jhd; v';fis moj;jhh;fs;/ mjpy; jhd;  
13 vjphp j';fntYf;F fhak; vd;W brhd;dhy; rhpay;y/ ehd; vdJ

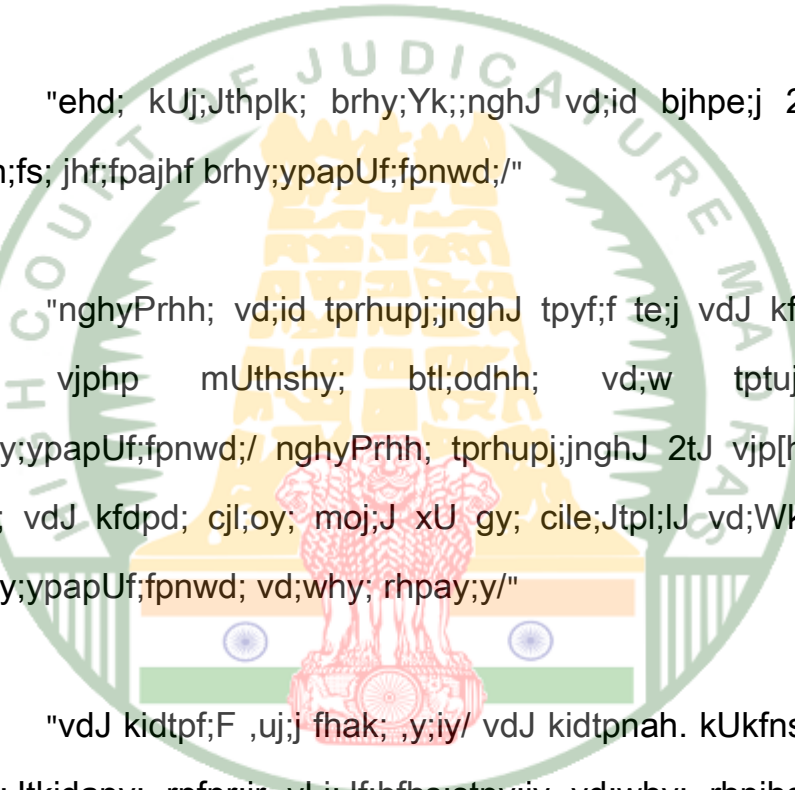
kfd;. kidtp. kUkfs; 13tJ vjphpia moj;J fhag;gLj;jpajhf  
 ,Uk;g[yFwpr;rp fhty; epiyaj;jpy; tHf;F gjpt[ bra;ag;gl;IJ  
 vd;why; me;j tHf;F gw;wp vdf;F vJt[k; bjhpahJ/ me;j  
 tHf;fpy; eh';fs; \$hkPdpy; btspte;Jtpl;nlhk; vd;why; rhpjhd;/  
 me;j tHf;if o/v!;/gp tprhupj;J js;Sgo bra;J tpl;lhh;/"

"ehd; kUj;Jthplk; brhy;Yk;;nghJ vd;id bjhpe;j 22  
 egh;fs; jhf;fpajhf brhy;ypapUf;fnpwd;/"

"nghyPrhh; vd;id tprhupj;jnghJ tpyf;f te;j vdJ kfid  
 1tJ vjphp mUthshy; btl;odhh; vd;w tptuj;ij  
 brhy;ypapUf;fnpwd;/ nghyPrhh; tprhupj;jnghJ 2tJ vjp[hp  
 jhd; vdJ kfdpd; cjl;oy; moj;J xU gy; cile;Jtpl;IJ vd;Wk;.brhy;ypapUf;fnpwd; vd;why; rhpay;y/"

"vdJ kidtpf;F ,uj;j fhak; ,y;iy/ vdJ kidtpnah. kUkfnsh  
 kUj;Jtkidapy; rpfpr;ir vLj;Jf;bfhs;stpy;iy vd;why; rhpjhd;/  
 vdJ kidtp kw;Wk; kUkfis ehd; kUj;Jtkidf;F miHj;J  
 bry;ytpy;iy/"

"ehDk; vd; kidtp kfd;. kUkfd; 13tJ vjphpia moj;J  
 fhag;gLj;jptpl;L XotUk;nghJ fhk;gt[z;l; Rthpy; nkhjp fhak;  
 vd;Wk;. ,ij gad;gLj;jp vjphpfs; kPJ bgha;ahf tHf;F  
 bfhLj;njhk; vd;why; rhpay;y/ ehd; brhd;dJ nghy brhd;d



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neuj;jpy; vt;tpj rk;gtKk; elf;ftpy;iy vd;Wk;. mjw;fhf ehd;  
 bgha;ahf g[fhh; bfhLj;J mjw;fhf bgha; rhl;rpak;  
 brhy;fpnwd; vd;why; rhpay;y/ rk;gtj;jpw;F Kd;ghf ehDk;  
 1tJ vjphpa[k; xw;Wikahf ,Ue;njhk; vd;why; rhpjhd;/ 10.000  
 U:gha; bfhLf;fy;. th';fypy; jhd; gpur;rid Vw;gl;IJ/"

22. P.W.1 and P.W.2 who are the son and father respectively, and both claimed that they sustained injuries because of the overt act of the accused persons, viz., A1 to A4. Further, P.W.3, who had been considered to be an independent witness, was treated as hostile as he made the following deposition before the Trial Court.

"m/j/F/tp/ nghyprhh; vd;id tprhhpj;jjhft[k; mg;ngHJ 1tJ  
 vjphp rpd;dJiu xU jo fHpahy; bghd;Drhkp jiyapy;  
 moj;jjhft[k;. 1tJ vjphp rpd;dJiu mhpthshy; m/rh1d; jiy tyJ  
 fz; g[Utj;jpw;F nky; btl;o fhak; gLj;jpajhft[k;. 2tJ vjphp  
 njnte;jpud; xU ,Uk;g[ igg;ghy; m/rh/1d; ,IJ njhs; gl;ilapy;  
 moj;J fhak; Vw;gLj;jpajhft[k; 3tJ vjphp kzpkhwd; ,Uk;g[  
 igg;ghy; unkcPd; tyJ gf;f thapy; moj;J nky;gf;f gy;iy  
 cilj;Jtpl;ljhft[k;. 4tJ vjphp uhn\$e;jpud; bfhiy kpul;ly;  
 bra;jjhft[k;. m/rh/1 unkcPd; fhy;fspy; moj;jjhft[k;. vjphp

fhh;j;jpf; m/rh/1ia fl;o gpoj;Jf;bfhz;ljhft[k; vjphp byl;Rkzd;  
 Fr;rpahy; moj;jjhft[k;. kw;w vjphpfs; m/rh/1.2iaa[k; rhl;rp  
 tp\$ahita[k; moj;jjhft[k; Twptpl;L jw;rkak; cz;ikf;F g[wk;ghf  
 rhl;rp brhy;fpnwd; vd;W brhd;dhy; rhpay;y/ 2.3 vjphpfs;  
 vd; Ch;fhuh;fs; vd;gjhy; mth;fs; gae;Jbfhz;L Kd;Df;F  
 Kuzhf rhl;rp TWfpnwd; vd;W brhd;dhy; rhpay;y/"

P.W.4 , wife of P.W.1, in her cross examination had deposed

as under

"vd;id nghyPrhh; rk;gtj;jd;W ,unt kUj;Jtkidapy; itj;J  
 tprhhpj;jjhft[k; ehd; Vw;fdnt Kjy; tprhuizapy; rhl;rpak;  
 mspj;jg;go jhd; nghyP!; tprhuizapYk;  
 brhy;ypapUf;fpnwd;/ rk;gtk; ele;jnghJ 50 ngh;fs;  
 ,Ue;jpUg;ghh;fs; vd;why; rhpay;y/ vjphpfs; kl;Lk; jhd;  
 ,Ue;jhh;fs;/ rk;gt neuj;jpnyna 13 vjphpia eh';fs;  
 moj;jjhft vd; kPJk;. vdJ khkdhh;. khkpahh;. fzth; kPJk;  
 tHf;F gjpt[ bra;ag;gl;lj vd;why; rhpjhd;/ ehd; muR  
 gzpapy; ,Uf;fpnwd;/ rk;gtk; ele;jjhft brhy;Yk; neuj;jpy;  
 ehd; ,;F ,y;iy vd;Wk;. vt;tpjkhd rk;gtj;ija[k; ehd;  
 gh;f;ftpy;iy vd;Wk;. m/rh/1.2 vd; fzth; kw;Wk;  
 khkdhh; vd;gjhy; mtUf;F Mjuthf bgha;rhl;rpak;  
 mspf;fpnwd; vd;why; rhpay;y/ nghyPrhh; vd;id  
 tprhhpf;ftpy;iy vd;whYk; rhpay;y"/

23. The aforesaid evidence of P.W.1 to P.W.4 were considered to be crucial witnesses according to the prosecution. Among the four witnesses, P.W.3 is the only independent witness, who had not deposed in support of the prosecution case. Therefore, he was considered to be a hostile witness. Insofar as the other three witnesses, viz., P.W.1, P.W.2 and P.W.4 are concerned, they are one family members as the P.W.1 is the son and P.W.2 is the father and P.W.4 is the wife of P.W.1. Even among these three witnesses, there had been considerable contradictions in their deposition.

24. This has been, of course, considered by the First Appellate Court in the judgement impugned. The following finding of the First Appellate Court would reveal the said aspect of contradictions as well as the strength of the deposition of P.W.1 to P.W.4 except P.W.3. Therefore, the said part of the findings given by the First Appellate Court are extracted hereunder:

"EX.P5, EX.P7 m/rh/1 d; fha rhd;iw ghprPypj;J  
 ghh;f;Fk; nghJ mtia[k; m/rh/2la[k; bjupe;j 22 egh;fs;  
 jhf;fpajhf kUj;Jtuplk; bjuptpj;Js;sdh;. nkYk;. mjpy;

Fwpg;gpl;Ls;s fha';fs; vJt[k; bfhL';fhak; ,y;iy/ m/rh/2d;  
 fhar;rh;wpy; "As per the evidence the injury is grievous  
 (Grievous injuries not mention) vd;W Fwpg;gpl;gl;Ls;sJ.  
 bfhL';fhak; vd;why; vd;bdd;d fha';fs; bfhL';fhak; vd;W  
 kUj;Jth; bjspthf Fwpg;gpl ntz;Lk;/ mg;go ,y;yhky;  
 kUj;Jth; vGjpa[s;s Fwpg;ig itj;J xUtUf;F Vw;gl;IJ  
 bfhL';fhakh. rhjuz fhakh vd;w Kot[f;F ve;j ePjpkd;wKk; tu  
 ,ayhJ vd;W ,e;ePjpkd;wk; fUJfpwJ/ vdn; jhd; tprhuiz  
 ePjpkd;wk; bfhL';fhaj;ij Vw;gLj;jpajw;fhd gphptpd; fPH;  
 jz;lid mspf;ftpy;iy vd;W ,e;ePjpkd;wk; fUJfpwJ/ nkYk;  
 bghJthf fhak; gl;lthpd; rhl;rpakK;. kUj;Jtupd; rhl;rpakK;  
 Kuz;ghod;wp ,Uf;f ntzLk;/ m/rh/1 d; rhl;rpago jd;id 12  
 egh;fs; mhpths;. ,Uk;g[ igg;. cUl;L fl;il Mfpa Ma[j];fSld;  
 te;J mrp';fkhf ngrp moj;jjh; Twpa[s;shh;. mtUila  
 rhl;rpaj;jpy; 5k; vjphp jd;id fl;og;gpoj;Jf; bfhz;ljhftt[k;. 6k;  
 vjphp jd;id @njtoah kfnd. bfhy;yhky; tplkhl;nld;@  
 vd;W fHpahy moj;jjhft[k; Twpa[s;shh;/ Mdhy; nk;go 6k  
 ;vjphp jd;id clk;gpy; ve;j ,lj;jpy; moj;jhh; vd;Wk;. mjdh;  
 jdf;F vd;d fhak; Vw;gl;IJ vd;Wk; Fwpg;gpl;L Twtpy;iy/  
 nk;go tprhuiz ePjpkd;wj;jpy; muR jug;g[ rhl;rpfs;  
 mspj;Js;s rhl;rpak; mth;fSf;Fs;nsna beU';fpa cwtpdh;fshf  
 ,Ue;Jk; xUtUf;bfhUth; Kuz;ghlhd rhl;rpak; mspj;Js;sdh;/  
 nkYk;. rk;gtk; 17/01/2012 md;W ,ut[ 7/30 kzpastpy;

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bfhLf;fg;gl;oUg;gjhf cs;sJ xU tHf;fpy; g[fhh; vd;gJ  
 cldoahf bfhLf;fgl ntz;Lk; vd;W gy jPh;g;g[fs; cs;sd/  
 MdhYk; ,e;j tHf;fpy; rk;;gtk; vd;gJ 17/01/2012 ,ut[ 11/45  
 f;F ele;jJ vd;W brhy;ygl;Ls;sJ/ Mdhy; rk;;gtk; ,ut[ neuk;  
 ele;jJ vd;gjhy; cldoahf bfhLf;fg;glhky; 18/01/2012 khiy  
 7/30 kzptiuapy; fhyjhkjk; Vw;gl ntz;oa mtrpak; vd;d vd;gij  
 muR jug;gpy; re;njff;jpw;F ,lkpd;wp tpsf;ftpy;iy/ nkYk;.  
 jdpgl;l rhl;rp vd;W Fwpg;gpl;Ls;s m/rh/3 muR jug;gpy;  
 gpwh; rhl;rpahf khwpa[s;shh;/ m/rh/1d; rhl;rpaj;ij  
 Mjhpj;J jdpgl;l rhl;rpfs; ahUk; rhl;rpak; tH';ftpy;iy/ vdpDk;  
 m/rh/1k;. m/rh/2k; vjphpfshy; jhf;fg;gl;ldh; vd;gJk; mjdhyy;  
 m/rh/1.2f;F fhak; Vw;gl;IJ cz;ik vd;Wk; muR jug;g[  
 rhl;rpfspd; thapyhf bjhpatUfpwJ/"

25. Even though the First Appellate Court having shown its consideration in proper perspective by giving such observation that there had been a delay in registering copy the FIR and also there had been a finding by the Trial Court that the doctor's evidence had not been clear as to what was the grievous injury based on Exs.P6 and P7, had given a specific finding that even though



P.W.2 and P.W.4 were close relatives, they had deposed before the Trial Court with contradictions of each other and the reason for delay in filing the FIR till next day evening, i.e., at 7.30 p.m. On 18.01.2012, even though the occurrence which took place on 17.01.2012 at 11.30p.m., was not explained by the prosecution, the First Appellate Court had come to the conclusion that the conviction made against A2 to A4 are to be confirmed except the conviction of three months simple imprisonment against A2.

26. This Court has given its anxious consideration and perused the evidence produced by the prosecution side especially the depositions of P.W.1, 2 and P.W.4.

27. As has been rightly pointed out by the First Appellate Court, even though they are one family as son, father, wife/daughter-in-law, there had been no cogency in the evidence given by them and there had been lot of contradictions in their evidence as has been pointed out above. Even in respect of

grievous injuries caused by damaging the teeth of P.W.1, there was no consistent and cogent evidence about alleged overt act of A2. Therefore, even though the First Appellate Court has rightly set aside the conviction of three months simple imprisonment against A2, it however, confirmed the fine imposed against him, which, in the opinion of this Court, is not justifiable.

28. Insofar as the overt acts against P.Ws.3 and 4 are concerned, even in respect of them, there had been no cogent evidence. Therefore, the case of the prosecution, in the opinion of this Court, has not been proved beyond reasonable doubt.

29. Moreover, since it is a case and counter as there had been complaint by A13 against P.W.1 and P.W.2 and in this regard on the alleged assault made by P.W.1 since A13 sustained injury and he had also taken treatment in the very same hospital, these aspects, as has been rightly pointed out by the defence side, have not been properly appreciated because of the reason that the police have closed the case as mistake of fact. Further,

the fact remains that A13 had sustained injury and had taken treatment in the hospital on the alleged occurrence taken place few minutes prior to the present occurrence on the said day.

30. All these contradictions would go to show that the prosecution has not presented the case in a cogent manner with consistent evidence in support of the prosecution case especially on the specific overt act against the accused persons, viz., A2 to A4. Therefore, taking into account these situations, this Court feels that the benefit of doubt shall be given in favour of the accused persons. In such perspective of the matter, this Court is of the considered view that the petitioners herein who are A2 to A4 are not liable to be punished as per the sentence made by the Trial Court as confirmed by the First Appellate Court and thereby this Revision Case deserves to be allowed.

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31. In the result, both, Criminal Revision Case Nos.1242 and 1243 of 2015 are allowed and the sentence and imposition of

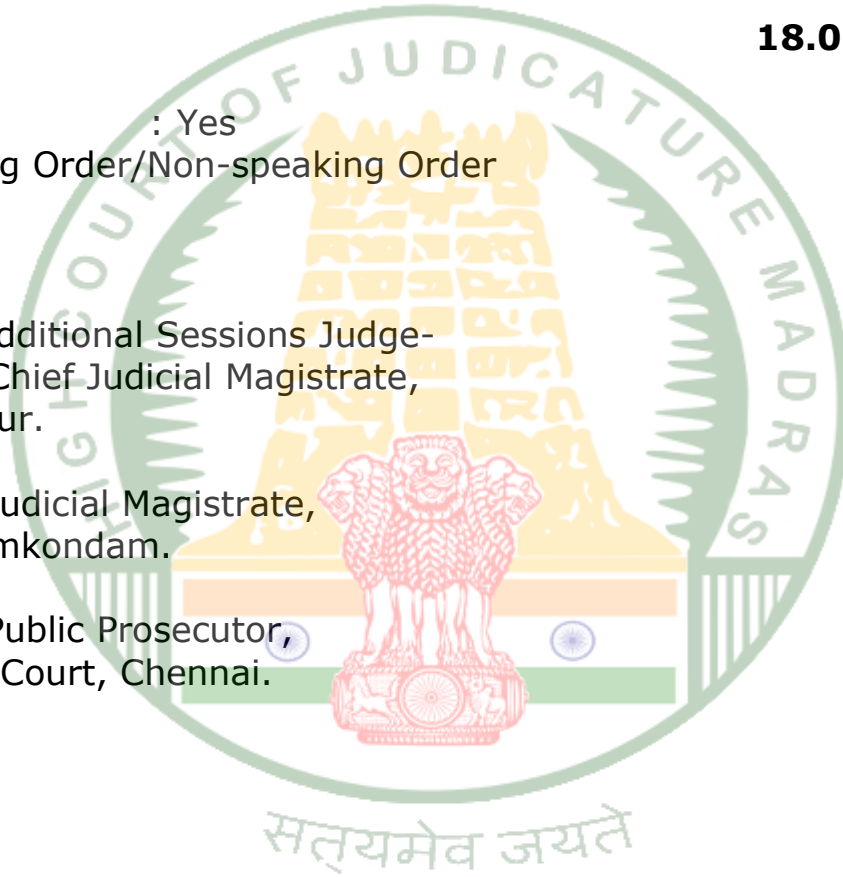
compensation/fine made against the revision petitioners are set aside and they are set at liberty. If any bail bond is executed by the petitioners, the same shall be terminated.

**18.05.2018**

Index : Yes  
Speaking Order/Non-speaking Order

To

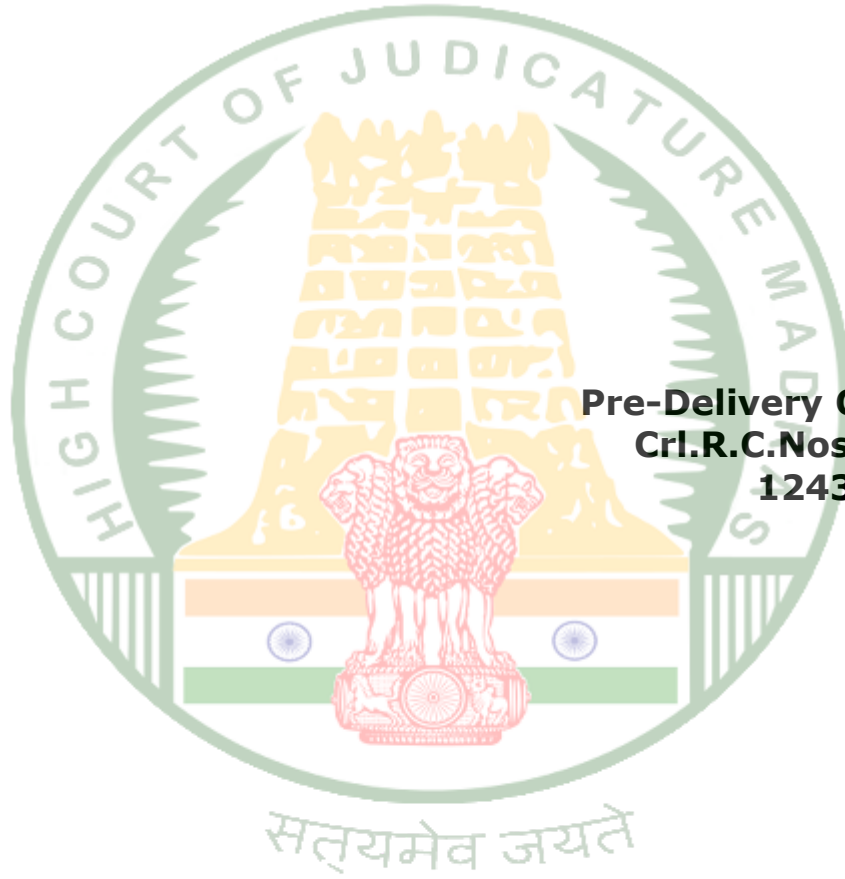
1. The Additional Sessions Judge-cum-Chief Judicial Magistrate, Ariyalur.
2. The Judicial Magistrate, Jayamkondam.
3. The Public Prosecutor, High Court, Chennai.



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**R.SURESH KUMAR, J.**

smi



**Pre-Delivery Orders in  
Crl.R.C.Nos.1242 &  
1243 of 2015**

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