

Crl.R.C.(MD)Nos.401 & 402 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.R.C.(MD)Nos.401 & 402 of 2025

and

Crl.M.P(MD)Nos.4120 & 4123 of 2025

Crl.R.C(MD)No.401 of 2025:

1.M.Soundararajan
2.Sumathy K.Prasad
3.Meena Sampath

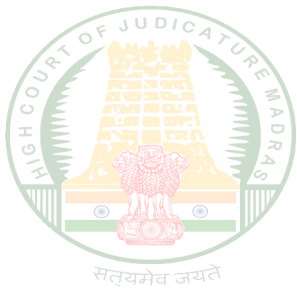
... Petitioners/Appellants/
Accused No.2 - 4

Vs.

Joseph Dhandapani(Since died)
by L.R of Rathinam

... Respondent/Respondent/
Complainant

PRAYER : Criminal Revision Case filed under Section 438 r/w 442 B.N.S.S., to call for the records relating to the Crl.A.No.32 of 2019 on the file of the Additional District and Sessions Court, Dindigul dated 13.06.2024 which is reversing the judgment in C.C No.488 of 2016 on the file of the Judicial Magistrate Court No.II, Dindigul dated 28.02.2019 set aside the same.



Crl.R.C.(MD)Nos.401 & 402 of 2025

WEB COPY

Crl.R.C(MD)No.402 of 2025:

1.M.Soundararajan
2.Sumathy K.Prasad
3.Meena Sampath

... Petitioners/Appellants/
Accused No.2 - 4

Vs.

1.D.Rathinam

... Respondent/Appellant/
Complainant

2.Sri Venkateswara Paper and Boards Limited,
NO.48-D, Palani Road,
S.V.Mill Post,
Udumalpet – 642 128.

... Respondent/1st Respondent/
1st Respondent

PRAYER : Criminal Revision Case filed under Section 438 r/w 442 B.N.S.S., to call for the records relating to the Crl.A.No.40 of 2019 on the file of the Additional District and Sessions Court, Dindigul dated 13.06.2024 which is reversing the judgment in C.C No.488 of 2016 on the file of the Judicial Magistrate Court No.II, Dindigul dated 28.02.2019 set aside the same.

For Petitioner : Mr.N.Krishnappan
For Respondent : Mr.N.Marimuthu

COMMON ORDER

Criminal Revision Case filed under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating



Crl.R.C.(MD)Nos.401 & 402 of 2025

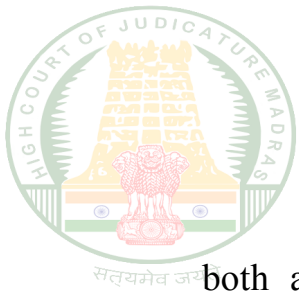
to the judgment dated 13.06.2024 in Crl.A.No.32 of 2019 on the file of the Additional District and Sessions Court, Dindigul, reversing the judgment dated 28.02.2019 in C.C.No.488 of 2016 on the file of the Judicial Magistrate Court No.II, Dindigul, and to set aside the same.

Factual Matrix:

2. The petitioners are Accused Nos.2 to 4 in C.C.No.488 of 2016 on the file of the learned Judicial Magistrate No.II, Dindigul. The prosecution was instituted by the complainant alleging commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. By judgment dated 28.02.2019, the learned Judicial Magistrate convicted the accused and sentenced each of them to undergo six months simple imprisonment and to pay a fine of Rs.2,000/-, in default to undergo two months simple imprisonment.

4. Aggrieved by the conviction and sentence, the accused preferred Crl.A.No.32 of 2019. The complainant preferred Crl.A.No.40 of 2019 seeking award of compensation and enhancement of punishment. Since



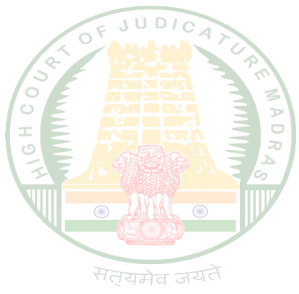
Crl.R.C.(MD)Nos.401 & 402 of 2025

both appeals arose from the same judgment, the learned Additional District and Sessions Judge, Dindigul, heard them together.

5. During consideration of the appeals, the appellate Court noticed that the separate papers containing the examination of the accused under Section 313 Cr.P.C. were not found among the records transmitted by the trial Court. Treating the non-availability of those papers as a fundamental defect, the appellate Court, by common judgment dated 13.06.2024, set aside the judgment of conviction and remitted C.C.No.488 of 2016 to the trial Court for proceeding afresh from the stage of examination under Section 313 Cr.P.C.

The impugned common judgment:

6. The impugned judgment rests substantially upon one circumstance, namely, that the record of the examination under Section 313 Cr.P.C. was unavailable. The appellate Court did not determine whether the examination had, in fact, taken place, whether its substance could be gathered from the trial judgment and the subsequent conduct of the defence, whether any particular incriminating circumstance had been omitted or whether any prejudice was demonstrated by the accused.



Crl.R.C.(MD)Nos.401 & 402 of 2025

7. The appellate Court also did not decide the grounds urged by the accused against conviction. Equally, it did not adjudicate the complainant's claim relating to compensation or examine the extent to which an appeal seeking enhancement of sentence was maintainable. Both appeals were thus disposed of through a wholesale remand.

Grounds of Revision:

8. The principal grounds urged by the petitioners may be summarised thus:

(i) the appellate Court failed to exercise its jurisdiction as the final Court on facts and did not independently evaluate the evidence;

(ii) paragraph 5 of the trial Court judgment expressly records that the accused were examined under Section 313(1)(b) Cr.P.C., that they denied the incriminating materials, and that they proposed to adduce defence evidence;

(iii) consistent with those answers, the third petitioner/fourth accused was examined as D.W.1 and Exhibits D.2 to D.6 were marked;

(iv) mere non-availability of the separate questionnaire or statement in the transmitted records did not establish that the statutory



Crl.R.C.(MD)Nos.401 & 402 of 2025

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exercise had never been conducted;

(v) the appellate Court ought to have considered whether the alleged defect caused actual prejudice and whether it could be cured at the appellate stage;

(vi) the entire cheque amount had allegedly been paid during the pendency of the trial, as adverted to in paragraph 27 of the trial judgment, and this circumstance required consideration on merits;

(vii) Crl.A.No.40 of 2019, insofar as it sought enhancement of sentence at the instance of the complainant, was not maintainable before the Sessions Court; and

(viii) the remand was mechanical, disproportionate and contrary to the limited circumstances in which a retrial or de novo continuation may be ordered.

9. The contention that a common judgment could never be rendered merely because the two appeals contained different prayers cannot be accepted. Connected appeals arising from the same judgment may legitimately be heard and decided by a common judgment. What the law requires is not separate sheets of paper, but separate application of



Crl.R.C.(MD)Nos.401 & 402 of 2025

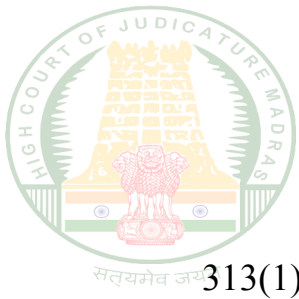
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mind to the distinct reliefs, grounds and questions of maintainability arising in each appeal.

10. Likewise, the broad submission that examination under Section 313 Cr.P.C. has no importance in a prosecution under Section 138 of the Negotiable Instruments Act cannot be countenanced. The summary or quasi-civil character sometimes attributed to such prosecution does not erase the statutory safeguard. Where incriminating evidence is led against an accused, the obligation to afford an opportunity of explanation remains. The petitioners can succeed only on the narrower and legally sustainable ground that the examination was recorded as having been conducted and that the mere loss or non-transmission of its separate record did not, without proof of prejudice, justify a wholesale remand.

Submissions on Either Side:

11. Learned counsel for the petitioners drew the attention of this Court to paragraph 5 of the trial Court judgment, the material part of which records that, after completion of the complainant's evidence, the incriminating circumstances were put to the accused under Section



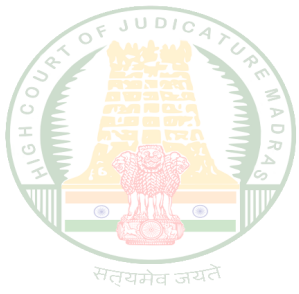
Crl.R.C.(MD)Nos.401 & 402 of 2025

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313(1)(b) Cr.P.C., that the accused stated that the complainant had deposited falsely and instituted a false case, and that they had witnesses to examine. It further records that the fourth accused, Meena Sampath, was thereafter examined as D.W.1 and defence documents were marked.

12. On this basis, learned counsel submitted that the contemporaneous judicial record affirmatively establishes completion of the Section 313 examination. According to him, the appellate Court mistook the loss or absence of a component of the record for the absence of the judicial act itself. He therefore sought setting aside of the remand and restoration of the appeals for adjudication on merits.

13. Learned counsel appearing for the respondent/complainant submitted that the complainant's grievance concerning compensation and the adequacy of the sentence also requires effective adjudication. He submitted that the appellate Court should be directed to consider the permissible reliefs in accordance with law.



Crl.R.C.(MD)Nos.401 & 402 of 2025

WEB COPY

14. This Court heard the learned counsel on either side and carefully considered the trial Court judgment, the impugned common judgment, the grounds of revision and the materials placed on record.

Points for Consideration:

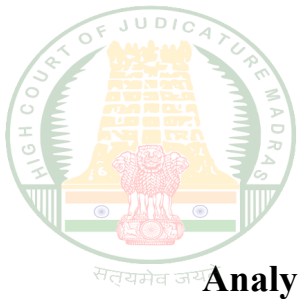
15. The following points arise for consideration:

(i) Whether the non-availability of the separate record of examination under Section 313 Cr.P.C., notwithstanding the express recital in the trial judgment and the subsequent defence evidence, justified setting aside the entire judgment and remitting the case to the trial Court?

(ii) Whether the appellate Court was required to ascertain material prejudice and consider less disruptive curative measures before directing remand?

(iii) Whether Crl.A.No.40 of 2019 was maintainable, and, if so, to what extent?

(iv) What is the appropriate relief to be granted in these revisions?



Analysis:

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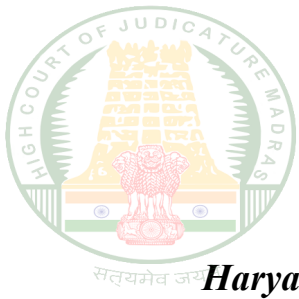
A. Object and Scope of Section 313 Cr.P.C:

16. Section 313(1)(b) Cr.P.C. obligates the Court, after the prosecution witnesses have been examined and before the accused is called upon to enter upon the defence, to question the accused generally on the case so as to enable him or her personally to explain any circumstance appearing in the evidence against him or her. The provision is a facet of a fair trial. Its purpose is twofold: to place the incriminating circumstances fairly before the accused and to enable the Court to consider the explanation offered.

17. The examination is not an empty ritual. Material circumstances which are not put to an accused ordinarily cannot be used to his or her prejudice. At the same time, every irregularity relating to Section 313 does not automatically vitiate a trial. The controlling enquiry is whether the lapse has occasioned failure of justice or caused material prejudice. The principles explained in *Basavaraj R. Patil v. State of Karnataka*¹, *Ajay Singh v. State of Maharashtra*², and *Nar Singh v. State of*

¹ (2000) 8 SCC 740

² (2007) 12 SCC 341



Crl.R.C.(MD)Nos.401 & 402 of 2025

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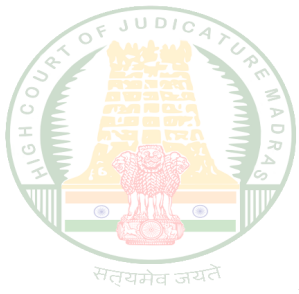
*Haryana*³, make it clear that the consequence must be tailored to the nature of the defect and the prejudice demonstrated.

18. Section 465 Cr.P.C. reinforces this principle by prohibiting reversal of a finding, sentence or order merely on account of an error, omission or irregularity in proceedings unless a failure of justice has in fact been occasioned. In deciding that question, the Court must also consider whether the objection could and should have been raised at an earlier stage.

B. Judicial Record and the Missing Section 313 Papers:

19. In the present case, the trial judgment does not remain silent about Section 313 Cr.P.C. Paragraph 5 contains a categorical judicial recital that the incriminating circumstances emerging from the complainant's evidence were explained to and put before the accused under Section 313(1)(b) Cr.P.C. It also records the substance of their answers. More importantly, their stated desire to adduce defence evidence was acted upon: the fourth accused entered the witness box as D.W.1 and defence documents were marked.

³ (2015) 1 SCC 496

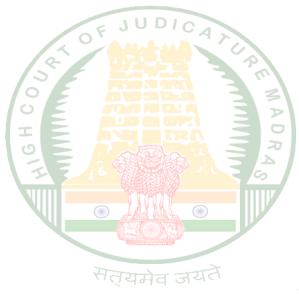


Crl.R.C.(MD)Nos.401 & 402 of 2025

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20. A recital in a judicial record regarding what transpired before the Court carries a presumption of regularity. Unless corrected through the procedure known to law or displaced by compelling material, it cannot be ignored merely because a separately maintained paper is subsequently unavailable. The maxim *omnia praesumuntur rite esse acta*, all acts are presumed to have been rightly and regularly done, has particular relevance where the judgment itself records the procedural act and the later stages of the trial corroborate it.

21. The absence of the separate statement from the appellate bundle could have arisen from loss, misplacement or defective transmission of records. It did not, by itself, establish that no examination occurred. Before unsettling a completed trial, the appellate Court ought to have called for a report from the trial Court, directed a search or reconstruction of the missing record, examined the notes or registers maintained by the Court, and heard the parties on the precise prejudice alleged.



Crl.R.C.(MD)Nos.401 & 402 of 2025

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22. Even if reconstruction proved impossible, the appellate Court was required to identify the specific incriminating circumstance which had allegedly not been put to the accused. No such exercise was undertaken. The petitioners themselves do not say that they were denied an opportunity to explain the prosecution evidence. On the contrary, their case is that the examination was conducted. No prejudice has therefore been identified, much less established.

C. Power of the Appellate Court and the rule against routine remand:

23. Under Section 386 Cr.P.C., an appellate Court possesses wide powers while deciding an appeal from conviction. It may reverse the finding and sentence, acquit or discharge the accused, order retrial, alter the finding, or alter the nature or extent of the sentence within the limits prescribed by law. These powers exist to secure justice; they do not dispense with the duty to decide an appeal on merits.

24. A retrial or remand which substantially reopens concluded proceedings is an exceptional remedy. It is warranted where the original



Crl.R.C.(MD)Nos.401 & 402 of 2025

WEB COPY

trial is vitiated in a manner that makes appellate adjudication unsafe and where the defect cannot be cured without returning the matter. It should not be ordered merely to fill gaps in record management or to avoid an evaluation of evidence. Delay, duplication of evidence, expense to parties and the possibility of faded recollection are relevant consequences which a Court must weigh.

25. The appellate Court had less intrusive alternatives. It could have attempted reconstruction; it could have called for a supplemental report; and, if a material circumstance was shown not to have been put, it could have adopted an appropriate curative course consistent with Section 391 Cr.P.C. and the principles governing appellate examination, while preserving the trial already conducted. The impugned judgment contains no reasons explaining why all such alternatives were inadequate.

26. The observation in paragraph 5 of the trial judgment was specifically material to the decision whether the Section 313 exercise occurred. Failure to consider it rendered the factual foundation of the



Crl.R.C.(MD)Nos.401 & 402 of 2025

remand unsustainable. The first and second points are accordingly answered in favour of the petitioners.

D. Payment of the Cheque Amount:

27. The petitioners rely upon paragraph 27 of the trial Court judgment and contend that the entire cheque amount was paid during trial. Whether the payment was complete, the date and terms on which it was made, whether it was accepted towards discharge of the liability, and its legal effect upon conviction, sentence or compensation are questions which must be determined from the evidence and applicable law.

28. Payment made after accrual of the offence under Section 138 of the Negotiable Instruments Act does not, by itself and retrospectively, obliterate the completed offence. Nevertheless, it is a material circumstance in relation to compounding under Section 147 of the Negotiable Instruments Act, sentencing and compensation. Since the appellate Court did not decide the merits, this Court refrains from recording a conclusive finding that may prejudice either side. The issue shall be considered by the appellate Court on the evidence and in accordance with law.



Crl.R.C.(MD)Nos.401 & 402 of 2025

E. Maintainability and Scope of Crl.A.No.40 of 2019:

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29. The petitioners' contention that a complainant can never maintain an appeal before the Sessions Court is too broadly stated. The forum and maintainability depend upon the nature of the order challenged and the statutory source of the appeal.

30. The proviso to Section 372 Cr.P.C. confers upon a victim a right of appeal against an order acquitting the accused, convicting for a lesser offence, or imposing inadequate compensation. Such appeal lies to the Court to which an appeal ordinarily lies against the order of conviction. In a case tried by a Magistrate, that forum would ordinarily be the Sessions Court. Thus, to the extent the complainant, satisfying the statutory description of a victim, challenges the absence or inadequacy of compensation, the appeal cannot be rejected merely because it was instituted before the Sessions Court.

31. The position is different in relation to enhancement of sentence. The proviso to Section 372 Cr.P.C does not confer a right upon the victim to appeal merely on the ground of inadequacy of sentence.



Crl.R.C.(MD)Nos.401 & 402 of 2025

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Section 377 Cr.P.C. provides for an appeal against inadequacy of sentence at the instance of the State Government or, in the classes of cases specified therein, the Central Government. In *Parvinder Kansal v. State (NCT of Delhi)*¹, the Hon'ble Supreme Court clarified that the victim's statutory appeal does not extend to a challenge based only on inadequacy of sentence.

32. Consequently, Crl.A.No.40 of 2019 is maintainable before the Sessions Court only insofar as it invokes the statutory remedy concerning inadequate or non-award of compensation, subject to the complainant establishing the necessary factual and legal requirements. It is not maintainable as an appeal for enhancement of substantive sentence at the complainant's instance. The appellate Court shall confine that appeal accordingly. This answers the third point.

F. Effect of the Transition to the BNSS:

33. The trial and the two appeals were instituted under the Code of Criminal Procedure, 1973, before the Bharatiya Nagarik Suraksha Sanhita, 2023, came into force. By virtue of the savings embodied in

¹ (2020) 19 SCC 496



Crl.R.C.(MD)Nos.401 & 402 of 2025

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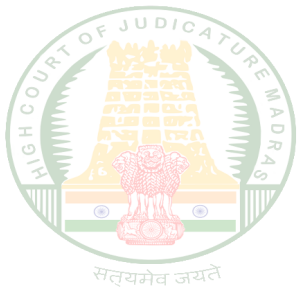
Section 531 of the BNSS, pending appeal proceedings continue to be governed by the former Code. The present revisions have been numbered by invoking Sections 438 and 442 BNSS. Whatever be the description of the revisional provisions in the cause title, the legality of the proceedings below must be examined with reference to the Cr.P.C. provisions governing those pending proceedings. No substantive right of either party is altered by the statutory transition.

Result:

34. The impugned common judgment dated 13.06.2024 cannot be sustained. It proceeded from the mere absence of the separate Section 313 record, overlooked the express recital in paragraph 5 of the trial judgment, did not ascertain prejudice, and did not consider any curative alternative. The remand therefore amounts to a failure to exercise appellate jurisdiction in the manner required by law.

35. Accordingly, both Criminal Revision Cases are allowed on the following terms:

(i) The common judgment dated 13.06.2024 in Crl.A.Nos.32 and 40 of 2019 on the file of the Additional District and Sessions Court, Dindigul, is set aside.



Crl.R.C.(MD)Nos.401 & 402 of 2025

(ii) Crl.A.Nos.32 and 40 of 2019 are restored to the file of the learned Additional District and Sessions Judge, Dindigul.

(iii) The appellate Court shall decide Crl.A.No.32 of 2019 on all grounds raised by the accused, upon an independent appraisal of the oral and documentary evidence and without being influenced by any observation on the merits of the prosecution or defence contained in this order.

(iv) Crl.A.No.40 of 2019 shall be considered only insofar as it relates to the statutory grievance concerning inadequate or non-award of compensation. The prayer for enhancement of substantive sentence at the instance of the complainant shall not be entertained as an appeal.

(v) Before hearing the appeals, the appellate Court may call for a report regarding the missing Section 313 record and cause a reasonable search or reconstruction to be undertaken from the available judicial records. The absence of that paper alone shall not result in a further remand. If any specific omission having a bearing on prejudice is established, the appellate Court may adopt the least disruptive curative procedure permissible in law.

(vi) The parties shall appear before the learned Additional District



Crl.R.C.(MD)Nos.401 & 402 of 2025

and Sessions Judge, Dindigul, on **09.09.2026**, without awaiting any further notice.

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(vii) Having regard to the age of the prosecution and the fact that the appeals are of the year 2019, the learned appellate Judge shall accord priority and dispose of both appeals, preferably within a period of **two (2) months** from the date of receipt of a copy of this order.

(viii) All contentions relating to the merits of conviction, the alleged payment of the cheque amount, compounding, sentence and compensation are left open, subject to the limitations stated above.

36. The connected Miscellaneous Petitions are closed.

06.08.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

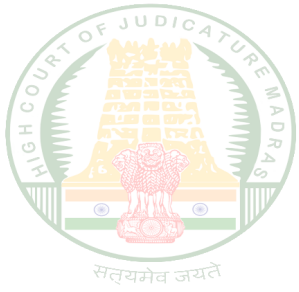
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Note : Issue order copy on 02.09.2026.

To:

- 1.The Additional District and Sessions Court, Dindigul.
- 2.The Judicial Magistrate Court No.II, Dindigul.

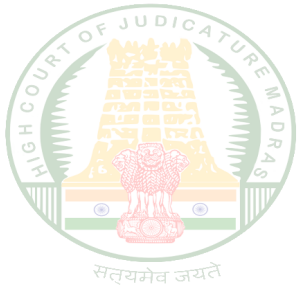
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Crl.R.C.(MD)Nos.401 & 402 of 2025

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3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Case Citation: (2026) ibclaw.in 5102 HC



Crl.R.C.(MD)Nos.401 & 402 of 2025

L.VICTORIA GOWRI ,J.

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Order made in
Crl.R.C.(MD)Nos.401 & 402 of 2025

Dated: 06.08.2026