

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 14.06.2018	Delivered on 20.06.2018
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**Crl.R.C.Nos.1307 of 2011****and****M.P.Nos. 1 & 2 of 2011**

Mani

... Petitioner

..Vs..

2.The State

Rep.by

The Sub-Inspector of Police,
C.C.I.W. CID., Kancheepuram,
Kancheepuram.2.Kancheepuram Co-operative Town Bank,
Nallukara Street,
Kancheepuram.

..Respondents

(R 2 is impleaded as per Order dated 19.04.2018
made in Crl.RC.Nos.1307 & 1308 of 2011)Crime No.17 of 1993

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Prayer:

Criminal Revision Case filed under Section 397 and 401 of Cr.P.C. to set aside the judgment dated 05.09.2011 made in Crl.A.No.10 of 2011 on the file of the District Sessions Judge, Court No.2, Kancheepuram and consequently to set aside the judgment dated 18.01.2011 passed in C.C.Nos.43 of 2000 on the file of Judicial

Magistrate No.I, Kancheepuram.

For Petitioner : Mr.K.M.Balaji

For Respondents : Ms.S.Thankira for R-1
Government Advocate
(Crl. Side)

: Ms.T.Girija for R-2

ORDER

This Criminal Revision Petition is filed against the order passed in Crl.A.No.10 of 2011 dated 05.09.2011, passed by the District and Sessions Judge, Kancheepuram confirming the order of conviction and sentence passed by the Judicial Magistrate No-I, Kancheepuram in C.C.No.43 of 2000, dated 18.01.2011.

2.The case of the prosecution in brief:

The petitioner was working as an Assistant in charge of the deposit holders loan section. During that period of time, one Manisekaran PW-2 had a fixed deposit for a tenure of six years for a sum of Rs.10,000/- [Rupees Ten Thousand Only] in the Co-operative Bank. The petitioner is known to PW-2. On 20.04.1989, the petitioner requested loan from PW-2 to the tune of Rs.7,500/-[Rupees Seven

Thousand Five Hundred Only]. PW-2 took a loan of Rs.7,500/- [Rupees Seven Thousand Five Hundred Only] against the fixed deposit and gave that money to the petitioner. On 22.12.1992, the PW-2 received a letter from the Society informing that the fixed deposit has matured and the total amount of deposit along with interest of Rs.20,327.90 [Rupees Twenty Thousand Three Hundred and Twenty Seven and Pise Ninety only] is available. PW-2 went to the Bank and to his shock he found that apart from Rs.7,500/- [Rupees Seven Thousand Five Hundred Only] which he had taken as loan and given to the petitioner, another sum of Rs.7,500/- [Rupees Seven Thousand Five Hundred Only] has been taken as loan by forging his signature. PW-2 found that his signature has been forged in various documents like loan application [Ex.P-7], Promissory Note [Ex.P-8], Security letter [Ex.P-10] and also the receipts [Ex.P-11 & Ex.P-12] as if PW-2 has repaid the loan. Immediately on coming to known of this, PW-2 gave a complaint Ex.P-13 to the Secretary of the Co-operative Bank. On coming to known of this development, the petitioner gave a letter Ex.P-14 agreeing to return back this money. PW-14 who was the Deputy Registrar of the Co-operative Society during the relevant point of time gave a complaint to the Inspector of Police CCIW CID, Kancheepuram and an FIR came to be registered in Crime No.17 of 1993 for an offence

under Section 408, 409, 420, 477 (A) and 109 IPC. PW-15 recorded the statement of witnesses and handed over the case for further investigation to PW-16, who continued with the investigation. PW-16 sent the relevant records to get the opinion of the hand writing expert and PW-12 gave his expert opinion and submitted a report Ex.P-25. On completion of investigation, Final Report was filed by PW-16 for an offence under Section 408, 477(A), 467 and 465 IPC and Trial Court took cognizance of the Final Report.

3. The prosecution examined 16 witnesses and marked 30 documents in order to prove their case. The petitioner examined himself as DW-1 and 2 documents were marked from his side.

4. The Trial Court after thoroughly appreciating the evidence given by the witnesses and also the various documents marked by the prosecution found that the prosecution has proved the case beyond reasonable doubts and convicted the petitioner and imposed a sentence of one year Rigorous Imprisonment and Rs.1,000/- [Rupees One Thousand Only] fine and in default one month Simple Imprisonment for an offence under Section 408 of IPC, one year Rigorous Imprisonment for the offence under Section 471 r/w 465 IPC, one year Rigorous

Imprisonment and Rs.1,000/- [Rupees One Thousand Only] fine and in default one month Simple Imprisonment for an offence under Section 471 r/w 467 IPC and one year Rigorous Imprisonment for an offence under Section 477 (A) IPC (two counts) for each count and the sentence was directed to run concurrently along with the sentence that was independently imposed in C.C.No.327 of 2006 for another set of charges faced by the petitioner along with 3 others.

5.On appeal filed by the petitioner, the Appellate Court on appreciation of the oral and documentary evidence did not find any ground to interfere with the order of conviction and sentence of the Trial Court and confirmed the order of the Trial Court. Aggrieved by the same, the petitioner has filed this Criminal Revision Petition.

6.The learned counsel for the petitioner would submit that both the Courts below failed to appreciate the fact that the case as projected by the witnesses was not in line with the case as projected by the prosecution in the FIR and the statements given at the time of investigation. The learned counsel also put forth his arguments to the effect that there is no direct or indirect evidence to show that the petitioner was directly involved in the commission of the crime.

7.Per contra, the learned Government Advocate (Crl.side) reiterated the case of the prosecution and argued that there are absolutely no materials to interfere with the orders of the Courts below and that the prosecution has proved the case beyond reasonable doubts. Therefore, the learned Government Advocate (Crl.side) prays for the dismissal of this Criminal Revision petition.

8.This Court has gone through the oral evidence of all the witnesses and also the documents relied upon by the prosecution. From the records it can be seen that the petitioner was in control of all the records in the deposit holders loan section during the relevant point of time. PW-2 was well known to the petitioner and during the first occasion the petitioner obtained a loan of Rs.7500/- [Rupees Seven Thousand Five Hundred Only] from PW-2 who in turn took a loan against his fixed deposit that was lying in the Co-operative Bank. It is the categoric evidence of PW-2 that apart from this loan, he did not take any other loan towards the fixed deposit. On 03.08.1992, certain concocted documents are made ready as if PW-2 has returned the loan taken by him and on the same day it is made to appear as if he is taking a loan of Rs.7,500/- [Rupees Seven Thousand Five Hundred

Only] by giving an application.

9.The evidence of PW-2, PW-3, PW-4, PW-5, PW-7, PW-9, PW-10 and PW-11 clearly shows that the petitioner was instrumental in preparing the forged and fabricated documents. Their evidence is further collaborated by the expert opinion marked as Ex.P-25 through PW-12. The evidence of PW-12 and his report clearly shows that he has compared the disputed documents which are S-11 to S-22, S-39 to S-62, S-99 to S-101, along with the sample signature of the petitioner Ex.P-23 and also the sample signatures of PW-3, PW-4 and PW-5 and found that all the disputed documents contains the hand writing of the petitioner herein. This overwhelming evidence clearly points out that it is only the petitioner who has forged and fabricated documents and thereby has committed the offence of criminal breach of trust by a clerk or servant, using as genuine a forged document, and falsification of a valuable security. The case attempted to be projected on the side of the accused person as if PW-2 came in person and obtained the loan and repaid it back through one Jayavel who is none other than a servant working in the shop of the petitioner's father, does not in any way inspire the confidence of this Court. The entire case is borne out by the records and records speaks for itself along with the report of the

expert clearly pointing out the guilt of the petitioner.

10.The petitioner has not only cheated the Co-operative Bank but also his own friend PW-2, whose account was manipulated for the purpose of mis-appropriation of funds.

11.This Court also takes Judicial notice of another offence that was committed by the petitioner who was in charge of the jewel loan during the relevant point of time and for which he was convicted and sentenced and which punishment was directed to run concurrently along with the punishment imposed in the present case. That case has been separately dealt with by a separate order passed in CrI.R.C.No.1308 of 2011. It is therefore seen that the petitioner taking advantage of his position has committed various offences during the relevant point of time and thereby misused the trust reposed on him by Co-operative Bank.

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12.During the pendency of this Criminal Revision Petition, the learned counsel for the petitioner submitted that the petitioner has remitted back the entire amount that was imposed on him in the surcharge proceedings independently conducted by the Co-operative

Society. This Court impleaded the concerned Co-operative Bank and the Deputy Registrar and Managing Director of the Co-operative Bank filed an affidavit before this Court to the effect that the petitioner remitted the entire surcharge amount of Rs.11,29,620/- [Rupees Eleven lakhs Twenty Nine Thousand Six Hundred and Twenty Only] to the Co-operative Bank. The learned counsel for the petitioner also brought to my notice that the petitioner is now aged about 64 years and this Court can take into consideration the subsequent conduct of the petitioner in repaying back the entire surcharge amount and also the age of the petitioner while considering to modify the sentence imposed on the petitioner if in case this Court is going to confirm the order of conviction.

13.As stated above, this Court is totally convinced with the fact that the petitioner did commit the offence and the same is clearly borne out by the overwhelming evidence that was let in by the prosecution. The prosecution has proved the case beyond reasonable doubts. This Court therefore does not find any ground to interfere with the order of conviction that was concurrently passed by both the Courts below.

14. On the question of sentence, this Court took into consideration the subsequent conduct and age of the petitioner and accordingly modifies the sentence as follows:

“ Six months Rigorous Imprisonment and Rs.1000/- [Rupees One Thousand Only] fine and in default one month Simple Imprisonment for an offence under Section 408 of IPC, six months Rigorous Imprisonment for the offence under Section 471 r/w 465 IPC, six months Rigorous Imprisonment and Rs.1,000/- [Rupees One Thousand Only] fine and in default one month Simple Imprisonment for an offence Under Section 471 r/w 467 IPC and six months Rigorous Imprisonment for an offence under Section 477 (A) IPC (two counts) for each count”.

These sentences are to run concurrently along with the sentence imposed in CrI.R.C.No.1308 of 2011. If the petitioner has to undergo remaining term of imprisonment [if any] after deducting the period when he was already in Judicial Custody, he shall surrender before the Trial Court and serve the remaining sentence. If the petitioner does not surrender, the Judicial Magistrate No.1, Kancheepuram shall immediately issue Non Bailable warrant through the respondent Police and secure the petitioner in order to undergo the remaining period of imprisonment if any.

15.This Criminal Revision Petition is allowed in part by confirming the order of conviction passed by both the Courts below and modifying the sentence to the extent indicated above. Consequently, the connected miscellaneous petitions are closed.

20.06.2018

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Index: yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order

Kp
To

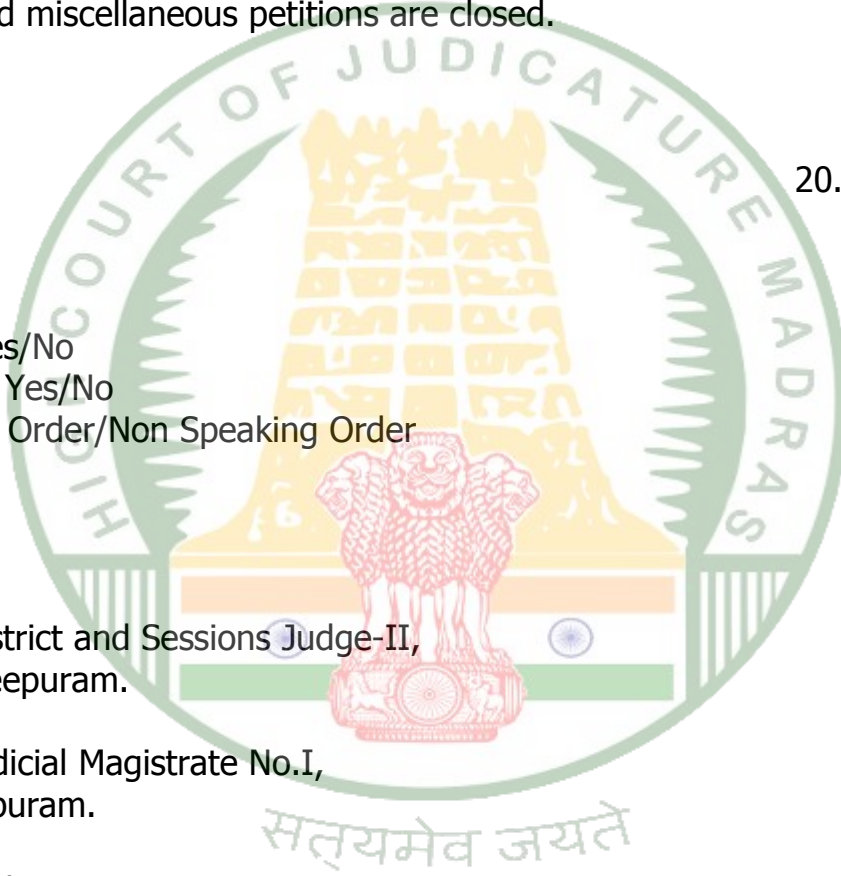
1.The District and Sessions Judge-II,
Kancheepuram.

2.The Judicial Magistrate No.I,
Kancheepuram.

3.The State
Rep.by
The Sub-Inspector of Police,
C.C.I.W. CID., Kancheepuram,
Kancheepuram.

4.Kancheepuram Co-operative Town Bank,
Nallukara Street,
Kancheepuram.

5.Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH,. J

KP



Pre-Delivery Order
in
Crl.R.C.No.1307 of 2011

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