

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.432 of 2016

Poovendan

... Petitioner

vs

State rep. by Sub-Inspector of Police,
C.C.I.W., Vellore.
(Crime No.15 of 2005)

... Respondent

Prayer : Criminal Revision Petition filed under Sections 397 and 401 of Code of Criminal Procedure, against in C.A.No.76 of 2011 on the file of I Additional District and Sessions Judge, Vellore dated 28.08.2014 by confirming the conviction and sentence imposed by the learned Judicial Magistrate No.2, Vellore dated 01.03.2011 and convicted for an offence under Section 406 and 477(A) of I.P.C. and to undergo R.I. for one year and to pay a fine of Rs.1000/- in default, to undergo S.I. for one month to run concurrently.

For Petitioner : Mr.S.Sairaman

For Respondent : Mr.R.Suriya Prakash

Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition is directed against the judgment made in C.A.No.76 of 2011 dated 28.08.2014 on the file of the learned 1st Additional District and Sessions Judge, Vellore confirming the Judgment dated 01.03.2011 made in C.C.No.90 of 2006 on the file the learned Judicial Magistrate No.II, Vellore.

2.The Revision petitioner herein is the 1st accused in the above C.C.No.89 of 2006 on the file of the learned Judicial Magistrate No.II, Vellore.

3.The sum and substance of the present revision petition as follows:

The Revision Petitioner is the then Secretary of Devasthanam Periyapettai Primary Agricultural Co-operative society appointed in the year 1992. He served as Secretary of the above society from 27.05.1992 to 29.09.2004. To the above

Society, the Accused No.2 namely Ramalingam was appointed as Assistant Secretary in the year 1999. He served as Assistant Secretary from 1999 to 2004. Accordingly A1 and A2 served as Secretary and Assistant Secretary respectively of the above society.

4. During their office tenure there were some irregularities found committed by A1 and A2, such that there were fabrication of documents false entries made in the accounts and records.

5. Therefore, departmental actions were initiated against both of them and an enquiry was conducted and both were found delinquent and involved in misdemeanor. Resultantly a criminal complaint dated 24.08.2005 came to be lodged by the Special Officer of the above society and a case was registered on 08.10.2005 as against the Revision petitioner and said Ramalingam for offence under sections 419, read with 109, 467, 471, read with 109, 408, read with 109 of I.P.C. by the 1st respondent. After investigation final report in C.C.No.89 of 2006 was filed by the respondent police under sections 467, 471, 477(A), 406 and 419 of I.P.C.

6. On the side of prosecution totally 12 witnesses were examined and 18 documents were marked. The learned trial judge on appraisal of oral and documentary evidence discharged the 2nd accused namely Ramalingam for want of prima facie evidence. The Revision petitioner was found guilty of charges under sections 406, and 477(A) of IPC and accordingly he was sentenced one year R.I. and Rs.1000/- fine towards each of the above offence and the sentences were ordered to run concurrently. With regard to other offences under sections 467, 471, 419 of I.P.C. the trial court found the charges against the accused as not proved beyond reasonable doubts. Accordingly the Revision petitioner was acquitted from the charges under sections 467, 471, 419 of I.P.C.

7. As against conviction for charges under sections 406 and 477(A) of I.P.C. an Appeal in C.A.No.76 of 2011 came to be filed by the Revision petitioner before the learned 1st Additional District Sessions Judge, Vellore. The appeal came to be dismissed vide a judgment dated 28.08.2014 by confirming the judgment of the trial Court. The said Judgment dated 28.08.2014 of Appellate Court is under challenge in the present criminal revision.

8. I heard Mr.S.Sairaman, learned counsel for the Revision Petitioner and Mr.R.Suriya Prakash, learned Government Advocate (Criminal side) for the respondent and perused the entire materials available on record.

9. The learned counsel for the Revision petitioner would submit that when the Revision petitioner and the Assistant Secretary, namely Ramalingam both by designation and work have undertaken jointly along with the Special Officer who is also

the signatory of the majority of vital documents, the conclusion of the court below as such A1 alone was responsible for the alleged irregularity is untenable. It is his case that when 10 people were working in the society-institution and the documents were handled by all of them, picking the Revision petitioner and holding the Revision petitioner for the alleged lapses is unsustainable. When the trial Court found there were no material particulars with regard to A2, the same yardstick would also be applicable to the Revision petitioner being placed identical.

10. Yet another contention of the learned counsel for the Revision petitioner is that the documents marked were mere Xerox copies and the original documents were not produced before the trial court. Thus Xerox copies are not reliable and liable to be rejected. More so, it was his further contention that on the date of alleged irregularity he was not in-charge of the society, since having handed over his Charge to the second accused on 17.03.2003.

11. According to rule 24 of the Tamilnadu Co-operative Societies Act only an authenticated copy issued by the Chief Executive Officer or the President of Society has to issue a Certified Copy after the same found checked and compared. The said formalities are not adhered in the instant case.

12. Per contra, the learned Government Advocate (Criminal side) would submit that the Revision petitioner being the Secretary of the society, he is exclusively liable for the irregularities as the officer-in-charge of the Society. The fabrication of document and false entries made in the records are made by the Revision petitioner. The Revision petitioner being the Secretary is responsible under section 83 of Tamil Nadu Co-operative Societies Act to safe guard all kinds of assets of the Bank, and also responsible for day to-day debit transactions. In the instant case the revision petitioner had fabricated the receipt without assigning number. Further beyond the knowledge and without consent of member records were forged as if certain loans were disbursed, while actually without disbursing such loan.

13. By playing above irregularities the Revision petitioner has misappropriated the funds of society by committing criminal breach of trust and thereby committed loss to the bank for the period between 25.02.2003 to 18.03.2004. Only on due appreciation of the oral and documentary evidence produced by the prosecution, the learned trial Judge was pleased to hold the Revision petitioner guilty under sections 406, and 477(A) of I.P.C. The learned appellate Judge was also right in confirming the sentence passed against the Revision petitioner. Accordingly, he prayed for dismissal of the Criminal Revision.

14. On perusal of records, as stated above the charges against the revision petitioner originally were found to be framed for the offences punishable under sections 467, 471, 477 (A), 406 and 419 of I.P.C. On trial, the trial Judge found that the charges under sections 406, 477(A) alone proved by prosecution and thereby convicting for the said offences, whereas acquitted for the remaining offences namely 467, 471 and 419 of I.P.C. with a specific finding that there was absolutely no material produced by prosecution as to manner, time, place and the person by whom the document were fabricated. Previously the second accused namely Ramalingam, the Assistant Secretary was discharged by the trial court for want of prima facie evidence against him. Being as such, there was no appeal filed by the State as against the acquittal of accused from the other charges and thus the same became final.

15. On perusal of the impugned order as well as the Judgment of the trial court it is found that the conviction of the accused is based on the version of PW5, PW7 and PW 11.

16. At this juncture, it is equally important to state that the trial court has held the evidence of other witnesses to be untrustworthy. At the cost of repetition it is to be stated that having disbelieved other prosecution witness projected pertaining to several other alleged irregularities said to have been committed by the revision petitioner and relying upon the evidence of PW5, PW7 and PW11 the conviction of the Revision petitioner is made by the Courts below. Therefore it is appropriate for this court to scrutinize the Order of conviction in the context of evidence let in by them.

17. In as much as the allegation with regard to PW5 namely Kullamal, it is the case of the prosecution that revision petitioner without disbursing Rs. 40,000/- as loan but had made false entries in daily registry as if loan lent. Whereas said Kullamal has denied the receipt of Rs. 40,000/-. In as much as evidence of PW 7 and PW 11 is concerned they deposed that without disbursing Rs. 40,000/- as loan to PW7 the revision petitioner had made false entries in daily registry as if loan lent. Accordingly the Revision petitioner was held to be guilty of breach of trust of members PW5 & PW7 for falsification of accounts. By fabricating the account maintained in daily ledger in respect of loan entries, the Revision petitioner was held to be guilty for offence under section 477(A).

18. At the outset it is needless for this court to reiterate the three settled rules of criminal jurisprudence as following that:

1.The prosecution has to prove the case beyond reasonable doubts.

2.The accused must be presumed to be innocent;

3.The onus of the prosecution never shifts.

19.As observed in Rabindra Kumar Dey -Vs- State of Orissa reported in 1997 AIR 170, it is to be stated that:

(i) The onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defense version while proving its case;

(ii) That in a criminal trial the accused must be presumed to be innocent until he is proved to be guilty and (iii) that the onus of the prosecution never shifts.

20.However in the case on hand, it is surprising for this Court to see that the onus was put on the Revision petitioner. The same can be ascertained from the findings made by the appellate court holding that when the Revision petitioner has to establish that he has handed over his charge on 17.03.2003. The said approach is contrary to the above rule of Jurisprudence. The said attitude would show that there was no presumption of innocence made in favor of the Revision petitioner by the trial court. At the same time the burden was put on him to establish his innocence. The said approach is highly erroneous.

21.It is equally significant to note from the report of the enquiry officer dated 06.09.2005 annexed in additional typed set that the Secretary and the Assistant Secretary are jointly liable for maintenance of records and day-to-day monitory dealings. Again it is to be noted that there is specific finding that the said irregularity ought to have been committed jointly. It is also found to be reflected in the cross examination of the Investigation Officer deposing that the enquiry report forwarded to him detailed that the above irregularity cannot be pointed exclusively as against the Revision petitioner and the irregularity might have been committed by second accused jointly. It is further denoted that practically infeasible to rightly locate the delinquent employee.

22.In the opinion of this Court, it is needless to say that once the Revision petitioner has produced Ex R1 dated 17.03.2003, the Order of handing over of his charge to A2, it is the bounden duty of the prosecution to rebut it successfully. However, admittedly in the case on hand the transactions are found to be taken place on 21.04.2003 and 19.05.2003. It is not

the case of prosecution that Ex R1 dated 17.03.2003 is forged or untenable but it is their case that the same was not acted upon.

23.In the above factual background this court finds some force in the contention of the Revision petitioner that when a number of persons have handled the documents, picking one alone among them and found to be responsible for the alleged lapses is untenable. In this context it would be appropriate to state the principle that suspicion or grave doubt however strong cannot be allowed to take the place of proof.

24.When the trial court found that there is no sufficient evidence as against A2 who is similarly placed, the court below ought to have extended the theory to Revision petitioner also. In other words, this court is not inclined over the approach by the trial court in dealing with the case of A1 and A2 in a diverging manner, when the fact remained both of them faced same set of charges and were placed on par as per the prosecution story, besides were holding in-charge of the society affairs jointly.

25.For the forgoing reasons, this Court finds that the prosecution has miserably failed to establish their case beyond reasonable doubts and accordingly the criminal revision is allowed by rendering benefit of doubt the revision petitioner is acquitted of charges under sections 406 and 477(A) of IPC. However the acquittal will have no effect over disciplinary proceedings or recovery proceedings if any pending.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To

1.The I Additional District and Sessions Judge,
Vellore.

2.The Judicial Magistrate No.II, Vellore.

+1cc to Mr.S.Sairaman, Advocate, S.R.No. 69382

Cr1.R.C.No.432 of 2016

GN(23/10/2018)