

BAIL SLIP

Crl.R.C.No.792 of 2010

The Petitioner/Accused was directed to be released on bail by the order of this court dated 6.8.2010 and made in M.P.No.2 of 2010 in Crl.R.C.No.792 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.792 of 2010

N.Ramasamy

... Petitioner

Versus

State of Tamil Nadu
rep. by the
The Inspector of Police
CCIW, Vellore.

... Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 23.06.2010 passed by the learned Additional District and Sessions Judge, Fast Track Court, Tirupathur, Vellore District in C.A.No.53 of 2008 confirming the conviction and sentence imposed by the learned Judicial Magistrate No.II, Vellore in C.C.No.162 of 2007 dated 20.02.2008.

For Petitioner : Mr.P.M.Bakthavatsalam

For Respondent : Mr.Md.Riyaz
Government Advocate (Crl.side)

ORDER

The petitioner was arrayed as A-1 in C.C.No.162 of 2007 on the file of the learned Judicial Magistrate No.II, Vellore and after trial the petitioner along with A2, were convicted for the offences under Sections 408 r/w 35 and 477(A) r/w 35 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- for each of the offences, in default, to undergo simple imprisonment for one month and both the sentences were ordered to run concurrently. As against the conviction and sentence imposed, the petitioner preferred Crl.Appeal No.53 of 2008, which was dismissed on

23.06.2010 confirming the conviction and sentence passed by the trial Court. Aggrieved by the same, the present Criminal Revision Case has been filed.

2. The case of the prosecution is that the petitioner along with A2, who were working as the Clerk and Secretary respectively in the Umarabad Primary Agricultural Co-operative Bank had misappropriated the funds of the said Bank during the year 1997 to the tune of Rs.28,371/-. The further allegation is that they have also shown wrong stock entries in the ledger book during the said period regarding the details of the fertilizers purchased and sold. Hence the complaint.

3. The main ground raised by the petitioner in this revision is that the prosecution has alleged five individual cases of criminal breach of trust under a single charge, which is not permissible under law. Further he would contend that the Audit report pertaining to each of the alleged criminal breach of trust has not been produced and that the petitioner is only working as a temporary Clerk in the Co-operative Bank and as such he cannot be made responsible for the assets and cash belonging to the said Bank. It is his further contention that fixing the liability on the petitioner is a motivated one as there is a delay of eight years in conducting the audit. Accordingly, he prayed for setting aside the conviction and sentence ordered by the courts below.

4. However, in the alternative, the learned counsel for the petitioner/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 petitioner/accused as he is aged 52 years. Learned counsel for the petitioner would also submit that the petitioner has lost his job also and he has to maintain his family.

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 petitioner/accused, who was working as Clerk 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 petitioner/accused on finding the fact that the petitioner has misappropriated to the tune of Rs.28,371/- from the Primary Agricultural Co-operative Bank, where the petitioner was holding the post of temporary Clerk 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 petitioner/accused prayed this Court to show mercy in the matter of awarding sentence; taking into account the fact that the petitioner is aged 52 years; that due to the conviction he lost his job also; that the amount misappropriated is only Rs.28,371/-; out of which towards fine amount the petitioner has also deposited a sum of Rs.1,000/-; that the sentence imposed is only for a period of one year, I am inclined to modify the same into one that of the period already undergone by the petitioner.

9. Accordingly, the conviction ordered by both the Courts below is confirmed. However, the sentence awarded to the petitioner 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 the petitioner on the following conditions:

(i) The petitioner/accused is directed to deposit a sum of Rs.25,000/- [Rupees twenty five thousand only] towards the misappropriated amount within a period of three months 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.25,000/- to the Umarabad Primary Agricultural Co-operative Bank.

(iii) However, on failure to comply with the condition imposed, within the time stipulated by this Court, this order will not enure to the benefit of the petitioner and he has 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/-

सत्यमेव जयते
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court,
Tirupathur, Vellore District

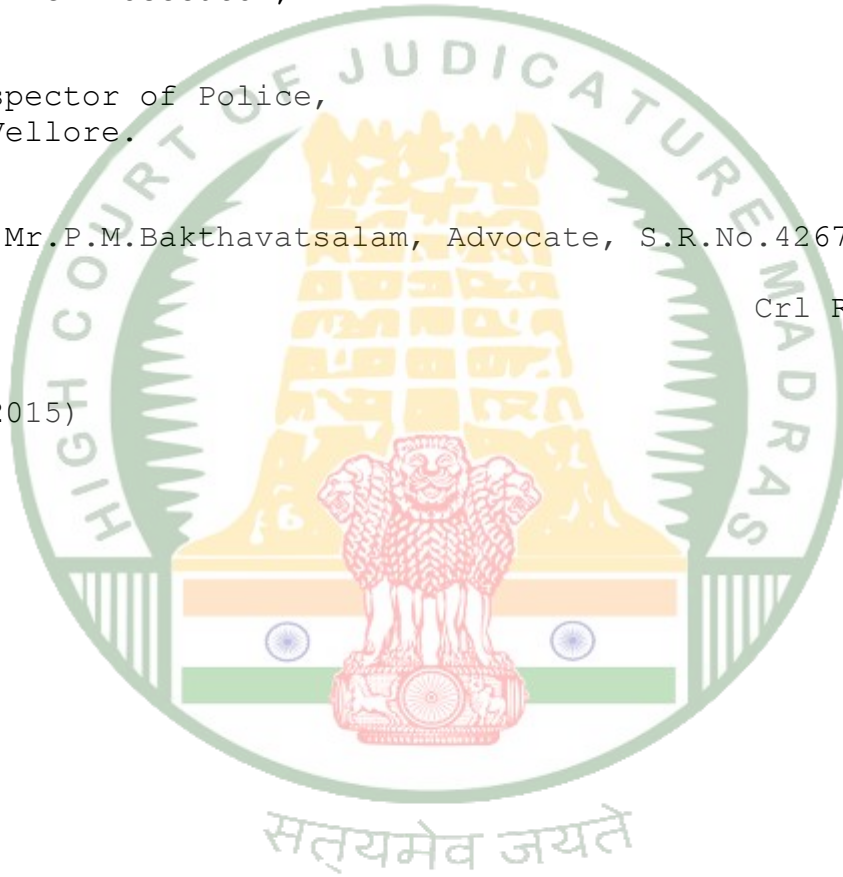
2. -do- Through The Principal Sessions Judge,
Vellore.

3. The Judicial Magistrate No.II,
Vellore
4. -do- Through The Chief Judicial Magistrate,
Vellore.
5. The Superintendent,
Central Prison,
Vellore.
6. The Public Prosecutor,
Madras.
7. The Inspector of Police,
CCIW, Vellore.

+2cc's to Mr.P.M.Bakthavatsalam, Advocate, S.R.No.426766

Crl RC No.792 of 2010

CTK(CO)
CA(02/09/2015)



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