Bail Slip

The Petitioner/Accused namely V.G.Rajendran S/O Govindarajalu, was released on bail as per order of this Court dated 04/01/2013 and 16/4/2013 made in Crl.M.P.No.1/13 in Crl.R.C.No.1/2013 and Crl.M.P.1/13 in Crl.R.C.492 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.R.C.Nos.1 and 492 of 2013

V.G.Rajendran .. Petitioner in both the Crl.R.C.s/Accused

Vs.

State by
The Inspector of Police,
CCIW CID, Vellore,
Vellore District. .. Respondent in both the Crl.R.C.s/Complainant

(Cr.No.18 of 2005)

Prayer in Crl.R.C.No.1 of 2013: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., against the order passed by Additional District Judge/Fast Track Court, Vellore in C.A.No.124/2010, dated 31.10.2011 whereby modifying the order passed in C.C.No.23/2008, dated 07.06.2010 on the file of Judicial Magistrate-II, Vellore, Vellore District and imposed sentence of one month each for the alleged offence under Sections 468, 471, 408 and 477(A) IPC together the fine imposed Rs.500/- in default one week sentence.

Prayer in Crl.R.C.No.492 of 2013: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., against the order passed by I Additional District and Sessions Judge, Vellore in C.A.No.126/2010, dated 21.01.2013 whereby modifying the order passed in C.C.No.25/2008, dated 07.06.2010 on the file of Judicial Magistrate-II, Vellore, Vellore District and imposed sentence of one month each for the alleged offence under Sections 468, 471, 408 and 477(A) IPC together the fine imposed Rs.500/- in default one week sentence.

(In both the Crl.R.C.s)
For Petitioner : Mr.C.Prakasam

For Respondent : Mr.R.Suriyaprakash
Government Advocate (Crl.Side)

COMMON ORDER

These criminal revision petitions preferred by the petitioner/accused against the order passed by the learned I Additional District and Sessions Judge, Vellore in C.A.Nos.124 and 126 of 2010 dated 31.10.2011 and 21.01.2013 whereby the learned lower appellate Court modified the order of conviction and sentence passed in C.C.Nos.23 and 25 of 2008 dated 07.06.2010 on the file of the learned Judicial Magistrate No.II, Vellore, wherein the learned trial Court sentenced the petitioner/accused for the offences under section 468, 471, 408 and 477(A) of IPC together the fine imposed Rs.500/- in default one week sentence.

2.Brief case of the petitioner /accused in both revisions is that:

The prosecution case is that the petitioner/accused V.G.Rajendran served as Secretary in-charge of Paradarami Primary Agricultural Co-Operative Bank from 28.2.1991. As per Bank sub rules and also as per section 84 of Co-Operative Society's Act, the Secretary is the chief administrator who is responsible to control and supervise the employees and to maintain and safeguard all kinds of documents of the bank and he is solely responsible for the entire income and expenditure of the bank. The special officer/president of administrative committee and Secretary of the bank are vested with power to transact with the central cooperative bank, Gudiyatham Branch in respect of accounts and for all kinds of debits and credits. As a secretary, the petitioner/accused is having some important responsibilities and as enrolling the new members on the basis of their eligibilities and scrutinizing the loan applications before sanctioning the loans and recommending the same to the President/Special Officer. The petitioner/accused for the period from 12.06.2001 to 28.05.2002 prepared fabricated documents in the name of 11 members and without disbursing any loans prepared forged documents as if loans were sanctioned and disbursed to the witnesses and dishonestly misappropriated the bank funds of Rs.3,92,775/- and used the said amount for his personal gain and used the documents fabricated by him as if they are genuine with the knowledge that those documents are forged documents and committed criminal breach of trust.

3.PW2 Sundaramoorthy while working as the Special Officer of Paradarami Primary Agricultural co-Operative Bank for the period from 21.11.2001 to 9.11.2004 learnt that the accused who was the full time Secretary of the said bank and in-charge of Bank funds misappropriated the bank amount to the tune of Rs6,73,200/- and in respect of the same, he had submitted Exhibits-P2 and P3 reports dated 02.07.2004 and 10.08.2004 to the Deputy Registrar. Similarly PW3 Yoganandan Cashier had submitted Exhibits-P5 and P6 reports, dated 21.06.2004 and 27.05.2004 respectively and a special report dated 25.05.2004, Exhibit-P7 to the Central Bank regarding the non -payment of Rs.6,29,817/- for 12 loan receipts and also for the nonpayment of cash in hand in the Central Bank. PW 4 Gurunanthan, Field Manager had submitted Exhibit P9 and P12 Special Reports with regard to the misappropriation of Rs.1,35,000/-. Based on the complaints received from the Special Officer and the employees, the Deputy Registrar issued the proceedings order, Exhibit-P14 on 16.08.2004 appointing PW 18 Ravidoss as Enquiry Officer as per section 81 of Co-operative Societies Act for conducting inquiry over the misappropriation.

4.PW18 Ravidoss, Department Enquiry Officer seized the loan files, Exhibits-P41 to P51, Exhibit-P52 Savings Account Register, Exhibit-P53 Debit Receipt and in the inspection, he found out that the accused had falsified the entries in the Daily Ledger as if loan amounts were sanctioned and disbursed to PW6, PW7, PW9 and PW17 and to the witnessed Munusamy, Radhakrishnan, Subramani and Govindasamy without actually disbursing the loans misappropriated the bank funds . He inquired the witnesses and recorded their statements and submitted his report together with the statements of the witnesses to the Deputy Registrar. PW14 Stephen, Scientific Officer, Forensic Science Department had obtained and inspected the thumb impressions of the witnesses and submitted his report Exhibit-P37, dated 12.09.2007. Likewise, PW16 Kirupakaran, Inspector, Forensic Science Department had inspected the debit receipts in dispute and issued report, Exhibit P40. On receiving the report of the Enquiry Officer, PW1 Venkatesan observed that the accused was the root cause for the misappropriation and lodged a complaint, Exhibit P1 with the Commercial Crime Investigation Wing. PW19 the Inspector of Police registered a case in Cr.No.18 of 2005 and prepared Exhibit-P57 FIR took investigation, recorded the statements of the witnesses and after receiving the reports issued by the Forensic Science Personnels and after completing the investigation , laid the charge sheet against the accused under sections 408, 467, 471 and 477(A) of IPC.

In C.C.No.23 of 2008

5.The learned Judicial Magistrate, No.II, Vellore who took cognizance, furnished the copies under section 207 of Cr.P.C to the accused and questioned about the offences. The accused denied his culpability and claimed the case to be tried. On the side of the complaint, 19 witnesses were examined and 57 exhibits were marked.

6.On completion of the trial, the learned Judicial Magistrate No.II convicted the petitioner/accused for the offences under sections 468, 471, 408 and 477(A) of IPC and sentenced him to undergo one year rigorous imprisonment for each offence and imposed fine of Rs.500/- in default to undergo 3 months simple imprisonment for each offence.

Aggrieved over the conviction and sentence, the petitioner/accused preferred criminal appeal before the learned Additional District Sessions Judge, Vellore in C.A.No.124 of 2010.

7.The learned lower appellate Court on hearing the parties, confirmed the conviction under section 468,471,408 and 477(A) of IPC and partly allowed the appeal by modifying the sentence to undergo rigorous imprisonment for one month each and to pay a fine of Rs.500/- each in default to undergo rigorous imprisonment for further period of one week each through its judgment dated 31.10.2011.

In C.C.No.25 of 2008

8.The respondent police also conducted another investigation in respect of the criminal breach of trust committed by the petitioner/accused for the period 2003 to 2004 and filed the final report in C.C.No.25 of 2008.

9.The case of the prosecution in C.C.No.25 of 2008 is that the petitioner/accused who was also the secretary in-charge of bank funds for the period from 24.12.2003 to 11.06.2004 committed criminal breach of trust with criminal intention and forgery and falsified the entries as if the loan amount was disbursed in Daily Ledger and misappropriated the bank funds of Rs.6,73,200/- and thereby committed offences under sections 468, 471, 408 and 477(A) of IPC.

10.During the trial, the prosecution examined PWs-1 to 18 and Exhibits-P1 to P61 were marked. No witness examined on the side of accused.

11.On completion of trial, the learned Judicial Magistrate No.II, Vellore convicted and sentenced the petitioner/accused for six months rigorous imprisonment each for the alleged offence under sections 468, 471, 408 and 477(A) of IPC together and imposed fine of Rs.500/- in default to undergo simple imprisonment for a period of three months.

12.Aggrieved over the conviction and sentence, the petitioner/accused preferred criminal appeal before the learned Additional District Sessions Judge, Vellore in C.A.No.126 of 2010.

13.The learned lower appellate Court on hearing the parties, confirmed the conviction under sections 468, 471, 408 and 477(A) of IPC and partly allowed the appeal by modifying the sentence to undergo rigorous imprisonment for one month each and to pay a fine of Rs.500/- each in default to undergo rigorous imprisonment for further period of one week each through its judgment dated 21.1.2013.

14.Aggrieved over the same, the petitioner/accused filed both revisions challenging the order passed by the learned Lower Appellate Court. Criminal Revision Petition in No.1 of 2013 was filed against the order passed in Crl.A.No.124 of 2010 in C.C.No.23 of 2008.

15.The 2nd Criminal Revision Petition was filed by the petitioner/accused in Crl.R.C.No.492 of 2013 challenging the order passed in Crl.A.No.126 of 2010 in C.C.No.25 of 2008. Both the revisions were commonly heard.

16.The learned counsel for the petitioner/accused submits that both Courts below failed to consider that the petitioner was working as Secretary in-charge in Bharatharami Primary Agricultural Co-operative Credit Society, when he was discharge his duties as Secretary in-charge, the Deputy Registrar of Co-operative Societies ordered enquiry under section 81 of Tamil Nadu Co-operative Societies Act for the alleged irregularities committed by the petitioner in regarding with issuance of crop loan and other loans to the members by way of fabricating the documents as if, the members of the said society borrowed the said loan and without sanctioning loan amount by the higher officials of the said society and coop department officials the Secretary alone cannot sanction the loan amount and misappropriate the same.

17.The learned counsel for the petitioner/accused submits that both Courts below failed to consider that the petitioner is AIDS Patient and he counting his days, even in the lower appellate Court order same was considered and modify the sentence from one year to one month on that reason that if the petitioner go for jail it will create health hazards not only to the petitioner and other inmates of the jail, hence the sentence has been reduced from one year to one month.

18.The learned Government Advocate (Criminal Side) appearing for the respondent supported the findings of the Courts below and sought for dismissal of the revision.

19.I heard Mr.C.Prakasam, learned counsel for the petitioner and Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record in both the criminal revisions.

20.The learned Government Advocate (Criminal Side) appearing for the respondent not disputed the fact that the petitioner/accused was affected by the AIDS disease and counting his days.

21.It is seen from the records that, both cases in C.C.Nos.23 and 25 of 2008 were separately enquired and the lower appellate Court modified the sentence for a period of one month by confirming the conviction and sentence imposed against the petitioner/accused.

22.I am of the view that the punishment of imprisonment for a period of one month has to be modified due to the nature of disease and the sufferings of the petitioner/accused in a humanitarian ground.

23.Therefore, both the criminal revisions are allowed and the punishment of one month rigorous imprisonment was modified and the petitioner/accused is directed to pay a sum of Rs.5,000/- in each case. Accordingly, both the criminal revisions are allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Additional District Judge/Fast Track Court, Vellore.

3.The Judicial Magistrate No.II, Vellore.

4.The Chief Judicial Magistrate, Vellore.

5.The Inspector of Police, CCIW CID, Vellore,
Vellore District.

6.The Public Prosecutor, High Court, Madras.

7.The Superintendent of Police, Vellore District.

8.The District Collector, Vellore District.

9.The Director General of Police,
Mylapore, Chennai-4.

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

+2cc to Mr.Cd.Prakasam, Advocate Sr.18714, 18715

CRL.R.C.Nos.1 and 492 of 2013

sr[co]
srg 05/03/2019