

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.491 of 2013

State rep. by
The Inspector of Police,
Commercial Crime Investigation Wing CID,
Tiruvallur. (Crime No.2/2008) ... Appellant/Complainant

Vs.

S.S.Subramani ...Respondent/Accused

The Criminal Appeal filed under Section 378 of Code of Criminal Procedure to set aside the judgment of acquittal dated 21.11.2011 made in C.C.No.275 of 2008 by the learned Judicial Magistrate Court, Tiruttani.

For Appellant : Mr.Ravichandran,
Government Advocate (Crl.Side)

For Respondent : Mr.A.Rajendra Kumar -
No Appearance

JUDGMENT

This criminal appeal has been filed by the State against the judgment of acquittal dated 21.11.2011 made in C.C.No.275 of 2008 by the learned Judicial Magistrate Court, Tiruttani.

2 According to prosecution, when the respondent/accused was acted as president of complainant society from 11.03.1994 to 24.05.2001, had misappropriated the fund and thereby committed offence under Sections 406 and 477 (A) of IPC and hence a case was registered in Crime No.2 of 2008. The appellant/State, after investigation, had filed a final report before the learned Judicial Magistrate, Tiruttani, which was taken on file in C.C.No.275 of 2008.

3 Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W.8 were examined and documents Ex.P1 to Ex.P23 were marked and on the side of the defence no one was examined and no document was marked.

4 The learned Magistrate, after trial, acquitted the accused, by judgment dated 21.11.2011, on the ground that the prosecution had failed to explain inordinate delay in lodging complaint, that too after settling the misappropriated amount by the respondent/accused. Against the judgment of acquittal, the state has preferred this present criminal appeal before this Court.

5 The learned Government Advocate (Crl.Side) appearing for the appellant/State would submit that the respondent/accused while acting as President of the complainant society for the period from 11.03.1994 to 24.05.2001, with dishonest intention, had not handed over the stock properly and also misappropriated the Society's fund, which was also admitted by him through Ex.P15 letter written by him to P.W.3/Special Officer. The learned Magistrate had erroneously acquitted the respondent/accused by observing that there was delay in lodging complaint and respondent/accused repaid the amount. Mere delay in lodging complaint and subsequent repayments are not grounds to acquit the accused. When misappropriation of money is proved and the same was also admitted by the respondent/accused, he should not be acquitted without any punishment for the offence committed by him. The prosecution had clearly proved the commission of offence by the respondent/accused under Sections 406 and 477 (A) of IPC. The trial Court had failed to consider the evidences of prosecution side witnesses and the documents submitted by the prosecution and also the learned Magistrate failed to consider the gravity of the offence committed by the respondent/accused and erroneously acquitted him, which warrants serious interference of this Court.

6 When the matter is called for hearing, there is no representation on behalf of the respondent/accused. Heard the learned Government Advocate (Crl.Side) appearing for the appellant/State and perused the original records.

7 It is not in dispute that the respondent himself admitted his liability through Ex.P15/ letter given to P.W.3/Special Officer. On a perusal of the records it reveal that the respondent repaid the amount and receipts for the same were also marked by the prosecution as Ex.P2 and Ex.P3. Further surcharge proceedings was also initiated by the Department and concluded in the year 2005 itself. After conclusion of surcharge proceeding, based on the finding made, the respondent/accused repaid the amount misappropriated by him, but, on seeing

FIR/Ex.P23, it was registered on 13.03.2008 in Crime No.2 of 2008, after the period of three years from the date of conclusion of surcharge proceedings.

8 Even prior to the conclusion of surcharge proceedings, the respondent/accused admitted his liability through Ex.P15. On reading of the entire documents, there was inordinate delay in lodging complaint. Further, the respondent/accused had settled the dues in the year 2006 and the complaint was made only after a year, whereas the alleged occurrence took place between the period from 1994 to 2001.

9 The complainant must have initiated criminal proceedings, either soon after finding of misappropriation or after conclusion of surcharge proceedings. The Society waited for years together and thereafter lodged a complaint that too after the settlement of dues by the respondent/accused.

10 It is true that the delay in lodging complaint is not a ground for acquittal. This Court and the Hon'ble Supreme Court time and again reiterated that the delay has to be explained properly with sufficient reason. In the present case on hand, prosecution had failed to explain the delay and the same is fatal to the case of the prosecution. This Court as a first appellate Court re-appreciated entire evidences and documents and found that prosecution had not made out any case to convict the respondent/accused. Under these circumstances, the learned Magistrate had rightly acquitted the respondent/accused, in which this Court does not find any illegality or irregularity.

11 In the result, the criminal appeal stands dismissed.

Sd/-

Assistant Registrar(CS)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court, Tiruttani.
2. The Public Prosecutor, High Court of Madras.
3. The Inspector of Police,
Commercial Crime Investigation Wing CID, Tiruvallur.

4. The Chief Judicial Magistrate, Tiruvallur

Copy To

The Section Officer, Criminal Section, High Court, Madras.

CrI.A.No.491 of 2013

PA (CO)
GMY (23/03/2019)



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