

Bail Slip

Crl.R.C. 1356 of 2015

The Petitioner/Accused No.3 namely Sridharan S/o Ramamirtham be and hereby was directed to released on bail as per the Order of this Court made in Crl.M.P. 1 of 2015 in Crl.R.C. 1356 of 2015 Order dated 18.02.2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reservation : 16.11.2016

Date of Pronouncement : 01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision Case No.1356 of 2015
and
M.P.No.2 of 2015

Sridharan

..... Petitioner/Accused No.3
Amended as per Order of this Court
dated 08.01.2016 made in Crl.M.P.
2681 of 2016 in Crl.R.C. 1356 of
2015.

versus

State rep. by Inspector of Police,
Vigilance & Anti Corruption,
Puducherry,
crime No.2 of 1998

... Respondent

Prayer: Criminal revision petition filed under Section 397 read with 401 of Cr.P.C., to set aside the order of confirmation of conviction by the II Additional Sessions Judge, Pudhucherry dated 15.12.2015 in C.A.No.20 of 2014 against the order passed in C.C.No.228 of 2003 dated 30.06.2014 by the Chief Judicial Magistrate, Puducherry and set aside the conviction and release the revision petitioner.

For Petitioners : Mr.V.Soundarrajan for
Mr.D.Ravichander

For Respondent : Mr.V.R.Thangavel, G.A.
(Pudhucherry)

ORDER

The criminal revision has been filed by the petitioner/A3 against the judgment of conviction passed by the learned II Additional Sessions Judge, Pudhucherry in C.A.No.20 of 2014 dated 15.12.2015, in which, the appellate Court, while dismissing the appeal so filed by the present petitioner has upheld the judgment of conviction passed by the learned Chief Judicial Magistrate, Pudhucherry in C.C.No228 of 2003 dated 30.06.2014, in which, the trial Court had convicted the present petitioner for the commission of offences under Sections 408 read with 134 of I.P.C. and 477 read with 34 of I.P.C. and sentenced them to undergo three months R.I. each and to pay a fine of Rs.2,000/- each in default to undergo one month S.I. each.

2.The case of the prosecution is that from 01.04.1996 to 31.05.1996 and 03.06.1996 to 20.06.1996 at Mudaliarpet Students Co-operative Society, Mudaliarpet, in furtherance of common intention, A1, the Secretary of the said Society, who was entrusted with stocks and maintenance of accounts and book-keeping, dishonestly misappropriated a sum of Rs.5,756.40, the sale proceeds of the stock and stock deficit worth Rs.23,161.65 by committing forgery and that during the period from 21.06.1996 to 31.03.1997 at the same place in the course of the same transaction, in furtherance of common intention, A2, the Salesman, in whose entrustment, the society stock was dishonestly misappropriated a sum of Rs.51,525.60, the sale proceeds of the stock and a stock deficit worth Rs.98,110.18 and that A3, the Salesman was found in deficit of stock worth Rs.12,646.95, which were entrusted to him and thereby dishonestly misappropriated the said stock; by committing forgery and in order to facilitate, the embezzlement stated above with intention to commit fraud and with an intention to cause damage to the Co-operative society, committed forgery in the accounts, records, registers, books, receipts of the society for suppressing sales and the forged documents were used for the purpose of cheating and that fraudulently and dishonestly used as genuine the documents forged, with the knowledge that those documents were forged and thereby falsified the accounts by suppressing sales, by embezzling the sale proceedings, by misappropriating the stocks in deficit and therefore, the accused have committed offences punishable under Sections 408, 409, 468, 471 and 477-A of I.P.C. read with 34 of I.P.C.

3.After completion of investigation, the Inspector of Police, Vigilance and Anticorruption, Pudhucherry filed a charge sheet against the petitioner and other accused before the learned Chief Judicial Magistrate, where the case was taken on

file in C.C.No.228 of 2003 and as prima facie was found against the accused persons, they were charge sheeted for the commission of offence under Sections as stated above.

4. In order to prove the case of prosecution, on the side of prosecution, as many as 24 witnesses, P.W.1 to 24 were examined and Exs.P1 to 180 were marked. However, on the side of the accused, no one was examined and no document was also marked. The trial Court, after completion of trial, on the basis of materials produced on records by the prosecution, found the accused not guilty for the offence under Section 468, 471 of I.P.C. read with 34 of I.P.C. and acquitted them under Section 248(1) of Cr.P.C. However, the trial Court found A1 to A3 guilty for the offence under Section 477-A of I.P.C. read with 34 of I.P.C. and sentenced them to undergo three months R.I. each and to pay a fine of Rs.2,000/- each and in default to undergo one month S.I. each and further found A1 guilty for the offence under Section 409 of I.P.C. and sentenced him to undergo R.I. for six months and to pay a fine of Rs.5,000/- in default to undergo S.I. for two months and further found A2 and A3 for the offence under Section 408 read with 34 of I.P.C. and sentenced them to undergo three months R.I. each and to pay a fine of Rs.2,000/- each and in default to undergo one month S.I. each.

5. Aggrieved by the said judgment of conviction passed against them by the learned trial Judge, the petitioner/A3 filed an appeal in C.A.No.20 of 2014 and the same was tried before the learned II Additional Sessions Judge, Pudhucherry, where the same was dismissed vide its judgment dated 15.12.2015 and confirmed the judgment of the trial Court. Against the said judgment, the present revision has been filed by the appellant/A3.

6. The learned counsel for the petitioner/A3 would submit that the charge against the present revision petitioner has not been properly proved by the prosecution and absolutely, there is no evidence that A3/the present revision petitioner was actually entrusted or any domain over the property, which resulted in stock deficit to a tune of Rs.12,646.95 and there is no resolution available in the alleged deficit period of 1.4.1996 to 31.04.1996. He would further submit that the petitioner is a Salesman and he worked for a period of two months from 01.04.1996 and quit the job on 31.05.1996 and as per the Co-operative Societies Act, the Secretary and the President are responsible for the day to activities of the Society and none other can be made responsible and such being the position, after the offence by mere passing a resolution fixing the responsibilities on the salesman that too on 06.09.1996 will have no impact and the Court below have failed to see that the

resolutions of the society can only operate prospectively and cannot operate retrospectively. He would further submit that Ex.P6, the resolution passed to fix the liability on the Salesman much later, after the occurrence and such evidence cannot give the resolution retrospective effect and on that basis, the petitioner cannot be made liable for the offence. The resolution itself was passed only in order to escape from the clutches of the law by A1, who is the Secretary of the Society. Exs.P3 and 4, which are bye-laws of the other Co-operative Societies, have nothing to do with the Society of Muthaliarpur Students Co-operative Society.

7. He would further submit that P.W.1 in his evidence has deposed that in the account book, there are corrections, over writings and some continuing pages are not there and he does not know, who has done those corrections in the account book and P.W.4 had deposed that the daily account are not maintained by the Society and it is well established duty of the Secretary to maintain the daily account register and not the salesman, who is the petitioner herein. He would further submit that P.W.7 in his evidence has categorically deposed that he could not inspect the accounts and perform the audit, which her accounts are incomplete. A2 was new and therefore, he trained him how to write the account in the account book and admitted that the account was written wrongly and he wrote with pencil from page 68 to 148 in the account book and there is no evidence by the prosecution to the effect that the funds are misappropriated by the petitioner. He would further submit that Section 34 of I.P.C. does not attract the petitioner, because, to attract the common intention, there should be two persons to share the intentions to do an act in common and the acquittal of A1 from the charge of Section 34 of I.P.C., would show that there is no sharing of minds to the petitioner by A1 and the same has not been proved by the prosecution that the accused persons have shared their intention to misappropriate the Society's funds. He would further submit that moreover, the petitioner has submitted all the receipt of the sale to A2, who has wrongly written the account and hence, the petitioner is not held responsible for the act committed by A2 by making wrong entry in the account for not maintaining proper ledger. Furthermore, at the time of questioning under Section 313 of Cr.P.C., A3/the petitioner has clearly stated that the petitioner has paid the alleged stock deficit of Rs.1,646.95 to the society and he has no dishonest intention or to commit criminal breach of trust to the society and in view of the pending of the proceedings from 2003 to 2013 and he resigned the job in the year 1995 and since, the petitioner is a first offender, , Section 4 of Probation of Offenders Act against the petitioner to be extended and he relied upon a judgment reported in 2010(2) MWN (cr.) 458 and 2000(1) SCC 260 and he prayed for allowing of the appeal. He

has further relied on the following decisions to support his case of prosecution:

- 1.1990 Suppl SCC 88 - Chhedi Ram V. State of Bihar
- 2.2000(1) SCC 260 - Bore Gowda Vs. State of Karnataka
- 3.2000(1) CCR(SC) 304 - Chandreshwar Sharma Vs. State of Bihar
- 4.(2007) 15 Supreme Court Cases 773 - Suraya Yoganand Alias Chitti
- 5.(2015)3 Supreme Court Cases (Cri) 287 - State of Madhya Pradesh Vs. Madanlal
- 6.2006(2) MLJ (Cri) 673 - Ponnuswamy V. Inspector of Police
- 7.2006 (2) MLJ (Cri) 177 - A.Srinivasan & Others. Vs. State, by the Inspector of Police
- 8.2008 (1) MLJ (Cri) 1287 - T.Tamilchelvan Vs. State
- 9.2015(1) MWN (Cr.) 513 - Nachiappan Vs. State

8.The learned Government Advocate appearing for the respondent would submit that A1 was the Secretary and A2 and A3 were the salesmen of Mudaliarpet Students Co-operative Society, who have been entrusted with the stocks and maintenance of accounts of the Society. The petitioner along with A1 and A2, with an intention to commit criminal breach of trust with respect to the maintaining of account and book keeping and committed breach of trust and also they have misappropriated the funds of the society and after proper investigation only, charge sheet has filed against them. P.W.1 Senior Inspector speaks about the misappropriation committed during the audit and prepared the complaint. P.Ws.1 to 7 have clearly deposed about the involvement of this petitioner and other accused and the prosecution has proved its case beyond reasonable doubt and the trial Court has correctly convicted and accused and in the appeal, the Additional Sessions Judge clearly answered regarding the conviction recorded by the trial Court and found correct and there is no reason to interfere the same and there is no legal grounds to interfere with the same. He would further submit that when both the Courts below had found the accused guilty of charges levelled against them, then the said findings did not warrant any interference by this Court in exercise of its revisional jurisdiction as there was no perversity in the findings so recorded by both the Courts below. Accordingly, he submitted that there was no merit in the revision petition and the same is liable to be dismissed.

9.Heard the learned counsel for the petitioner/A3 and the learned Government Advocate (Pudhucherry) appearing for the respondent and perused the materials available on records as well as the judgment passed by both the Courts below.

10.The brief facts of the case of the prosecution is that during the period from 03.06.1996 to 20.06.1996 at Mudaliarpet Students Co-operative Society, Mudaliarpet in furtherance of

common intention, A3 being Salesman of the Co-operative Society dishonestly misappropriated a sum of Rs.1,646.95 of sale proceeds of the stock and stock deficit of Rs.12,646.95 by committing forgery. To prove the case of prosecution, P.Ws.1 to 24 were examined and Ex.P1 to 180 were marked and on the side of the accused, no one was examined and no document was marked. The trial Court after perusing the materials available on records and after hearing both sides found the petitioner/A3 guilty for the offence under Sections 408 read with 34 of I.P.C. and 477-A read with 34 of I.P.C. and convicted and sentenced him as stated above. The appellate Court also has confirmed the same in the appeal filed by the petitioner/A3.

11.A perusal of the judgment of the Courts below and the oral and documentary evidence adduced before the Courts below would clearly show that P.W.1, who is the Senior Inspector of the Co-operative Department, as defacto complainant has lodged the complaint Ex.P2 alleging that when he was working as Auditor in the Registrar of Co-operative Societies, Pudhucerry upto 30.09.1997 and he audited the accounts of the Mudaliarpur Students Co-operative Stores and reported certain serious irregularities committed by the Secretary and the Salesmen of the said stores to the Registrar as per order No.6/1/181/RCS/Audit/I-1/97/444 dated 14/11.1997. He has further stated that during the time of conducting final audit for the year 1996-97, he checked the salesman liability register with price fixation register, sales chitta, sales bills for the entire period from 01.04.1996 to 31.03.1997 and physical stock verification was conducted for three times i.e. On 03.06.1996, 20.06.1996 and 31.03.1997 and found total stock deficit worth Rs.1,33,918.78, in which, the petitioner/A3 is responsible for Rs.12,646.95. P.Ws.2 to 7 also corroborated the same and thus, A3 has misappropriated an amount of Rs.12,646.95 and they have been prosecuted for the offence under Section 408, 409, 468, 471 and 477 of I.P.C. read with 34 of I.P.C. Therefore, there is no illegality or infirmity found from the judgments of the Courts below and the conviction recorded against the petitioner does not warrant any interference by this Court.

12.At the time of arguments, even before this Court, the learned counsel for the petitioner/A3 has mainly focussed that since the petitioner/A3 is now a senior citizen and also he has paid the alleged misappropriated amount and also he has resigned the job and he is the first offender, the petitioner/A3 can be considered under Section 4 of the Probation of Offenders Act.

13.As already stated, this Court has also found that the petitioner/A3 has committed the offences under Section 408, 477-A of I.P.C. read with 34 of I.P.C. and there is no interference with the conviction passed by the trial Court and upheld by the

appellate Court. However, considering the fact that since the petitioner is a first offender and only for a short period, he had worked in the Society and thereafter, he has resigned his job and also repaid the alleged misappropriate amount to the Society and there is no loss to the society, this Court is of the view that there is some force in the contention raised by the learned counsel for the petitioner and the authorities submitted by the learned counsel for the petitioner are squarely applicable to the facts of the present case. Therefore, considering the facts and circumstances of the case, I am of the view that the petitioner may be extended the benefit of Section 4 of Probation of Offenders Act.

14. Accordingly, the conviction dated 30.06.2014 made in C.C.No.228 of 2003 passed by the learned Chief Judicial Magistrate, Puducherry against the petitioner/A3 and confirmed by the learned II Additional Sessions Judge, Pudhucherry vide her judgment dated 15.12.2015 in C.A.No.20 of 2014 alone is confirmed. With regard to the sentence is concerned, the matter is remitted to the trial Court to consider the case under Section 4 of Probation of Offenders Act and on receipt of the records along with this order, the trial Court is directed to get the report from the Probation Officer and pass orders in accordance with law.

15. With the above observation and direction, this criminal revision Case petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Arul

To

1. The Inspector of Police,
Vigilance & Anti Corruption,
Puducherry,
2. The II Additional Sessions Court,
Pudhucherry.

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3. The Chief Judicial Magistrate,
Karaikal.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

5. The Public Prosecutor,
High Court, Madras.

6.
+lcc to the Government Pleader, Puducherry, Sr. 39375

Pre-Delivery order made in

Criminal Revision Case No.1356 of 2015
and
M.P.No.2 of 2015

KJ(CO)
VR(13/6/2017)



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