



Bail Slip

The Appellant/Accused, namely G.Mariappan, 60 Years S/o. Gurusamy Nadar was directed to be released on bail as per order dated 12.11.2011 in MP.NO.1/11 IN Crl.R.C.No.1469 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.R.C.No.1469 of 2011

G.Mariappan

... Petitioner

Vs

The State rep by,
The Inspector of Police,
CCIW CID,
Chennai.
(Crime No.03 of 1991)

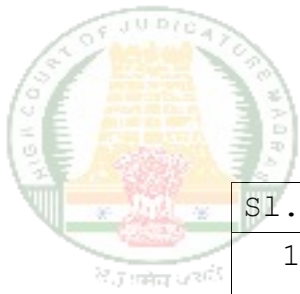
... Respondent

PRAYER: Criminal Revision case filed under Section 397 r/w 401 of Criminal Procedure Code, against the judgment dated 19.10.2011 passed in C.A.No.175 of 2010 by the learned 3rd Additional Sessions Judge, Chennai, confirming the judgment dated 18.09.2010 in C.C.No.9324 of 1991 passed by the learned II Metropolitan Magistrate, Egmore, Chennai-600 008.

For Petitioner : Mr.Kumar Talreja
For Respondent : Mr.T.Shanmugarajeshwaran
Government Advocate (Criminal Side)

O R D E R

In this case, the revision petitioner was shows as A2. The respondent police registered a case against the revision petitioner for the offence under Sections 408 and 477(A) IPC. After investigation, the respondent police laid a charge sheet against the revision petitioner before the learned II Metropolitan Magistrate, Egmore, Chennai. The learned II Metropolitan Magistrate, Egmore, Chennai, has taken the case on file in C.C.No.9324 of 1991, after trial the learned II Metropolitan Magistrate, Egmore, Chennai found guilty of the accused No.1 and 2 for the offence under Sections 408, 477(A) r/w 34 IPC and convicted them as follows:



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Sl.No	Under Sections	Sentences
1	408 IPC	One year Rigorous Imprisonment and to pay fine of Rs.1000/- in default to undergo two months Simple Imprisonment.
2	477(A) r/w 34 IPC	One year Rigorous Imprisonment.

2 Challenging the said judgment of the the learned II Metropolitan Magistrate, Egmore, Chennai, the petitioner/second accused has filed an appeal before the learned III additional District and Sessions Judge, Chennai, in Crl.A.No.175 of 2010. After hearing the arguments, the learned Principal Judge, Chennai, dismissed the appeal and confirmed the judgment of the learned II Metropolitan Magistrate, Egmore, Chennai. As against the said judgment of the learned III Additional District and Sessions Judge, Chennai, in Crl.A.No.175 of 2010 dated 19.10.2011, the revision petitioner had filed the present Criminal Revision Case before this Court.

3 The learned counsel for the petitioner would submit that the revision petitioner was working as only Milk Marketting Officer, he has not been entrusted with the cash, he was not on the duty to collect the case and remit back the same and he was not the incharge of the Milk cards and cash. A1 was entrusted with the cash and he has to remit back, after receiving the cash. The non remittance of the cash by A1, the revision petitioner is not liable for the offence under Section 408 IPC or 477 (A) IPC, which warrants interference by this Court.

4 The learned Government Advocate (Criminal Side) appearing for the respondent would submit that from the evidence of P.W.1, P.W.2, P.W.3, P.W.9, P.W.12 and P.W.13 it reveals that they have clearly spoken about the duties and responsibilities of the revision petitioner. Admittedly, the revision petitioner was working as a Milk Marketing Officer and the contents of Ex.P.47 has clearly shows that he has to regularly verify the register and send the same. On reading of the evidence of the prosecution witnesses and also the documentary evidence shows that he has not verified and even he ha not put his signatures. From the evidence of the prosecution witnesses it is clear that both A1 and this revision petitioner both have intentionally not remitted the money to the bank, which was collected from the members of the society. Even though, in surcharge proceedings separate charge was not framed but, after the enquiry in the surcharge proceedings and further the investigation reveals that both the Courts below have rightly appreciated the evidence and held that the revision petitioner has committed the offence,



which does not warrants any interference by this Court.

5 Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side), appearing for the respondent and perused the materials available on record.

6 Admittedly, A1 was working as a cashier in the Society and the revision petitioner was working as Milk Marketing Officer. The period between 13.06.1988 and 23.11.1990, he was the in charge of the Milk Marketing. The sale proceeds of the milk has to be remitted in the Tamil Nadu State Co-operative Society Bank, Anna Nagar Branch. At the relevant point of time, A1 and the revision petitioner are the in chargers. A1 should have remitted the money and this revision petitioner should have verified and sent the same each day and should have given report to the bank.

7 Admittedly, the period between 13.06.1988 and 23.11.1990, there was a shortage of money, which was not remitted to the Society's account and the revision petitioner has also not verified properly and reported the same. Therefore both of them have committed the offence under Sections 408, 477 (A) r/w 34 IPC.

8 Before the trial Court as many as 18 witnesses were examined and 50 documents were marked. On the side of the defence, no oral and documentary evidence was produced.

9 P.W.1, P.W.2, P.W.3, P.W.5, P.W.6, P.W.13, P.W.10 and P.W.12 have clearly spoken about the involvement of this revision petitioner. P.W.17 has clearly spoken about that the revision petitioner was working as a Marketing Officer, Perambur Zone. Both the accused has to remit the sale proceeds of the milk for each and every day and has to make entry in the challan and send the same to the office and they used to verify the challan. Since they have not received the challan at the relevant period, on 22.11.1990, the officals inspected the same and verified it. On verification, it was found that there was a shortage of money, which have not been remitted for the Society's account for the period between 06.08.1990 and 06.09.1990, total Rs.1,75,000/- and the officials submitted the report Ex.P1. Therefore, both the Courts have appreciated the oral and documentary evidence and found that A1 and the revision petitioner are the responsible for the same.



10 Further the evidence of the prosecution witnesses shows that both the accused, with a common intention to swindle public money, have not properly remitted the cash to the Society's account. There is no records to show that the revision petitioner has verified the register and signed the same. The contention of the revision petitioner that he has not entrusted with money and he is not responsible for any non remittance is not acceptable. The verification work has been entrusted to the revision petitioner, the non verification and non remittance of the amount and put the signature in the register are unexplained by the revision petitioner.

11 The appellate Court is the final Court of fact finding Court and it re-appreciated the entire evidence and dismissed the appeal and confirmed the judgment of the trial Court. This Court, while exercising the revisional jurisdiction cannot sit in the arm chair of the appellate Court and re assess the entire evidence and substitute its own view, unless, there is any perversity in appreciation of evidence by the Courts below. On reading of the materials this Court does not find any perversity in the judgment of both the Courts below.

12 Accordingly, this Criminal Revision Case is dismissed. Considering the age of the revision petitioner as on now, the period of Rigorous Imprisonment of one year Rigorous Imprisonment has been modified to six months Rigorous Imprisonment, which will meet the ends of justice. The trial Court is directed to secure the accused to undergo remaining period of sentence, if any.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Inspector of Police,
CCIW CID, Chennai.

2.The 3rd Additional Sessions Judge, Chennai.

3.The II Metropolitan Magistrate, Egmore Chennai 8

4.Public Prosecutor, High Court, Chennai.

Copy to

The Section Officer,
Criminal Section, High Court, Madras

+1cc to Mr.Kumar Talreja, Advocate SR.No. 66055

Crl.R.C.No.1469 of 2011

A.SK(22/01/2020)