

BAIL SLIP

CRL RC.1399 OF 2011

The Appellant/Accused S.Gopalakrishnan, S/o.B.Subbiah, aged 62 years is directed to be released on bail as per order of this court dated 04.10.2011 in MP.1 of 2011 in CRL RC.1399/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 26.04.2018

ORDERS PRONOUNCED ON : 22.06.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.R.C.No.1399 of 2011
and M.P.No.1 of 2015

S.Gopalakrishnan ..Petitioner/Appellant/Accused
versus

State of Tamilnadu,
Rep. by Inspector of Police,
B-4 Police Station,
Coimbatore.

..Respondent/Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the order of the learned Additional District and Sessions Judge [Fast Track Court-I], Coimbatore dated 16.05.2011 in C.A.No.139 of 2010 confirming the order of the learned Judicial Magistrate No.III, Coimbatore made in C.C.No.368 of 2006 dated 04.06.2010 and allow the revision petition.

For Petitioner : Mr.R.Sendhilkumar
for M/s.A.B.Fathima Sulthana

For Respondent : Ms.T.P.Savitha
Government Advocate [Crl.Side]

सतयमेव जयते
O R D E R

This Criminal Revision has been filed praying to set aside the judgment rendered by the learned Additional District and Sessions Judge [Fast Track Court - I], Coimbatore in C.A.No.139 of 2010 dated 16.05.2011, wherein he confirmed the conviction and sentence awarded by the learned Judicial Magistrate No.III, Coimbatore in C.C.No.368 of 2006 dated 04.06.2010.

2. The gist of the prosecution case is as follows:

2.1. The de facto complainant, namely, Kumar, was residing in Gopalapuram and doing the business of Film Distributor. The revision petitioner was also doing the same

business in the name of "Mahalakshmi Films". In the business transactions, the de facto complainant, who examined as P.W.1 requested the revision petitioner to display the film under the basis of commission. Thereafter, in complying with the request made by P.W.1, the petitioner released the Films. Further, the petitioner arranged a finance to P.W.1, for which, he issued a blank cheques to the petitioner by way of security.

2.2. Subsequent to the said agreement, the disputes have been arised between the petitioner and the P.W.1, thereby, P.W.1 lodged a complaint before the B-4 Police Station, Coimbatore. Similarly, in order to settle the disputes arised between the petitioner and P.W.1, the members of the Film Distribution, Coimbatore, interfered and appointed one Kanchanadevi for verifying the accounts in respect of the business transaction made between the petitioner and P.W.1. Further, the witness Thambidurai, who appointed by the President of the Film Distributor Association verified the accounts and found Rs.2,90,000/- alone was the due amount for P.W.1. At the same time, the witness Kanchanadevi verified and found Rs.12,84,282/- is the due amount. The original accounts ledger was marked as Ex.P.1. Subsequent to the verification of the accounts, another dispute had arised due to the receiving of Rs.75,000/- and hence, another complaint was lodged by P.W.1 before the same Police Station. For which, a case has been registered against the petitioner for the offence punishable under Section 406 IPC in Crime No.1537 of 2004. During the time of investigation, the respondent [P.W.5 / G.G.Ramasamy] examined 3 witnesses i.e. P.W.2 to P.W.4 and filed a charge sheet for the same offence.

2.3. In the Trial Court, on the side of the prosecution 5 witnesses were examined as P.W.1 to P.W.5 and 6 documents were exhibited as Ex.P.1 to Ex.P.6. Besides, the petitioner had examined himself as R.W.1 and one Sugumar was examined as R.W.2 and he exhibited 6 documents as Ex.D.1 to Ex.D.6. After full trial, the learned Judicial Magistrate No.III, Coimbatore, held that the petitioner is found guilty for the offence under Section 406 IPC and awarded conviction and sentenced to undergo two years Simple Imprisonment with a fine of Rs.2,000/-, in default to undergo six months Simple Imprisonment. As against the said conviction, the petitioner filed the Criminal Appeal [Crl.A.No.368 of 2010] before the learned District and Sessions Judge, Coimbatore.

2.4. After elaborate enquiry, on 16.05.2011, the learned Additional District Judge [Fast Track Court-I], Coimbatore, dismissed the Appeal and confirmed the sentence awarded by the learned Magistrate. Now, in order to check the correctness of the above concurrent judgments, the petitioner

filed the present revision before this Court.

3. The first and foremost contention raised by the revision petitioner is that in order to settle the dispute between the petitioner and the de facto complainant [P.W.1], P.W.3 [Meenakshi Sundaram] and P.W.4 [Kanchanadevi] were appointed as Verification Officers. According to the verification of P.W.3 and P.W.4, the correct amount liable to pay by the revision petitioner is not find out. According to the verification of P.W.4 [Kanchanadevi], Rs.12,84,282.50/- is the balance amount which has to be paid to P.W.1. On the other hand, according to the evidence of other witnesses, the amount in dispute is not in accordance with the finding arrived by P.W.4. In this regard, the respondent police has laid a charge sheet against the petitioner by saying that Rs.7.5 lakhs have been misappropriated by the petitioner. Accordingly, the correct amount which was misappropriated by the petitioner has not been arrived before the Trial Court.

4. However, it is general Rule in order to prove the offence under Section 406 IPC, entrustment is necessary. In this regard, Section 405 IPC reads as follows:

"405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."

So, according to the said provision, in order to prove the case falls under Section 406 IPC, initially the respondent police has necessarily to prove the entrustment. But in this case, the entire evidence put forth by the prosecution reveals that prior to the registration of the case, the petitioner and P.W.1 is having the business transaction in respect of distributing the films in Erode and in Coimbatore District. Due to the non-payment of the commission amount, the dispute has been went up to the police station. Even in the charge sheet the police has not mentioned anything about the manner of entrustment. Therefore, without proving the fact of entrustment, this Court is not in a position to conclude the findings arrived by the Trial Court as well as the First Appellate Court is correct one. The basic ingredients for the offence under Section 406 IPC is "entrustment". Without knowing the said aspect both the Courts

below had committed a grave error and punished the revision petitioner [accused] as above. So, the order passed by the learned Additional District and Sessions Judge [Fast Track Court-I], Coimbatore in C.A.No.139 of 2010 dated 16.05.2011 is liable to be set aside and accordingly, the same is set aside. Therefore, the conviction and sentence awarded to the revision petitioner is set aside. The fine amount, if any paid, shall be refunded to him.

5. In fine, the Criminal Revision is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

sri

To

1. The Principal District Judge, Coimbatore.
2. The Additional District and Sessions Court [Fast Tract Court No.I], Coimbatore.
3. The Judicial Magistrate No.III, Coimbatore.
4. The Chief Judicial Magistrate, Coimbatore.
5. The District Collector, Coimbatore.
6. The Public Prosecutor, High Court, Madras.
7. The Inspector of Police, B-4, Police Station, Coimbatore.
8. The Record Keeper, Criminal Section, High Court, Madras.

+1cc to Mr.S.N.SUBRAMANI, Advocate, S.R.No.39474

ORDER IN Cr1.R.C.No.1399 of 2011

CA(CO)
TR(29/06/2018)