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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CRL.A.NOS.1128, 1129 AND 1130 OF 2003

State by
Inspector of Police
C.C.I.W.C.I.D.,
Namakkal.

... Appellant in all Crl.As'

Versus

1.Pandian
2.Ravichandran
3.Ponnusamy
4.Raju
5.Pappathi
6.Perumal

... Respondents in all Crl.As'

PRAYER: Criminal Appeals filed under Section 378 Cr.P.C., against the judgment dated 05.12.2002 in C.A.Nos.72, 71 and 70 of 2002 respectively, on the file of Additional District Judge, Fast Track Court, Namakkal and pray this Court to set aside the order of acquittal and convict the accused.

For Appellant : Mr.T.Shanmugarajeshwaran
in all Crl.As'

For Respondents : Ms.Selvi George
in all Crl.As'

COMMON JUDGMENT

These Criminal Appeals have been preferred against the order of acquittal made in Criminal Appeal Nos.70, 71 and 72 of 2002 respectively, on the file of Additional District Judge, Fast Track Court, Namakkal, dated 05.12.2002.

2. The appellant registered a case against the respondent for the offences under Sections 408, 467, 471 and 477 (A) of Indian Penal Code. After investigation, a charge sheet was laid for the offences under the above mentioned Sections. During trial prosecution examined twenty six witnesses viz.,



P.W.1 to P.W.26 and marked ninety three exhibits viz., A1 to A93. On the side of the accused, none was examined as witness and no documents were marked.

3. The Trial Court found all the accused guilty of all the offences and sentenced them to undergo six months rigorous imprisonment for offences under Section 120-B IPC; two years for offences under Sections 408 and 477(A) IPC, concurrently, along with the sentences imposed in C.C.No.284/1999.

4. On appeal, the Additional District Judge, Fast Track Court, Namakkal, in C.A.No.72 of 2002 dated 05.12.2002 set aside the finding of the Trial Court and reversed the judgment and acquitted the accused giving benefit of doubt in their favour. Challenging the order, the present appeals have been preferred by the State.

5. The defacto complainant is the Sub Registrar of S.607, Namakkal Agricultural Producers Co-op. Marketing Society, Namakkal. On the basis of the complaint dated 02.02.1998, Crime No.1/98 was registered for the offences under Sections 408, 467, 471 and 477 (A) IPC committed by the accused during the period between 30.03.1995 and 28.03.1996. According to the prosecution, the appellants have stolen cotton stacked within the premises of the Society and misappropriated the funds of the Society and thereby committed criminal breach of trust.

6. The Trial Court based on the evidence of the prosecution witnesses particularly of P.W.16, P.W.17 and P.W.23 and Exs.A49 to 52, A60 to 65, A72 to A92 has found that the accused themselves had given statements admitting their guilt in the enquiry conducted under Section 81 of Tamil Nadu Co-operative Societies Act, 1983 and paid the money misappropriated by them into the Society. The confession made by the accused before the authorities and during enquiry has been categorically proved and the case of the defence remain very weak and could not be accepted. The Trial Court considered the statements given to the disciplinary authority amounts to confession of guilt. Therefore, the accused were found guilty.

7. On the other hand, the appellate Court had found that the prosecution has failed to prove the charges of misappropriation of funds. Eventhough P.W.19 to P.W.22 have deposed that there was shortage in weight of the cotton, no documents were marked to prove that they have made complaints for the shortage. The finding of the Trial Court is based on assumptions. The theory of conspiracy was also not proved. The Court shall consider the circumstances in which the statements were given by the accused and it cannot be considered as confession statements without ascertaining the same. The



documents were prepared by the employees of the Society and the accused admittedly have nothing to do with the documents the offence of forgery cannot be attributed them and thus held the charges were not proved by convincing evidence. In the absence of any direct evidence that accused altered or tampered the records, the charges cannot be held to be proved beyond reasonable doubt and hence acquitted the accused.

8. The learned Public Prosecutor would contend that the prosecution through the cogent and clear witnesses and based on records have clearly proved the charges beyond doubt. The prosecution witnesses are not inimical towards the accused. The finding of the lower appellate court that the prosecution failed to prove the charges beyond reasonable doubt is erroneous and as per the judgment of this Court reported in 1998 MLJ (CRL) 46 conviction could be based on the statement given before the authorities other than Police shall be considered as confession statement and it cannot be rejected. P.W.23 and P.W.24, who conducted enquiry, have explained the facts clearly in their report. Ex.P10 discloses the criminal activities of each and every accused. The documentary evidence vide Exs.P1 to P91 amply prove all the charges, and conspiracy can be presumed based on the chain of event and the evidences are free from infirmities and prayed to set aside the order of acquittal.

9. A thorough analysis of the materials placed before this Court clearly reveal that the proof of the charges mainly based on the statements given by the accused before the disciplinary authority and the enquiry officer. The witnesses P.W.4 to P.W.10 are the members of the Society who sell the cotton through the Society. They would affirm that there were no shortage in cotton. P.W.19 to P.W.22 are the cotton merchants who purchase cotton from the Society. They would depose that there used to be shortages and that they have given complaints to the authorities. But not even a single complaint was produced or marked as exhibit before the Court. The evidence of P.W.19 to P.W.22 also reveal that there were oral and written complaints, but they were not specific about the date or period during which there was shortage. More particularly, there is no specific evidence about the quantity of shortage. It is admitted during cross examination of P.W.18 that they used to take the stocks purchased after a month also and there were probabilities for weight loss of cotton and that they were not aware of the fact as to who had stolen the cotton. A perusal of oral evidence of all the witnesses categorically prove that nobody had seen that the accused stealing the cotton nor they were caught red handed. Therefore, it is crystal clear that there is absolutely no evidence to prove that the accused removed the cotton from the premises of the Society.



10. Due to lack of evidence with regard to theft, the accused were charged for misappropriation. Even this charge, as stated above was based on their written statements during enquiry. Ex.P49 is the statement of fourth accused (A4) given to the Special Officer of the Society on 21.04.1996. According to the statement, A4 used to sell the cotton produced by him from cultivating his lands. On 21.02.1996, A1 requested A4 to sell the cotton through the Society, which he agreed and paid the monies to A1. In turn, A1 used to give Rs.400/-. On 28.03.1996, A4 requested A1 to pay more, i.e., Rs.450/- which he declined and declared that he will sell the cotton through somebody else. Thereafter, A1 sold cotton through A5 Pappathi. P.W.17 would depose that A4 had given his statement in front of the Special Officer, Secretary and another employee and it was typed and thereafter, the signature was obtained. The said statement was the starting point of the case. He would further depose that misappropriation was estimated on the basis of auction slips and weight receipts stood in the name of A4 to A6. During cross examination, he would state that the accounts would be audited. In so far as cotton is concerned, they do not maintain Stock Register and during his service, the details of shortage was not brought to his knowledge and the shortage was not registered. Agriculturists have not given complaints for shortage. A suggestion was made that the statements from A1 to A6 were obtained by using threat, physical torture and that the superior authorities are also involved in theft. In order to escape, the accused were made scape goat.

11. A conjoint reading of the statement of A4 and evidence of P.W.17, it can be inferred that the statement was obtained by the Special Officer at his office and it was typed and signature was obtained from A4. The reason for giving such statement against A1 was that A1 refused to give more money and he engaged A5 and A6 for selling the cotton. Due to the animosity, he had given the statement. The totality of the circumstances reveal that the statement was not voluntary but obtained from A4 and it was not made voluntarily out of conscious prick. Likewise, in a typed statement, thumb impression was obtained from A5 on 22.04.1996.

12. In so far as the statements of A1 to A3 are concerned, they were also obtained on the same date 22.04.1996. On the basis of the same, a charge memo was issued. In the explanation to the charges A1 to A3 would request the Special Officer to pardon them and to reinstate them and that they have remitted the amount back. The request for reinstatement does not disclose that the statement was made voluntarily but it was made for a barter of not removing them from employment. During question under Section 313 Cr.P.C., all the accused have denied the charges as false.



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13. In such circumstances, it has to be seen as to whether the contention of the Public Prosecutor relying on a judgment of this Court in ASSISTANT COLLECTOR OF CUSTOMS VS. GOVINDASAMY RAGHUPATHY [1998 MLJ (CRL) 46] can be accepted. In the said judgment, it is held thus:

"....excepting for the specific purposes of Sections 27 and 32 of the Evidence Act. Barring the above circumstances under which a confession statement has been given with the Police Officer or in the presence of the Police Officer in custody, no other confession made before any authority or prosecuting officials could be viewed with suspicion and they have enormous evidentiary value and conviction could be based on the evidence of such confession statement alone as pronounced in various decisions of the Apex Court."

14. The above judgment is in respect of a customs case. As per Section 108 of Customs Act, the confession given to a Customs Officer is admissible in evidence. In the present case, there is no confession made by the accused before the Magistrate during criminal investigation much less before anybody including the investigation officer. A customs officer is empowered to get confession statement by virtue of the powers conferred on him by the statute. Whereas, the Special Officer is not a competent authority to conduct criminal investigation nor empowered or competent to record confession statement. There are lot of difference between a confession and a statement. All statements will not become confession. Hence, statement admitting the guilt in a departmental proceedings cannot be equated to each other as the standard of proof in criminal investigation is entirely different from a departmental proceeding. Therefore, the said judgment will not apply to the case on hand.

15. In the judgment in COMMISSIONER OF POLICE VS. NARENDER SINGH [2006 (4) SC 265 = AIR 2006 SC 1800], it is held thus:

"The policy underlying behind Sections 25 and 26 is to make it a substantive rule of law that confessions whenever and wherever made to the police, or while in the custody of the police to any person whomsoever unless made in the immediate presence of a magistrate, shall be presumed to have been obtained under the circumstances mentioned in Section 24 and, therefore, inadmissible, except so far as is provided by Section 27 of the Act. A confession



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would mean incriminating statement made to the police suggesting inference of the commission of the crime and it, therefore, is confined to the evidences to be adduced in a court of law. If the provisions of the Evidence Act are not attracted in a departmental proceeding, a fortiori Sections 25 and 26 shall not apply."

16. In the judgment in STATE (N.C.T. OF DELHI) VS. NAVJOT SANDHU [2005 (11) SCC 600], it is held that confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth.

17. In the judgment in UNION OF INDIA AND OTHERS VS. NAMAN SINGH SEKHAWAT [2008 (1) SCC (L&S) 1053], it is held as follows:-

"28. Reliance has also been placed on Commissioner of Police, New Delhi vs. Narender Singh : (2006) 4 SCC 265 wherein this Court was dealing with a case of a police constable, who was accused of committing theft of arms. He made a confession of his involvement. It was found to be inadmissible in the criminal proceeding. In that factual backdrop this Court held :-

"12. It is not in dispute that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceeding are distinct and different. Whereas in a criminal case, it is essential to prove a charge beyond all reasonable doubt, in a departmental proceeding preponderance of probability would serve the purpose."

Thus, from the above judgments, it can be safely inferred that a statement given before a superior officer need not be a confession even though it admits to all the facts proving guilt of the person making it.

18. In the instant case, as observed above, the starting point of the case was the information given by A4 to the Special Officer. In the statement given on 22.04.1996, A4 would state that A1 refused to pay extra amount and engaged somebody else to sell the cotton and thereafter, he gave the statement about theft. On the other hand, before the Enquiry Officer, he would state that he was not aware that the cotton given by A1 to him for sale was a stolen item. Once he came to know of it, he refused to sell the cotton on behalf of A1. Likewise, A5 and A6



would also state that they were not aware of the fact that the cotton given to them by A1 was a stolen item. In that event, it is all the more necessary to prove the statement given to the Special Officer was voluntary and without threat or inducement. Even before the Enquiry Officer, the Special Officer was not called as a witness to prove the factum that the statement given by A1 to A6 was voluntary and without inducement. A1 to A3 were called to enquiry and they would give a statement that they have given their statement already on 22.04.1996 and that they have nothing more to say. This evidence before the Enquiry Officer does not satisfy the requirement it was voluntary and it was made as prompted by their conscience. The Special Officer, who submitted his statement vide Ex.A89 would not utter a word about the statement made on 22.04.1996 much less it was made voluntarily. Thus, the evidence on record does not disclose that the accused have made a voluntary statement on 22.04.1996 before the Special Officer and the same has not been proved in the manner known to law.

19. Be that as it may, in a departmental proceedings, when a document is relied, it shall be produced during the enquiry and shall be proved through the author of it. Even assuming that it was produced by the Presenting Officer, an opportunity shall be given to the delinquent to speak about the same. If it is admitted, then it can be taken as admission. Even that admission shall be unambiguous admission of guilt. In the instant case, neither the written statement was produced nor the Special Officer appeared for enquiry. In that event, the letter given by A1 to A6 on 22.04.1996 cannot be taken as admission of guilt and it cannot be relied on as material evidence.

20. In that event, the written statement, which was made before a Special Officer, when it is not proved, cannot be considered as admission. The reliance placed on this statement by the Trial Court is erroneous. A confession is a more serious term. Confession is not defined in Evidence Act. "Confessions" which is a terminology used in Criminal Law is a species of "admissions" as defined in Section 17 of the Evidence Act. An admission is a statement, oral or documentary which enables the Court to draw an inference as to any fact in issue or relevant fact. It is trite to say that every confession must necessarily be an admission, but every admission does not necessarily amount to a confession.

21. Thus, the written statement said to have been given before the Special Officer will not amount to confession. The accused during criminal investigation of the case after lodging of FIR have not given any statement. It is not stated that such a piece of evidence was relied by the criminal court. In cases of confessions that should have been made before the Court of Law,



much less it should have been given to a Magistrate (as defined in Criminal Procedure Code). But, I do not find any such confession made by A1 to A6.

22. The statements made before the Special Officer, were recorded after calling the accused to their office. It was not prompted by consciousness of the accused unable to bear the guilt. The circumstances does not rule out inducement, threat and coercion. In all departmental proceedings, the usual bait is that if the delinquent admits his guilt, he would be let off with lesser punishment. In such an event, the statement admitting the guilt on the promise of some barter will not qualify to be a confession as per Section 24 of Evidence Act.

23. In the case on hand, it can be presumed that the accused were persuaded to give such a statement. The trial Court without relying on the evidence produced before it, was carried away by the unproved statement given in a departmental proceedings, on moral grounds. The lower appellate court has rightly disagreed with such findings as it does not qualify to be a confession.

24. In so far as the other offences are concerned, it is admitted case of the prosecution that the employees only prepared the bills and made the payments. There was no irregularity or shortage in making payment. Accused A1 to A3 being watchmen and gate keeper, admittedly have no access to these records, particularly, there is no evidence or even allegation of tampering or altering or manipulating the records. In that event, the finding of the lower appellate court is very much correct. The theory of conspiracy is also not made out.

25. These appeals merit no consideration and accordingly, stands dismissed. In fine, the judgment dated 05.12.2002 in C.A.Nos.72, 71 and 70 of 2002 respectively, on the file of Additional District Judge, Fast Track Court, Namakkal is hereby confirmed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar



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To

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1.The Additional District Judge,
Fast Track Court,
Namakkal.

2.The Public Prosecutor,
High Court of Madras,
Madras.

+3cc to Mr.Selvi George, Advocate Sr.45114, 45113, 45115

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