



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2018

CORAM:

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)No.205 of 2018

Sivakami Pillai

:Revision Petitioner/
Appellants/Accused

Vs.

The State represented by
The Sub Inspector of Police,
District Crime Branch Police Station,
Thoothukudi.
(Crime No.6/1997)

:Respondent/Respondent/
Complainant

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records in C.A.No.30 of 2016 dated 23.02.2018 on the file of the First Additional Sessions Judge, Thoothukudi in confirming the judgement of conviction under Section 409 IPC and modifying the sentence of 3 years to one and half years and modifying the fine amount of Rs.7,500/- from 10,000/- in C.C.No.57 of 1999 dated 15.07.2016 on the file of the Judicial Magistrate Court No.I, Thoothukudi and allow the revision and acquit the revision petitioner.

For Petitioner: Mr.R.Ramachandran

For Respondent: Mr.A.Robinson,

Government Advocate(Crl.Side)

ORDER

This Criminal Revision case is filed against the judgment dated 23.02.2018 in C.A.No.30 of 2016 passed by the First Additional Sessions Judge, Thoothukudi confirming the judgment passed by the Judicial Magistrate Court No.I, Thoothukudi in C.C.No.57 of 1999 dated 15.07.2016.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.side) appearing for the respondent.



Special officer in Puliankulam Co-operative Land Colonization Society during the period from 25.05.1993 to 15.11.1993.

4.The case of the prosecution is that while serving as Special Officer, the revision petitioner has collected loan amount from the members of the society and issued receipts for the same. But he had not remitted into the societies account and dishonestly misappropriated the total sum of Rs.7,458/-. To prove the case of misappropriation, the prosecution has marked Ex.P7 to Ex.P17, the receipts for collection of money from the members, but not remitted into the account of society.

5.To prove the charge for the offence under Section 409 IPC, the prosecution has examined 11 witnesses and 29 exhibits, out of which the receipts issued to the subscribers. The subscribers who paid money to the revision petitioner/accused were also examined on behalf of the prosecution.

6.The Courts below have properly appreciated the facts of the case. In the light of the evidence let in by the prosecution, having proved the guilt of misappropriation to the tune of Rs.7,458/-, the trial Court has imposed the sentence of three years simple imprisonment and to pay a fine of Rs.10,000/-, in default to undergo three months simple imprisonment. On appeal, the lower appellate Court, considering the age of the appellant, though dismissed the appeal, confirming the conviction, has modified the sentence to the effect that the revision petitioner/accused shall undergo 1½ years simple imprisonment and to pay a fine of Rs.7,500/-. Aggrieved by that, the present criminal revision case has been filed.

7.In the criminal revision petition, it is contented by the learned counsel for the revision petitioner that the prosecution has failed to prove the case of misappropriation. Ex.P25 to Ex.P.28 are not furnished to the accused along with 207 papers. Since the author of the First Information Report is not examined, the case of the prosecution itself is doubtful. Further it is also contented by the learned counsel for the revision petitioner that while the Co-operative Societies Act provides for surcharge proceedings and recover the money, criminal prosecution for the same, is un-warranted. At last, the learned counsel also submitted that considering the age of the revision petitioner/accused, who is now 79 years, leniency may be shown in respect of the sentence and the revision petitioner/accused is ready to pay the some additional fine.

8.The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the clear case of misappropriation almost confessed by accused and the persons, who have deposited the money to the accused have been examined as P.W.4 to P.W.10. The handwriting found in the receipts issued by



the accused is proved through the handwriting expert. The non-remittance of the money collected by the accused is also proved through the statement of account and register maintained by the Society.

9. Both the Courts below had rightly appreciated the evidence and held him guilty and convicted. Hence, there is no ground for interfering the concurrent findings of the facts by the Courts below in the case, since the prosecution has proved the guilt of the accused, who was misappropriated a sum of Rs.7,458/- from the subscribers and failed to remit the same in the society's account.

10. The further submission of the learned counsel for the revision petitioner is that presently the age of the revision petitioner is 79 years. The lower appellate has taken note of his age and has reduced the sentence to 1½ years simple imprisonment, while considering the appeal. The revision petitioner herein pleads the leniency in sentence. considering the age and ailment and taking note of the fact that he was in jail for nearly three months, this Court is inclined to modify the sentence. The revision petitioner has already undergone sentence for a period of 70 days during pre-trial and after conviction by the trial Court. Taking the period of sentence into consideration, the trial Court order is modified to the effect that the period of sentence already undergone shall be the sentence and accordingly, the sentence is modified to the effect that period of imprisonment already undergone by the petitioner and fine of Rs.25,000/- is imposed in addition to the fine of Rs.7,500/- already paid. Sentence period is already undergone and fine amount is Rs.32,500/- (Rs.7,500/- already paid + Rs.25,000/- to be paid). The fine amount of Rs.25,000/- shall be paid on or before 10.10.2018.

11. The Criminal Revision Case is partly allowed on above terms.

Sd/-

Assistant Registrar (CS-I)

//True Copy //

Sub Assistant Registrar (CS-III)

To

1. The First Additional Sessions Judge,
Thoothukudi.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Judicial Magistrate Court No.I,
Thoothukudi.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Sub Inspector of Police,
District Crime Branch Police Station,
Thoothukudi.

+ 1 CC TO MR.R.RAMACHANDRAN, ADVOCATE IN SR NO.83401

CP

BU/SKN/SAR-III :11.10.2018 : 5P/6C

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