

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.No.1308 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

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.11 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.No.327 of 2006 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.11 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.327 of 2006, dated 18.01.2011.

2.The case of the prosecution in brief:

During the period 03.04.1991 to 29.09.1992, the petitioner was working in the jewel loan section of the big Kancheepuram Co-operative Town Bank and was in charge of receiving the jewel pledged, certificate for the weight of the jewel, maintaining the ledger and also to submit the documents pertaining to the sanction of jewel loan and handing over the jewel to the chief cashier. Two of the members named Latha and Umapathy, gave a complaint to the Special Officer of the Society to the effect that there is a shortage in weight in the jewel that was pledged and later redeemed by them. When an enquiry was ordered, it came to like that there was similar shortage in weight for another 32 members who had also pledged their jewels. Subsequently, PW-13 forwarded two complaints Ex.P-3 and Ex.P-4 to the Deputy Registrar PW-2 based on which a Section 81 enquiry under the Co-operative Societies Act was initiated. The order directing the initiation of Section

81 enquiry was marked as Ex.P-5. After detailed enquiry, the report of the Enquiry Officer Ex.P-30 revealed that the petitioner along with three others is directly involved in the offence and pursuant to which the petitioner was suspended from service. After the Enquiry Report was submitted, a complaint was independently given before the respondent Police and FIR was registered [Ex.P-32] in Crime No.17 of 1993 for an offence under Section 408, 409, 420, 477 (A) and 109 IPC against the petitioner and three others.

3.The investigation was taken up by PW-21 and he recorded the statements of witnesses and collected the necessary documents. Thereafter, the investigation was handed over to PW-22 who on completion of the investigation filed his Final Report for an offence under Section 408 r/w Section 109 of IPC. The learned Judicial Magistrate took cognizance of the Final Report and framed charges for the said offences.

4.The prosecution examined 22 witnesses and marked 33 documents. The petitioner himself as DW-1 and marked 8 documents from his side. The Trial Court after considering the oral and documentary evidence placed before it passed an order convicting all

the four accused persons and imposed a punishment of one year Rigorous Imprisonment and fine of Rs.1000/- [Rupees One Thousand Only] and in default one month Simple Imprisonment for an offence under Section 408 IPC and insofar as A-2 to A-4 a punishment of one year Rigorous Imprisonment and fine of Rs.1,000/- [Rupees One Thousand Only] and in default one month Simple Imprisonment for an offence under Section 408 r/w Section 109 IPC. The petitioner aggrieved by this order, filed Criminal Appeal No.11 of 2011 before the Sessions Court and the Sessions Court on appreciation of the entire evidence found no ground to interfere with the order of conviction and sentence passed by the Trial Court, and accordingly, dismissed the Criminal Appeal filed by the petitioner. Aggrieved by the same, the petitioner has filed this Criminal Revision Petition.

5.The learned counsel for the petitioner submits that there is no evidence to show that the property in question was entrusted to the petitioner and he was in control of the same. The learned counsel for the petitioner would further contend that there is no evidence to show that the petitioner committed an act of mis-appropriation and that the prosecution did not prove the case against the petitioner beyond reasonable doubts, and therefore the orders passed by the Courts

below requires interference.

6.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.

7.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.

8.PW-1 to PW-3 and PW-19 who were working at the relevant point of time PW-6 to PW-18 are the members who gave evidence about the jewel that was pledged by them and the shortage of weight in the jewels. PW-5 was a person who physically weighed the jewels and found the shortage in weight. The official witnesses have spoken about the various responsibilities assigned to the accused persons. In the report after the Section 81 enquiry, it can be seen that the jewels that were pledged was kept by the petitioner herein till 4.00 p.m. and thereafter, without weighting them, the same was kept in the locker, and therefore, the shortage in the weight of jewels has happened when the petitioner was in total control of all the jewels that was pledged by the members in the Co-operative Bank. Therefore, the entrustment of the property viz., the jewels was with the petitioner herein. No one else is involved in handling this jewels that were pledged except the petitioner and this was well within the knowledge of the other accused persons A-2 to A-4.

9.While the petitioner was in control of the jewels after the entrustment, the shortage has happened.

10.When the entire evidence was against the petitioner was put to him during Section 313 questioning, no plausible explanation was given by the petitioner. The petitioner was only trying to shift the blame to the other accused persons who according to the petitioner are suppose to have weight the jewel and kept it in safe custody in the locker. It is for this reason that the other accused persons were also punished for an offence under Section 408 r/w 109 IPC.

11.There is overwhelming evidence against the petitioner and this Court exercising its revisional jurisdiction does not find any ground to interfere with the order of conviction of the Courts below.

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. 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. This sentence has to run concurrently with the sentence imposed in Cr.R.C.No.1307 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.

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

20.06.2018

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 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.

N. ANAND VENKATESH,. J

KP



Pre-Delivery Order
in
Crl.R.C.No.1308 of 2011

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