

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Petition No.746 of 2015
and
M.P.Nos.1and 2 of 2015

Gunasekaran

.. Petitioner/Appellant/
Accused No.1

Versus

State by Inspector of Police
C.C.I.W.C.I.D.

Thiruvallur(crime No.1/97)

.. Respondent/Respondent/
Complainant

Criminal Revision petition filed under Section 397 and 401 of Cr.P.C. to call for the entire records in connection with the C.A.No.31 of 2009 on the file of the IV Additional District and Sessions Judge, Ponneri and set aside the conviction and sentence imposed by the learned IV Additional Sessions Judge, Chennai dated 13.4.2015 in C.A.No.31 of 2009 confirmed the conviction and sentence imposed by the learned Judicial Magistrate No.II, Ponneri in C.C.No.78 of 1999 dated 24.7.2009.

For Petitioner : Mr.V.Paarthiban

For Respondent : Mr.V.Arul
Government Advocate (Crl.side)

O R D E R

The revision petitioner herein is the first accused in C.C.No.78 of 1999 on the file of the learned Judicial Magistrate No.II, Ponneri and he stands convicted for the offences under Section 406, 477-A IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- in default to undergo six months simple imprisonment by judgment dated 24.7.2009. The said conviction and sentence of imprisonment were confirmed by the learned IV Additional District and Sessions Judge, Ponneri in C.A.No.31 of 2009. Aggrieved by the said conviction and sentence, the petitioner has preferred this Criminal Revision Case.

2. The petitioner and another person, who worked as President and Secretary of Thathamancheri Adhidiravida Brick Chamber Labourers Cooperative Society, were entrusted with money to execute work of Society for the welfare of the labourers

employed in the brick chamber by maintaining proper accounts. When there were entrusted with discharge of public duty, they dishonestly mismanaged the accounts and misappropriated the money entrusted with them not for the purpose they have been entrusted but for some other purpose and they have not executed the work satisfactorily and created vouchers for payment of material purchased, payment of wages etc. The defects were very exhaustive. They have not properly maintained the records and accounts. Because of their criminal act, the society incurred a loss and the same had been came to light and enquiry was ordered. After due enquiry, criminal action was initiated which resulted in the prosecution of the case and in the end of the trial, the petitioner was found guilty for the charges framed against him and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- in default to undergo six months simple imprisonment by judgment dated 24.7.2009. The appellate Court also confirmed the said conviction and sentence. Therefore, the petitioner is before this Court.

3. When the matter was taken up for admission, this Court, by order dated 31.7.2015, directed the petitioner to pay 50% of the alleged amount due to the Society and subsequently, considering the request of the learned counsel for the petitioner and also considering the facts and circumstances of the case, the same was modified and the petitioner was directed to pay 25% of the amount due to the Society. Since the said conditional order has not been complied with by the petitioner, this Court, by order dated 12.10.2015, directed the registry to list the matter under the caption for dismissal.

4. Even today, the conditional order has not been complied with by the petitioner. The learned counsel for the petitioner submitted that he is not willing to argue the case today and he seeks adjournment. Admittedly, the petitioner has not even come forward to comply with the conditional order and took several adjournments. As per the judgment of the Hon'ble Apex Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], if the petitioner do not appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner. The Court is empowered to deal with the matter on merits and dispose of the same and not on the ground of non prosecution. In view of the above judgment, I am inclined to dispose of the case on merits. Accordingly, the matter is taken up for final disposal .

5. The only ground raised by the petitioner is that the enquiry officer has not signed in the enquiry report and hence, the enquiry report is not reliable.

6. It is seen that the prosecution has marked necessary documents to prove the guilt against the accused. The investigating officer has also been examined as P.W.3 by the prosecution. The petitioner has not marked any oral and documentary evidence. Though it is stated that the enquiry

officer has not signed in the covering letter enclosing the enquiry report, from the materials available on record, it appears that he completed the enquiry and submitted the full fledged report by putting his signature as Enquiry Officer at page 95 of the enquiry report. Therefore, as rightly pointed out by the courts below, the covering letter of the enquiry report, without the signature of the enquiry officer, did not vitiate the contents of the enquiry report.

7. Further, it is seen that the petitioner was also examined properly with the incriminating evidence of prosecution and he did not adduce any oral evidence on his side. On a perusal of the entire materials, it is clear that the respondent has proved the charges against the petitioner with sufficient oral and documentary evidence. Moreover, the Courts below, have given only minimum sentence of imprisonment. Therefore, I do not find any reasons to interfere with the reasoned orders of the Courts below.

8. The Criminal Revision case is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. Judicial Magistrate No.II, Ponneri
2. IV Additional District and Sessions Judge, Ponneri
3. The Public Prosecutor, High Court, Madras.

Cr1 RC No.746 of 2015

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