

BAIL SLIP

Petitioner(Accused) was directed to be released on bail as per order of this Court dated 3.11.2009 in M.P.No.1/09 in CrI.R.C.No.1055/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1055 of 2009
and
M.P.No.1 of 2009

1. C.Rajamanickam

2. K.Ponnusamy .. Petitioners/Appellants/Accused 1 & 2

Versus

State rep.by
The Inspector of Police
CCIW, Salem.
(Crime No.6/2000)

.. Respondent/Complainant

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 09.10.2009 passed by the learned Additional District and Sessions Judge cum Special Judge (Essential Commodities Act), Salem in C.A.No.129 of 2006 confirming the order dated 28.09.2006 passed by the learned Judicial Magistrate, No.2, Sankari in C.C.No.364 of 2001.

For Petitioners : Mr.B.Vasudevan

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

ORDER

The petitioners are the accused in C.C.No.364 of 2001 on the file of the learned Judicial Magistrate No.2, Sankari and they have been convicted for the offences under Sections 120(B), 408, 467, 471 and 477(A) IPC and were sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/-for each of the offences, in default, to undergo rigorous imprisonment for three months and the sentences were ordered to run concurrently. As against the conviction and sentence imposed, the petitioners filed CrI. Appeal No.129 of 2006 and the first appellate Court by judgment dated 09.10.2009 confirmed the same. Aggrieved by the same, the present Criminal Revision Case is filed.

Agricultural Co-operative Bank has misappropriated a total sum of Rs.8,500/-. However, the trial court, acquitted A3 and convicted the petitioners alone for the alleged offence.

3. Learned Counsel appearing for the petitioners would submit that the Courts below failed to take into consideration the fact that there is no specific evidence produced for withdrawal of the money by the petitioners using the withdrawal slip as alleged in the complaint. Further, the Court below also failed to send the signature of PW3 for comparison to the handwriting expert and if there is any shortage in the money, it is the responsibility of the Cashier to give evidence regarding the same. However, the trial court acquitted A3/Cashier and convicted the petitioners alone. Accordingly, he would pray for setting aside the conviction and sentence ordered by the Courts below.

4. However, in the alternative, the learned counsel for the petitioners/accused would submit that if this Court comes to a conclusion that the orders passed by the Courts below warrants no interference, then, he pray for leniency in the sentence imposed on the petitioners/accused as the petitioners are aged 57 years and 62 years respectively as of now. Learned counsel for the petitioners would also submit that the petitioners have also lost their job. He would further submit that the petitioners are also prepared to deposit the alleged misappropriated amount.

5. Learned Government Advocate (Criminal side) would submit that both the Courts below only after analysing the entire oral and documentary evidence adduced, convicted the petitioners/accused, who were working as Secretary and Assistant Secretary in the Primary Agricultural Co-operative Bank during the said period, warranting no interference in this revision.

6. Heard both sides and perused the records.

7. On a careful consideration of the judgments passed by both the Courts below, it is seen that the Courts below have convicted the petitioners/accused on finding the fact that the petitioners have misappropriated a sum of Rs.8,500/- from the Primary Agricultural Co-operative Bank, where the petitioners were holding the post of Secretary and Assistant Secretary at the relevant point of time. In such circumstances, I do not find any reason to interfere with the conviction ordered by the Courts below.

8. At this juncture, since the learned counsel for the petitioners/accused prayed this Court to show mercy in the matter of awarding sentence; taking into account the fact that the first petitioner is aged 57; that the second petitioner is a senior citizen and aged 62 years and suffering from ailment; that due to the conviction they lost their job also; that the amount misappropriated is only to the tune of Rs.8,500/-; out of which towards fine amount the petitioners have also deposited a sum of Rs.10,000/-; that the petitioner is also willing to pay back the appropriated amount, the sentence of rigorous imprisonment imposed for a period of one year for each of the offences I am inclined to modify the same into one that of the period already undergone by the petitioners.

9. Accordingly, the conviction ordered by both the Courts below is confirmed. However, the sentence awarded to the petitioners to undergo rigorous imprisonment for a period of one year for each of the offences is modified into one that of the period of sentence already undergone by them on the following conditions:

(i) The petitioners/accused are directed to pay back the appropriated sum of Rs.8,500/- [Rupees eight thousand and five hundred only] jointly, along with a fine of Rs.5,000/- each within a period of four weeks' from the date of receipt of a copy of this order.

(ii) On such payment being made, the learned Magistrate shall return back the misappropriated amount of Rs.8,500/- to the Idapady Primary Agricultural Co-operative Bank.

(iii) However, on the failure to comply with any one of the conditions imposed, viz., to repay the misappropriated fund and the fine amount, within the time stipulated by this Court, this order will not enure to the benefit of the petitioners and they have to undergo the sentence ordered by the trial Court and confirmed by the first appellate Court.

10. With the above modification, the Criminal Revision Case is partly allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

vj2

To

1. The Additional District and Sessions Judge cum Special Judge (Essential Commodities Act), Salem.
2. The Judicial Magistrate, No.2, Sankari
- 3.-do- Thro The Chief Judicial Magistrate', Salem
- 4.The Inspector of Police CCIW, Salem.
5. The Public Prosecutor, Madras.

1 cc to Mr.B.Vasudevan , Advocate Sr.No.31266

Cr1 RC No.1055 of 2009

rv(co)

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