

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE Nos.2098 & 2099 OF 2006

-

COMMON ORDER:

-

-

Criminal Revision Case No.2098 of 2006 is filed by the petitioner/A-2 under Sections 397 and 401 Cr.P.C. challenging the judgment, dated 8.12.2006, in Criminal Appeal No.20 of 2004 on the file of the V Additional Sessions Judge (Fast Track Court), East Godavari District at Rajahmundry whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioner against the judgment, dated 29.1.2004, in C.C.No.165 of 1997 on the file of the III Additional Judicial First Class Magistrate, Rajahmundry.

Criminal Revision Case No.2099 of 2006 is filed by the petitioner/A-2 under Sections 397 and 401 Cr.P.C. challenging the judgment, dated 8.12.2006, in Criminal Appeal No.19 of 2004 on the file of the V Additional Sessions Judge (Fast Track Court), East Godavari District at Rajahmundry whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioner against the judgment, dated 29.1.2004, in C.C.No.164 of 1997 on the file of the III Additional Judicial First Class Magistrate, Rajahmundry.

2. Since the parties and the offences in both the cases are one and the same, these two cases are being disposed of by way of this common order.

3. **CRIMINAL REVISION CASE No.2098 OF 2006:-**

Case of the prosecution, in brief, is as follows:

A-1 worked as Clerk in Sri Rajyalakshmi Primary Agricultural Co-operative Society, Katheru from 1.7.1988 to 31.7.1991. While he was working as Clerk, he attended the sales of fertilizers and other

items connected with the society. A-2 worked as Secretary of Primary Agricultural Co-operative Society, Katheru and is responsible for the executive administration of the society and shall maintain the records of the society subject to the control of the President and Board of Management. The responsibility of maintaining the records of the society up to date lies with the Secretary, as per bye-law No.24. A-3 was elected as President of Sri Rajyalakshmi Primary Agricultural Co-operative Society, Katheru and is the custodian of the properties of the society including the cash and also custodian of the records of the society.

i) Mr.Ch.Chitteyya conducted statutory enquiry under Section 51 of the A.P. Co-operative Societies Act, as per the orders of the District Co-operative Officer, Kakinada, dated 12.8.1992. During the enquiry, it was revealed that A-1 to A-3 misappropriated Rs.1,02,398-20 ps. during the co-operative year 1988-89 by falsifying the records of the society and by forging some of the documents. The total amount of misappropriation by the accused is Rs.5,62,381-43 ps. during the years 1988 to 1991.

ii) During the year 1989-90, A-1 to A-3 misappropriated a sum of Rs.3,34,241/- for not remitting the sale proceeds of the fertilizers and other items. A-1 conducted sales and A-2 and A-3 did not supervise it properly and they all failed to bring the sale proceeds to the cash back and jointly misappropriated the above mentioned sum.

iii) A-1 fraudulently reduced the stock of 57 bags of D.A.P. each worth Rs.145/- totalling Rs.8,265/- and three bags of 20:20 (complex fertilizer) each worth Rs.136/- totalling Rs.408/- and thus, misappropriated the total amount of Rs.8,673/-. A-2 also misappropriated Rs.15,235/- by booking expenditure under fictitious vouchers in the category of cattle feed stock. A-2 also encashed the cheque, dated 15.12.1989, on 26.12.1989 issued by P.A.C.S.,

Kapavaram in favour of P.A.C.S., Katheru for an amount of Rs.9,425/- towards fertilizer due and did not credit the said amount in the cash book and misappropriated the same.

iv) A-3, with the assistance of A-1 and A-2, fraudulently obtained an amount of Rs.60,000/- as milk cattle loan in the names of the prosecution witnesses and utilized the same by them and for this purpose, A-1 to A-3 forged the loan applications and other documents.

v) The Enquiry Officer brought the above facts to the light and submitted his report to the District Co-operative Officer. Basing on the report of the Enquiry Officer and taking into consideration of all the facts and circumstances of the case, the Collector, East Godavari District, Kakinada accorded the sanction in his proceedings, dated 25.5.1993, to launch prosecution against the accused.

vi) The Divisional Co-operative Officer gave report to the Sub-Inspector of Police, III Town Police Station, (Law and Order), Rajahmundry about the offences committed by the accused. The Sub-Inspector of Police, III Town (Law and Order), Rajahmundry registered the report of the Divisional Co-operative Officer as a case in Crime No.171 of 2003 under Sections 409, 465 and 477-A read with 34 I.P.C. and investigated into. After completion of investigation, the Sub-Inspector of Police, III Town Police Station, Rajahmundry filed the charge sheet.

4. **CRIMINAL REVISION CASE No.2099 OF 2006:-**

Case of the prosecution, in brief, is as follows:

i) A-1 worked as Clerk in Sri Rajyalakshmi Primary Agricultural Co-operative Society, Katheru from 1.7.1988 to 31.7.1991. While he was working as Clerk, he attended the sales of fertilizers and other items connected with the society. A-2 worked as Secretary of Sri Rajyalakshmi Primary Agricultural Co-operative Society,

Katheru from 15.7.1987 to 10.5.1991 and is responsible for the executive administration of the society and shall maintain the records of the society subject to the control of the President and the Board of Management. The responsibility of maintaining the records of the society up to date lies with the Secretary, as per bye-law No.24. A-3 was elected as President of Sri Rajyalakshmi Primary Agricultural Co-operative Society, Katheru and he worked as President from 1.7.1987 to 30.8.1990 and is the custodian of all the properties of the society including the cash and also custodian of all the records of the society.

ii) Mr.Ch.Chitteyya conducted statutory enquiry under Section 51 of A.P. Co-operative Societies Act, as per the orders of the District Co-operative Officer, Kakinada, dated 12.8.1992. During enquiry, it was revealed that A-1 to A-3 misappropriated Rs.1,02,398-20 ps. during the co-operative year 1988-89 by falsifying the records of the society and by forging some of the documents. The total amount of misappropriation by the accused is Rs.5,62,381-43 ps. during the years 1988 to 1991.

iii) During the year 1988-89, A-1 to A-3 misappropriated a sum of Rs.1,02,398-20 ps. by not remitting the sale proceeds of the fertilizers and other items. A-1 conducted sales and A-2 and A-3 did not supervise it properly and they all failed to bring the sale proceeds to the cash book and jointly misappropriated the above mentioned sum.

iv) A-1 also misappropriated an amount of Rs.42,000/- by fraudulently diverting the stock of fertilizers covered by invoice in R.O.Nos.144 and 582, dated 17.1.1989, (400 bags of urea to Rajavolu P.A.C.S.) without bringing the stock into the stock register of Primary Agricultural Co-operative Society, Katheru. A-1 also reduced 400 bags of urea from the existing stock by raising false bills (Bill No.83, dated 9.2.1989, Bill No.14, dated 9.3.1989.)

v) On 13.3.1989, A-2 debited an amount of Rs.5,100-25 ps. in the cash book and credited only an amount of Rs.3,165-65 ps. in the D.C.C.B. Ltd., Rajahmundry. A-2 did not account for the remaining balance of Rs.1,934-60 ps.

vi) On 29.6.1989, A-2 debited an amount of Rs.98,080-63 ps. in the cash book without mentioning any details and misappropriated the amount. However, during the year 1989-90, an amount of Rs.89,606/- was credited in the cash book of the society. A-2 did not account for the remaining balance of Rs.8,474.63 ps.

vii) The Enquiry Officer, during his enquiry, brought the above facts to the light and submitted his report to the District Co-operative Officer, Kakinada. Basing on the report of the Enquiry Officer and taking into consideration of all the facts and circumstances of the case, the Collector, East Godavari, Kakinada accorded sanction in his proceedings, dated 25.5.1993, to launch prosecution against the accused.

viii) The Divisional Co-operative Officer gave report to the Sub-Inspector of Police, III Town Police Station, (Law and Order), Rajahmundry about the offences committed by the accused. The Sub-Inspector of Police, III Town Police Station (Law and Order), Rajahmundry registered the report of the Divisional Co-operative Officer as a case in Crime No.171 of 1993 under Sections 409, 465 and 477-A read with 34 I.P.C. and investigated into. After completion of investigation, the Sub-Inspector of Police, III Town Police Station, Rajahmundry filed the charge sheet.

5. In both the cases, cognizance was taken against A-2 for the offences under Sections 408, 409, 420 and 477-A I.P.C. After appearance of A-2, he was charged under Sections 477-A and 408 I.P.C. in both the cases and he pleaded not guilty. So, A-2

was placed for trial. The prosecution examined nine witnesses and marked four documents in C.C.No.165 of 1997 whereas the prosecution examined three witnesses and marked twenty documents in C.C.No.164 of 1997.

6. After considering both oral and documentary evidence, the trial Court found A-2 guilty for the offences punishable under Sections 477-A and 408 I.P.C. in both the cases and accordingly, convicted and sentenced him to undergo rigorous imprisonment for a period of two years for the offence punishable under Section 477-A I.P.C.; and to undergo rigorous imprisonment for a period of two years and also to pay a fine of Rs.500/- for the offence punishable under Section 408 I.P.C. and in default of payment of fine, to undergo simple imprisonment for a period of one month in both the cases. Aggrieved thereby, A-2 preferred Criminal Appeal Nos.20 and 19 of 2004 on the file of the V Additional Sessions Judge, East Godavari District at Rajahmundry and the same were dismissed by the learned Sessions Judge confirming the judgments of the trial Court on the ground that the trial Court has not committed any error. Challenging the said judgments, A-2 filed these Revision Cases.

7. Heard and perused the material available on record.

8. Considering all the facts and circumstances of the case and from the material available on record, both the Courts below have rightly come to the conclusion that the petitioner committed the offences punishable under Sections 477-A and 408 I.P.C. and accordingly, convicted him in both the cases, as stated supra. In view of the concurrent findings of both the Courts below, this Court is not inclined to interfere with the conviction imposed by the Courts below.

9. While arguing the matter, learned counsel for the petitioner informed that the petitioner is aged about 60 years and suffering from

several ailments and hence, prayed to reduce the sentence of imprisonment.

10. Considering the facts and circumstances of the cases, health condition of the petitioner and the submission of the learned counsel for the petitioner, this Court is inclined to reduce the sentence of imprisonment.

11. In the result, the conviction imposed against the petitioner/A-2 in the judgments, dated 8.12.2006, in Criminal Appeal Nos.20 and 19 of 2004 on the file of the V Additional Sessions Judge, (Fast Track Court), East Godavari District at Rajahmundry for the offences punishable under Sections 477-A and 408 I.P.C. is confirmed. However, the sentence of imprisonment imposed by the trial Court, which was confirmed by the first appellate Court, for the said offences in both the cases is reduced to the period which the petitioner has already undergone. The fine amount, if any, is not interfered with.

12. Accordingly, these Criminal Revision Cases are partly allowed.

13. Miscellaneous petitions pending, if any, in these Criminal Revision Cases shall stand closed.

JUSTICE RAJA ELANGO

22.8.2016
AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

-
-
-
-
-
-
-

—

AMD