

Bail Slip

The Petitioner/Accused namely A.Ramadasan S/o. Mani, aged about 44 years was directed to be released on bail as per order of this court dated 20/12/2006 made in M.P.Nos.1,1&1 of 2006 in CrI.R.C.No.892,893 and 909 of 2006 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22-12-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

CrI.R.C.No.909 of 2006

A. Ramadasan ... Petitioner/Accused

Vs

The Inspector of Police,
CCIW CID (Urban),
Coimbatore (Cr.No.2/1992) ... Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure challenging the judgment dated 28.6.2006 in C.A.No.400 of 2004 on the file of the Additional District and Sessions Judge (FTC No.II), Coimbatore, confirming the conviction and modifying the sentence imposed by judgment dated 9.8.2004 in C.C.No.3 of 1994 on the file of the Judicial Magistrate No.IV, Coimbatore.

For Petitioner : Mr.C.Deivasigamani
For Respondent : Mr.K.Prabakar,
Government Advocate (CrI.Side)

Reserved on	Pronounced on
11-12-2015	22-12-2015

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O R D E R

Revision Petitioner herein is the accused in Cr.No.2 of 1992 on the file of the Inspector of Police, CCIW CID (Urban), Coimbatore and he was tried in C.C.No.3 of 1994 on the file of Judicial Magistrate No.IV, Coimbatore for the offence under Section 409 IPC, and convicted and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo nine months rigorous imprisonment. On

appeal, the appellate Court confirmed the conviction and modified the sentence of imprisonment.

2. The case of the Prosecution is that when A.Ramadasan (accused) was the President of the Ramakrishna Co-Operative Housing Society between 7.10.1985 and 25.7.1987, he had misappropriated a sum of Rs.2,26,473/-, which was paid by 25 members of the Society for the purpose of purchase of house sites, without bringing into the accounts of the Society, and thus committed Criminal breach of trust.

3. Initially an enquiry was ordered by Duraiswamy, Deputy Registrar (Housing), Coimbatore Circle (PW-2) into the affairs of Ramakrishna Co-operative Housing Society, pursuant to which Syed Ahamadullah (PW-3), Sub-Registrar of Co-Operative Societies conducted an inspection and submitted his report (Ex.P-7 & 10). Further enquiry under Section 81 of the Tamil Nadu Co-Operative Societies Act, 1983 was ordered and Munusamy (PW-25) conducted a detailed enquiry in the affairs of the Society and submitted a report (Ex.P-78).

4. Based on the enquiry report, a complaint (Ex.P-104) was lodged on 26.8.1991, and a case in Cr.No.2 of 1992 under Sections 408, 409, 467, 477(A) IPC was registered against the petitioner/accused. Investigation of the case was taken up by Muthusamy (PW-26), Inspector of Police, CCIW CID, Coimbatore. After completing the investigation, the Police filed Final Report against the accused before the learned Judicial Magistrate No.IV, Coimbatore, where charge under section 409 IPC was framed against the accused. The accused pleaded "Not Guilty" before the Trial Court.

5. To prove the charge, Prosecution examined 28 witnesses and marked 104 exhibits. The accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances against him and he denied the same. On the side of defence, 6 exhibits were marked, but no witness was examined.

6. After hearing both sides and analyzing the evidence adduced, the trial Court convicted and sentenced the accused as stated above. On appeal, the appellate Court confirmed the conviction under Section 409 IPC and modified the sentence of rigorous imprisonment from two years to one year and confirmed the imposition of fine of Rs.5,000/-. Aggrieved by the said decision, the A.Ramadasan (accused) has filed this revision petition.

7. Mr.C.Deivasigamani, learned Counsel appearing for the revision petitioner/accused strenuously took me through the

Tamil Nadu Co-Operative Societies Act, 1983, especially Sections 81, 84 and 92 and submitted that the Act is a self-contained code, which provides for a detailed mechanism to conduct enquiry into the affairs of the Society, ignoring which the prosecution has been launched. Section 81 of the Tamil Nadu Co-Operative Societies Act, 1983 reads as follows:

"81. Inquiry.- (1) The Registrar may, of his own motion and shall, on the application of a majority of the board or of not less than one-third of the members or on the request of the financing bank or of the District Collector, hold an inquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mismanagement in relation to that society or into any particular aspect of the working of that society.

(2) The Registrar or the person authorised by him under sub-section (i) shall have the following powers, namely:-

(a) He shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession of, or responsible for the custody of, any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof.

(b) Where any person summoned under clause (a) fails or refuses to produce any record or property of the registered society as specified in the summons, any Metropolitan Magistrate or any Judicial Magistrate of the First Class in whose jurisdiction the office of such society or the records and properties of such society is or are situated, shall on application by the Registrar, or the person authorised by him under sub-section (i), direct the delivery to the Registrar or such person of the possession of the records and properties of such society:

Provided that no such application shall be made by the person authorised under sub-section (1) without the previous sanction of the Registrar.

(c) He may seize the books, accounts or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents or to facilitate his inquiry, and shall give the person from whose custody the books, accounts or documents have been seized a receipt for the same:

Provided that the books, accounts or documents seized shall be retained by him only for so long as may be necessary for their examination and for the purpose of inquiry:

Provided further that the books, accounts or documents shall not be retained for more than three months at a time except with the permission of the next higher authority.

(d) He may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody if the Registrar, or the person authorised as aforesaid has reason to believe that such books, accounts or documents contain any entry relating to transactions of the society.

(e) (i) He may, notwithstanding any rule or by-law specifying the period of notice for a general meeting of the society or for a meeting of the board, require any officer or officers of the society to call a general meeting or a meeting of the board at such time and place at the headquarters of the society or any branch thereof to consider such matters as may be specified by him and the provisions of sub-clauses (i) and (ii) of clause (b) of sub-section (4) of section 32 shall apply to any meeting called under this sub-clause as if it were a meeting called in pursuance of a requisition under clause (a) of sub-section (3) of that section.

(ii) If the officer or officers of the

society refuses or refuse or fails or fail to call such meeting or if in the opinion of the Registrar there is no board or officer or officers competent under this Act, the rules or the by-laws to call such meeting, or if there be an order of the Registrar or of the Civil Court restraining the board to function, the Registrar or the person authorised by him under sub-section (1) shall have power to call the meeting himself and the provisions of clause (b) of sub-section (4) of Section 32 and sub-section (5) of that section shall apply to such meeting as if it were a meeting called under clause (a) of the said sub-section (4).

(3) When an inquiry is held under this section, the Registrar shall within such time as may be prescribed communicate the result of the inquiry-

(i) in case the Government have subscribed directly to the share capital of the registered society or in case any moneys are due from the registered society either to the Principal State Partnership Fund or to the Subsidiary State Partnership Fund referred to in Chapter VI, to the Government or to any officer appointed by the Government in this behalf;

(ii) to the financing bank, if any, to which the society is affiliated; and

(iii) to the society concerned.

(4) The inquiry shall be completed within a period of three months from the date of ordering the inquiry or such further period or periods not exceeding three months at a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate.

(5) It shall be competent for the Registrar to withdraw any inquiry from the person authorised by him under sub-section (1) and to hold the inquiry himself or entrust it to any other person as he deems fit.

(6) The Registrar may, by order in writing, direct the registered society or any officer of the society or its financing bank to take such action as may be specified in

the order to remedy, within such time as may be specified therein, the defects, if any, disclosed as a result of the inquiry."

8. I am unable to persuade myself to accept the above submission, because the mechanism provided for enquiry under the Tamil Nadu Co-Operative Societies Act, 1983 is for punitive civil action against the delinquent member, and that can in no way regulate the investigation of an offence governed by Chapter XII of the Criminal Procedure Code. In State of M.P. v. Rameshwar ((2009) 11 SCC424) while dealing with Madhya Pradesh Co-operative Societies Act, 1960, the Supreme Court in para 48 observed thus,

"48. Mr.Tankha's submissions, which were echoed by Mr.Jain, that the M.P.Cooperative Societies Act, 1960 was a complete code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted in view of the fact that there is no bar under the M.P.Cooperative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved."

9. Before the Criminal Court, the witnesses are examined in flesh and blood in the presence of the accused with an opportunity to the accused to cross-examine them. In this case, the accused has exhaustively cross-examined the prosecution witnesses, as could be seen from their deposition. The members of the Co-Operative Societies were examined to show the fraudulent act of the accused.

10. Before proceeding further, it may be relevant to bear in mind the powers of this Court to interfere with the concurrent findings of fact by two Courts below. In State of Maharashtra v. Jagmohan Singh Kuldip Singh, ((2004) 7 SCC 659 : 2004 (6) Supreme 287), the Supreme Court in paragraph 22 (in SCC) has stated as follows:

"22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of

power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power."

The Supreme court has held that the High Court in revisional jurisdiction cannot substitute a factual foundation by an assumption to give benefit of doubt to the accused.

11. Despite the above, this Court went into the evidence on record in order to find out, whether there is any perversity in the findings of the Court below.

12. PWs.4 to 10 are all Members of the Society. All the witnesses have uniformly stated that they had paid higher amounts for purchase of plots, but the sale deeds reflected lesser amount, which prompted them to approach the authorities and they learnt that the petitioner/accused had cheated them. For instance, Rajagopal (PW-8) in his evidence has stated that he was a Member of the Society and that he had paid a sum of Rs.3,000/-, Rs.6,500/-, Rs.1,000, and Rs.1,600/- (totally Rs.12,100/-) , whereas the property document showed the value of the property only as Rs.5,500/- and the difference in amount has not been brought to the accounts of the Society.

13. Same is the tenor of all other witnesses. Thus, from all these witnesses, petitioner/accused had taken higher amounts, but conveyed properties for lesser amount, and thus misappropriated the amounts, without bringing them to the accounts of the Society. Nothing substantial was brought to the notice of this Court to doubt their testimonies. When the Special Officer took charge of the Society after dissolution of

the Board, there was only a balance of Rs.32.85 in the Society.

14. Mr.C.Deivasigamani, learned Counsel contended that the prosecution has failed to prove, when the Society was superseded by examining the Special Officer, and therefore the conviction and sentence stand vitiated. It is seen from the entries in Day Book (Ex.P-100) that the Special Officer took charge of the Society after dissolution of the Board on 10.7.1989 and when he took charge, the balance was only Rs.32.85, and hence he cannot go beyond records. Hence non-examination of Special Officer cannot be faulted. The revision petition is devoid of merits.

15. Before parting with this case, this Court finds that during investigation, the Police have obtained original deeds/documents of several persons and filed them along with the Final Report. Some of them have also been marked as exhibits. Those documents may be necessary for those persons, as it relates to title to property. For the sin of having co-operated with the Police during investigation, people should not be made to suffer. Hence the trial Court is directed to return the original deeds to the concerned persons as and when application is made for the said purpose. The trial court shall take photo copy of the said deeds/documents and certify them before returning the original.

16. In the result, I find no merit in this Criminal Revision Petition and the same stands dismissed. The bail bonds are cancelled and the petitioner/accused is directed to be taken into custody for serving the period of sentence imposed by the appellate Court.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Inspector of Police, CCIW CID (Urban), Coimbatore (Cr.No.2/1992)
2. The Additional District & Sessions Judge (FTC-II), Coimbatore,
3. The Judicial Magistrate No.IV, Coimbatore
4. The Public Prosecutor, High Court, Chennai.
5. The Chief Judicial Magistrate, Coimbatore(for information)

CrI.R.C.No.909 of 2006

sai co, kra 11.01.2016