IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.390 of 2010

1.Mottaiyan @ Veerappan
2.Ramasamy
3.Sesu @ Sekar ... Appellants/Accused 1 to 3

/Vs/

The State Rep. By
The Deputy Superintendent of Police,
District Crime Branch, Namakkal,
Namakkal District.
(in Crime No.12/2003). ... Respondent/Complainant

PRAYER: Criminal Appeal filed under section 374 of the Criminal Procedure Code, to allow this appeal by setting aside conviction and sentence imposed on the appellants by the judgment dated 22.02.2010 by the Additional District Sessions Judge, Namakkal (Fast Track Court) in S.C.No.58/2006.

For Appellants : Mr.B.Vasudevan
For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is filed against the judgment of conviction and sentence, dated 22.02.2010, made in SC.No.58 of 2006, by the learned Additional District and Sessions Judge, Namakkal, Fast Track Court, convicting and sentencing the appellants/accused 1 to 3 for the offence under Section 406 of IPC and to pay a fine of Rs.5,000/- each, in default, to undergo six months rigorous imprisonment each. The sentences were ordered to run concurrently.

2. The case of the prosecution is that PW.1/A.M.Veerappan was functioning as hereditary trustee of Arulmigu Muthusamy Temple Ariyur, for the past 12 years. On 19.12.2002, a trust was created and one Ponnusamy was appointed as the Vice President along with other seven members and that they had, as per the Trust Deed, intended to collect money from the people belonging to the community and that they had decided to conduct a Magha Kumbabishekam on 10.03.2003. Two months prior to the occurrence,

work for renovation of the temple was distributed among the de-facto complainant/PW.1 and other committee members and the appellants/accused 1 to 3 were entrusted with the work of collecting money from the community people and from the public and to hand it over to PW.1. After entrustment of work, the appellants/accused 1 to 3 had collected amounts from several persons and the appellants/accused 1 to 3 had entered into a criminal conspiracy, in order to misappropriate the amount received as Donations from the public towards the renovation of the temple, pursuant to which, the appellants/accused 1 to 3 along with the accused 4 and 5, prior to 10.03.2003, had collected the amounts of Rs.23,500/- from Karuppannan, Rs.26,500/- from Marappan, Rs.27,000/- from Elangovan, Rs.15,000/- from K.Muthusamy, Rs.30,000/- from Gunasekaran, Rs.27,750/- from Muthusamy, Rs.21,000/- from P.Palaniyappagounder, Rs.21,000/- from Nagulsamy, Rs.12,500/- from Nallappagounder, Rs.7,500/- from Nallappagounder, Rs.21,500/- from J.K.Kaliyappagounder, Rs.45,500/- from Ramasamy, Rs.33,000/- from P.Karuppannan, Rs.21,000/- from Chellappan, Rs.37,500/- from Raji, Rs.34,500/- from Vettukkadu Karuppannan, Rs.22,000/- from K.Sekar, Rs.45,750 from K.Duraisamy, Rs.27,275/- from Chinnapaiyan @ Chellappan and had issued fabricated receipts to them claiming them to be genuine receipts and thereby, collected an amount of Rs.4,98,750/- and cheated the de-facto complainant/PW.1 and thereby, committed offences under Sections 465, 467, 471, 420 of IPC. In pursuance of the same, accused 1 to 5, (in continuance of the criminal conspiracy) during the month of July 2003, around 12 Noon, had waylaid the accountant of the temple and wrongfully restrained him and snatched the key of the temple's office and taken the key of the bureau and trespassed into the temple opened the bureau and had taken away the account books, Minutes books, statement of the accounts, diary, Chitta, Voucher, monthly balance sheet which were in the bureau and thereby, committed the offences under Sections 450, 395 of IPC. The Deputy Superintendent of Police, Namakkal Crime Branch, after completing the investigation filed the final report for offences under Sections 120(b), 465, 467, 471, 420, 406, 450 and 395 of IPC.

3. The learned Judicial Magistrate No.2, Namakkal took the case on file in PRC No.15 of 2005 and committed the case to the learned Principal Sessions Judge, Namakkal, who had taken the case on file in S.C.No.58 of 2006 and made it over to the Additional District and Sessions Judge, Namakkal, (Fast Track Court) for trial. Before the committal while the case was pending in PRC stage, the 4th accused London Selvam @ Selvakumar passed away and the charge against him got abated.

4. After appearance of the accused charges were framed against the appellants/accused 1 to 3 and the 5th accused one Karuppannan for offences under Sections 120(b), 465, 467, 471, 420, 406, 450 and 395 of IPC. When they were questioned with regard to the charges, they had denied the charges and sought to be tried and the case was posted for trial, pending trial, the 5th accused/Karuppannan died on 08.01.2010 and the charge against him got abated.

5. On the side of the prosecution witnesses PWs.1 to 31 were examined and documents Ex.P1 to P26 were marked, but no oral evidence was let in on the side of the defence, however, Ex.D1 was marked on the side of the defence.

6. The learned trial Judge, after completion of trial and questioning the appellant/accused 1 to 3 under Section 313 Cr.P.C and hearing the arguments of the counsel, acquitted the appellants/accused 1 to 3 for the charges under Sections 120(b), 467, 471, 450 and 395 of IPC and convicted all the appellants/accused 1 to 3 for the offence under Section 406 of IPC and imposed sentence of fine as stated above.

7. The learned counsel for the appellant/accused 1 to 3 would submit that the entire case is based on a fabricated documents on account of the enmity and rivalry between two parties with regard to administration of affairs of a temple. He would further submit that the case of the prosecution circles on the evidence of PW.1/de-facto complainant and PW.8 to PW.26 who are the persons stated to have entrusted money to the accused towards the expenses for renovation of temple and conducting the Kumbabishegam and also on the evidence of PW.29 having handed over the moneys under receipts Ex.P9 series and also on the evidence of PW.29/Venkatasubramanian, a Chartered Accountant of the temple. He would further submit that originally charges were framed against the appellants/accused 1 to 3 in respect of allegations of misappropriation of an amount of Rs.4,98,750/- stated to be collected from the witnesses PW.8 to PW.26. Whereas the trial Court, had disbelieved the evidence of PW.8 to PW.26 and had rendered a finding that Ex.P9 series are fabricated documents and had acquitted the appellants/accused 1 to 3 for the offences under Sections 120(b), 467, 471, 450, 395 of IPC. Further, the trial Court has also disbelieved the evidence of PW.3/Nallannan, the Accountant of the temple.

8. The learned counsel for the appellant/accused 1 to 3 would submit that having disbelieved Ex.P9 series and having rejected the evidence of PW.8 to PW.26, finding that Ex.P9 series documents are fabricated and acquitting the accused for all the charges, erred in convicting the accused under Section

406 of IPC, in respect of wrongly holding that the deposit of Rs.5 lakhs belonging to the temple in the Post Office Account would amount to temporary misappropriation criminal breach of trust. The learned counsel for the appellants/accused 1 to 3 would further submit that no specific charges were framed in respect of the amounts deposited in the Postal Account. Further, it is the own admission of the appellants/accused 1 to 3 that the amounts belonging to the temple were deposited in the postal account and it has also been reflected in the income and expenditure statement of the temple certified and issued by the Statutory Auditor, PW.29, in Ex.P23. He would further submit that no charges were framed in respect of the allegations of misappropriation of Rs.5 Lakhs. He would also submit that in fact taking into consideration the entire evidence, the prosecution is unable to show that the appellants/accused 1 to 3 had intention to misappropriate the money belonging to the temple and in fact the amounts have been deposited for a period of six years under the monthly income scheme. He would further submit that since a dispute was pending between the appellants/accused 1 to 3 and PW.1 in respect of administration of the temple and civil suits were also pending, the amounts have been deposited in the postal account to protect the money from PW.1

9. PW.29, who is the Statutory Auditor, by Ex.P23, had given evidence that the accused had produced vouchers and the statement of accounts for the period between 01.02.2003 and 31.07.2003 and that based on the records given by the appellants/accused 1 to 3, he had prepared Ex.P23, which had revealed that the expenses for the Magha Kumbabishegam for Rs.8,68,750/-, the expenses for construction of the temple was Rs.4,31,029/- and the total expenditure was Rs.12,89,780/- and the balance amount of Rs.5,22,213/- was with the appellants/accused 1 to 3 out of which an amount of Rs.5 Lakhs were deposited in the Post Office account through Ex.P13 to Ex.P17 in the name of first appellant/accused and one K.Selvamani, who is not added as the accused (Rs.2,50,000/-) and the balance amount of Rs.2,50,000/- was deposited in the joint names of A4 and A5 namely Ex.P18 to P22. While this being so, the trial Court erred in holding that the appellants/accused 1 to 3 committed temporary misappropriation of Rs.5 Lakhs by way of depositing in the Post Office account at Mohanur for a period of six years.

10. Further even as per the evidence of PW.29, no amounts were deposited in the names of the 2nd and 3rd appellants/accused. He would further submit that PW.30, the Sub Inspector of Police had deposed that initially, the case was registered and referred as civil in nature and thereafter only

on the direction of the learned Magistrate, further investigation was taken up and the final report was filed. However, no documents have been marked during trial to show that the further investigation was ordered. Further, the trial Court failed to take into consideration Ex.D1 filed by the appellants/accused 1 to 3 to prove about the misconduct committed by PW.1.

11. The learned Additional Public Prosecutor would submit that though the trial Court had rejected the evidence of PW.8 to PW.26 with regard to the collection of the amount of Rs.4,98,750/-, based on the evidence of Ex.P23 and Ex.P29, the amounts were deposited in the individual names of the appellants, had found the appellants guilty for the offences under Section 406 of IPC for misappropriation of the amount and for having deposited the amounts in their individual names.

12. However, he would fairly submit that the trial Court did not frame any specific charge against the appellants/accused 1 to 3, in respect of Rs.5 Lakhs, which was deposited in the postal account and he would also fairly submit that Exs.P13 to 17 in respect of deposits of Rs.2,50,000/- were made in the name of the first appellant/accused and one K.Selvamani and that the said K.Selvamani has not been arrayed as an accused in this case. He would also submit that the appellants/accused 1 to 3 have not let in any evidence to show that there was no dishonest intention on their part and thereby, the trial Court has rightly convicted them.

13. I have given careful consideration to the rival submissions of the learned counsel on either side and also perused the materials placed on record.

14. Now what is to be seen is whether the trial Court is right in holding the appellants guilty for offence under Section 406 of IPC.

15. In this case, the evidence of PW.1, PW.3, PW.8 to PW.26 and PW.29 assumes significance. Admittedly, there had been a dispute and motive between PW.1 and the appellants/accused in respect of administration of the affairs of the temple. The allegation of PW.1 is that the appellants misappropriated an amount of Rs.4,98,750/-, which were stated to be paid to the appellants and supported by receipts Ex.P9 series. The Trial Court had disbelieved the evidence of PW.3, in respect of waylaiding him and snatching away the keys of the office of the temple and bureau of the temple and thereby acquitted the appellants with regard to the charge under Sections 450 and 395 of IPC. The trial Court had further disbelieved the evidence of PW.1, PW.3, PW.8 to PW.26 and had also rendered a finding that

Ex.P9 series are fabricated one and discovered only for foisting the case. Further, PW.10/Ramasamy in his deposition before the trial Court has stated that he paid a cash of Rs.5,000/- to PW.1 and that PW.1 did not issue the receipt.

16. Now, coming to the evidence of PW.29, the Statutory Auditor, who is the Auditor of the temple and who has issued Ex.P23 he had stated that during August 2003, the accused had approached him and handed over the accounts to him to give a report and that he had after verifying the accounts had given a statement of accounts relating to the period between 01.02.2003 and 31.07.2003. He had deposed that during the period of six months, the appellants had collected donations of Rs.16,77,933/- and that they were having a cash of Rs.1,34,060/- on hand and the total amount was Rs.18,11,993/- and they had handed over the accounts and based on that, he had prepared the Auditor's report. He had further stated that the appellants had incurred an expenditure of Rs.8,58,751/- towards Kumbabishegam and an expenditure of Rs.4,31,029/-, towards construction of temple and the total expenditure was Rs.12,89,780/- and that out of the balance amount of Rs.5,22,213/-, the appellants had deposited Rs.5,00,000/- in the Mohanur Post Office in two monthly deposit schemes and that the amounts were deposited for a period of six years from 14.05.2003 to 14.05.2009 and that the amount of Rs.2,50,000/- under five deposits under Ex.P13 to P17 were deposited in the joint account of one K.Selvamani and the first appellant and the balance amount of Rs.2,50,000/- was deposited in the name of the 4th and 5th accused in joint accounts against whom the charges got abated. Exs.P13 to P17 (Passbooks and Deposit receipts) and Ex.P23, the Auditor report were marked.

17. Further in his evidence, he had deposed that the appellants have furnished him details with regard to the all amount other than the amount of Rs.4,98,750/-(which tallied with the fabricated receipts). He had also deposed that he had prepared the Auditor's report based on the information furnished by the appellants.

18. This Court has carefully and consciously gone through the evidence and perused the documents on record. The amount of Rs.5 Lakhs had been deposited by the appellants in the Post Office account for a period of six years and the date of deposit being 14.05.2003 and the date of maturity being 14.05.2009. The accounts have been opened jointly in the name of two persons namely one K.Selvamani and the first appellant. No accounts have been opened in the name of the second and third appellants. The balance amount of Rs.2,50,000/- had been deposited in the name of the 4th and 5th accused against whom the charges have abated.

19. Admittedly, no charges have been framed by the trial Court in respect of the amount of Rs.5 Lakhs deposited in the Post Office account and no evidence has been let in by the prosecution to show that the appellants had dishonest intention to misappropriate the amount for their own use.

20. When such being so, this Court is of the opinion that the trial Court had, without any legal material and evidence on record and on mere presumption, found the appellants guilty for the offences, when especially it is the evidence of PW.29, the Statutory Auditor that the amount of Rs.5 Lakhs was deposited in Post Office Account and that the amounts were declared by the appellants as amounts belonging to the temple.

21. In view of the above discussion, I find that the trial Court has wrongly found the appellants guilty for the offence under Section 406 of IPC.

22. At this juncture, it has been stated by the learned counsel for the appellants that the appellants are now administrating the temple under a registered Trust. The learned Additional Public Prosecutor would submit that the amounts may be directed to be returned to the persons presently administrating the temple subject to filing appropriate proof before the trial Court by them and the Trial Court may be directed to conduct an enquiry regarding the same.

23. In the result, the appeal is allowed, the conviction and sentence passed in S.C.No.58 of 2006 by the Additional District Sessions Judge, Namakkal (Fast Track Court) dated 22.02.2010 are set aside. The appellants/accused 1 to 3 are acquitted from all the charges and the fine amount paid by them is directed to be returned. The bail bond, if any, executed by the Appellants/accused 1 to 3, shall stand cancelled. The Trial Court shall pass appropriate orders in compliance of the relevant provisions under the Chapter XXXIV of Cr.PC with regard to the postal deposits after conducting due enquiry.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

1.The Additional District Sessions Judge,
Namakkal (Fast Track Court)

2. The Deputy Superintendent of Police,
District Crime Branch, Namakkal,
Namakkal District.

3.The Public Prosecutor, High Court of Madras.

4.The Section Officer, Criminal Section, High Court of Madras.

Crl.A.No.390 of 2010

AD(CO)
SP(04/09/2019)