Bail Slip

The appellant/accused No.3 viz., K.Murugesan, S/o.Kandasamy was directed to be released on bail as per the order of this Court, dated 03/11/2011 made in M.P.No.1 of 2011 in Crl.R.C.No. 1473 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.02.2019	Pronounced on: 06.03.2019

Coram:
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.1473 of 2011

K.Murugesan,
S/o.Kandasamy Chettiar,
Masinayakkanpatty,
Salem-5. ... Appellant/Accused No.3

/versus/

State represented by:
Inspector of Police,
C.C.I.W., C.I.D.,
Salem District. ... Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Section 392 of Cr.P.C against the judgment dated 14.10.2011 passed in C.A.No.79 of 2008 by the learned Additional District and Sessions Judge, Fast Track Court No.1, Salem confirming the judgment of conviction and sentence passed by the Learned Judicial Magistrate No.2, Salem, in C.C.No.232 of 2004 dated 22.04.2008.

For Petitioner : Mr.K.V.Sridharan

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate

O R D E R

This Revision Petitioner is preferred by the one K.Murugesan (A3) Former Bank Inspector in Central Co-operative Bank, Salem District. He was tried along with 8 others for abating the other accused to commit forgery and falsification of bank accounts. Thereby, misappropriated a sum of Rs.5,62,834/-.

2. The allegations against the accused persons who were tried in this case in brief is that Mr.N.Kuppusamy (A1), President and Tamilselvan (A2), Secretary of Periyagoundapuram Primary Agricultural Co-operative Bank had entered into criminal conspiracy with others to dishonestly misappropriate the funds of the bank. Pursuant to the said conspiracy, false consumer loans were created in the loan ledger. A4 to A8 namely Thevigamannan, Paneerselvam, Arumugam, Rajammal and Rajagopal who were members of the said bank, allowed A1 and A2 to credit the loan amounts in their accounts and withdrew the same in connivance with A1 and A2.

3. A3 who is the revision petitioner herein was the Bank Inspector during the relevant point. He has connived with other accused and failed to report the fabrication of accounts and misappropriation of funds. Later, when the misappropriation came to light, the department initiated enquiry proceedings under Section 81 of Co-operative Society Act. The enquiry Officer found the aid and assistance rendered by the revision petitioner herein in the commission of crime.

4. The respondent police registered the case against 8 persons. As far as, this revision petition is concerned, he was charged for offence under Section 408 r/w 109 of I.P.C. Pending enquiry, one of the accused Tamilselvan the Secretary of the Bank died.

5. Before the trial Court, the prosecution has examined 35 witnesses and marked 104 Exhibits. On behalf of accused 2 witnesses and 2 Exhibits were marked.

6. The trial Court, on appreciation of evidence found A4 to A8 are the members of the Co-operative bank, in whose account the misappropriated money was stiffened were found not guilty since the prosecution was unable to prove the case against them beyond reasonable doubt.

7. As far as, Kuppusamy (A1), the President of the Co-operative Bank and K.Murgesan (A3) the revision petitioner, the trial Court found them guilty. Convicted A-1 for the charges under Sections 408, 409, 467, 471, 477-A of I.P.C. Convicted A-3 the petitioner herein for the offence under Section 408 r/w 109 of I.P.C sentenced him to undergo 1 year R.I and to pay fine of Rs.1,000/- in default 3 months S.I.

8. Aggrieved by the sentence and conviction, this revision petitioner preferred C.A.No.79 of 2008 on the file of Additional District and Sessions Judge, F.T.C. No.1, Salem.

9. On re-appreciation of the evidence, the Appellate Court confirmed the judgment of the trial Court. The present

revision petitioner is therefore preferred challenging the finding of the Courts below.

10. The Learned Counsel appearing for the Revision Petitioner would submit that the alleged money misappropriated was by A2. He was not alive to face the trial but even before his death, he has paid the entire money alleged to have been misappropriated. As far as, K.Murugesan (A3) the revision petitioner is concerned, he was the Bank Inspector. As per duty roster, he is supposed to inspect the banks within his jurisdiction twice in a month. The Periyagoundapuram Primary Agricultural Co-operative Bank is one among several banks under his jurisdiction. He is vested with the responsibilities of supervising alone. The revision petitioner is not authorised to handle the accounts or day-to-day transactions. The allegations against the revision petitioner is that, he failed to inform the higher official about the irregularities committed by the President and the Secretary of the Bank. He had certified the transactions of the bank without noting the irregularities. Thereby, aided A1 and A2 to misappropriate the funds of Co-operative Bank. He aided A1 and A2 to create false entries, falsification of accounts and misappropriation. Thus, for aiding A1 and A2 to commit criminal breach of trust, A3 has been prosecuted. But there is no evidence against the revision petitioner that he aided A1 and A2 to commit alleged offence. The revision petitioner joined the Primary Agricultural Co-operative Bank Periyagoundapurm as bank Inspector only on 29.07.1997. The alleged consumer loans and false entries dated 14.06.1997 (Ex.P.29), 10.04.1997 (Ex.P.45), 09.05.1997 (Ex.P.59), 30.06.1997 (Ex.P.47) were all prior to his joining duty as Bank Inspector of the said bank. Therefore, holding the revision petitioner guilty for these entries are absolutely baseless.

11. Based on the evidence of PW.32 that certain entries in the ledger (day book) were made by this revision petitioner, the Courts below has held him guilty for aiding A1 and A2 to commit breach of trust. There is no evidence to corroborate the evidence of PW.32 that the alleged entries were actually made by the revision petitioner. The entries alleged to have been made by the revision petitioner in the account books were not send for hand writing expert opinion for comparison. The show cause notice Ex.P.2 is not a proof for crime. However, the Courts below have relied upon Ex.P.2 to hold the revision petitioner guilty for abatement. The report of the Deputy Registrar in his proceedings has only pointed out the negligence of this revision petitioner and PW.31 who preceded the revision petitioner as Bank Inspector. This will not amount to proof of alleged crime. Negligence or omission to find out irregularities during inspection will ipso facto will not be a proof for abating the offence. When conspiracy charged

against the other accused was not found proved, the charge of abatement against this revision petitioner will also not sustain. Since the commission of offence was prior to the revision petitioner joining duty as bank inspector, the question of abatement to commit the offence will not arise. Furthermore, the learned Counsel would also submit that the revision petitioner had found the irregularities in the account during the inspection and he has reported the same to the Higher Officials of the Bank soon thereafter.

12. The learned Government Advocate (Crl.Side) representing the respondent/State would submit that this accused was the Bank Inspector during the relevant point of time when a sum of Rs.5,62,834/- was misappropriated by falsification of accounts. No doubt some of the entries in the accounts were made prior to his joining as Inspector of the said bank, but as a Bank Inspector, he is responsible for scrutinising the accounts and report to the Higher Official about the irregularities. Though, this accused pleaded that he has reported the irregularities to the Higher Officials, he has not produced any document to substantiate the same. Therefore, having known about the irregularities in the accounts suppressing the fact from the knowledge of the Higher Officials amounts to aid and assistance to A1 and A2 to commit breach of trust. Regarding the entries made in the documents the accused himself has admitted in the departmental enquiry conducted by PW.32 that he has carried out corrections. Having admitted the alterations made by him in the account books during the previous proceedings and being identified by the witnesses, who are acquittance with this hand writing the need to send the entries for hand writing expert does not arise. PW.32 who was working along with the revision petitioner is acquainted with the writings of the revision petitioner and had identified the same. The trial Court has rightly pointed out these admitted facts and has held the revision petitioner guilty.

13. For not prosecuting PW.31 who was predecessor to the revision petitioner and the falsification of accounts commenced while he was the Bank Inspector, the Learned Government Advocate (Crl.Side) would submit it is a fact that PW.31 had failed to inspect and he has admitted his dereliction of duty. Hence, proceeded with departmental action. Whereas this revision petitioner had inspected the banks, though found the irregularities, failed to inform the same to the Higher Officials. Thereby, he has connived with the other accused, assisted and aided them to commit breach of trust.

14. The learned counsel appearing for the revision petitioner would contend that the charge under Section 408 r/w 109 of I.P.C itself is improper. The allegations against this revision petitioner is that he failed to inform the Higher

Officials about the misappropriation committed by A1 and A2 and gave false certificate that A1 and A2 are maintaining the records properly. Even according to the prosecution the failure to inform the higher Official is subsequent to the crime committed by A1 and A2 and not prior to that. Therefore, the charge must have been 109 r/w 408 I.P.C and not 408 r/w 109 I.P.C. In support of his submission the learned counsel would rely upon 2017-2-L.W(Crl.)1 (Madras High Court division bench).

15. He would further submit that mere facilitating the commission of crime will not amount to abatement. The accused should intentionally aid to attract offence of abatement. For the said purpose the learned counsel rely upon the Judgment of the Supreme Court reported in 1972 MLJ Crl 78.

16. He would content that in this case only dereliction of duty on the part of the revision petitioner is proved. Mere dereliction of duty will not amount to abatement to the crime. In support of his submission, he rely upon the judgment of Supreme Court reported in 1994 SCC (Cri) 430 to emphasis, the absence of dishonest intention while discharging the duty, mere dereliction of duty not noticing the irregularity, will not attract Section 109 of I.P.C.

17. The learned counsel referred few more judgments on the above lines to buttress his submission. Whereas, the Government Advocate (Crl.Side) appearing for the state by way of rebuttal submit that it not mere dereliction of duty but an act of omission of duty cast upon the revision petitioner. It is not the case of the defence that he was not aware of the misappropriation and the irregularities committed by A1 and A2. He admits the knowledge of irregularities, he also pleads that he informed the Higher Officials about the irregularities, but there is no document to show that the revision petitioner informed his Higher Officials about the irregularities. When he admits, the inspection of the bank as Bank Inspector and informed to the Higher Officials about the irregularities, the claim that he informed, proved to be false, the dishonest intention of the accused to suppress the fact and dishonest intention to assisted the accused persons to commit breach of trust gets proved. Therefore, the charge as framed for offence under Section 408 r/w 109 of I.P.C is in accordance with law and facts.

18. Furthermore, the learned Government Advocate would also submit that the revision petitioner has understood the charge framed against him. Contested the case, the revision petitioner has let in evidence in his support both oral and document. So, if at all, there is any irregularity in the charge framed, it stands cured since the said charge was fully understood by the accused and defended.

19. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent. Perused the documents marked as Exhibits.

20. The revision petitioner admits that he was the Bank Inspector during the period between 29.07.1997 and 10.11.1998. The irregularities, falsification of accounts, misappropriation and breach of trust has been committed between 25.04.1997 and 10.11.1998. The revision petitioner admits that he duty is to inspect the bank accounts twice a month. He also admits that he has inspected the bank accounts and gave certificate that accounts are maintained properly. Though he pleads that, he intimated the Higher Officials about the irregularity found during the inspection, there is no document available on record. Contrarily his certificate that accounts are in order alone is available. It is true that the irregularity has commenced even before this revision petitioner took charge as the Inspector of the said bank. His predecessor was PW.31. He was not prosecuted. The evidence available indicates that PW.31 never inspected the bank during his tenure. Therefore, the dishonestly suppressing the fact will not attract against PW.31. It is case of dereliction of duty as far as PW.31 is concern. Whereas, the revision petitioner has inspected the bank, but not informed the irregularities to the Higher Officials. Contrarily given clean chit to A1 and A2. He claims that this is also only dereliction of duty and relied upon some judgments of this Court as well the Supreme Court. The facts available before this Court proves otherwise. He has not only failed to inform the Higher Officials about the irregularity but he has dishonestly suppressed and screened the fact from the higher Officials by certifying the transactions of the bank as correct.

21. From the evidence of PW.31, it is clear that the Primary Co-operative Bank, Periyagoundapuram is not suppose to give consumer loans. The report of PW.32 clearly proves that the said bank has involved in advancing consumer loans. Those consumer loans were stiffened by A1 and A2 through the accounts of A4 to A8. This fact would have been easily noted by the Inspector during the inspection. Therefore, the very factum of advancing consumer loan which is not permissible, per se sufficient to hold the revision petitioner guilt for dishonest suppression of fact in order to aid and assist the purporters of the crime.

22. The learned counsel for the revision petitioner would submit that the charge should have been under Section 109 r/w 408 of I.P.C not 408 r/w 109 of I.P.C.

23. Section 107 of I.P.C defines abatement and Section 108 defines who is an abettor. The person who intentionally aides by any act or illegal omission, the doing of a thing is an abettor. In this case, the accusation against the revision petitioner is that he has intentionally omitted to report the act of crime committed by A1 and A2. The alleged act of crime against A1 and A2 is breach of trust, which is an offence under Section 408 of I.P.C. It is to be noted that the revision petitioner is not charged for abating offences under Section 467, 471 or 477-A of I.P.C. He is charged for abating offence under Section 408 of I.P.C. As per the facts of the case, the revision petitioner has abated other accused committing criminal breach of trust. From the records placed by the prosecution, the criminal breach of trust has been committed by A1 and A2 between 25.04.1997 and 10.11.1998. This revision petitioner was the Inspector of the said bank from 24.07.1997 to 10.11.1998. The breach of trust has been committed while he was in-charge as Inspector. Therefore framing of charge against him under Section 408 r/w 109 of I.P.C is perfectly in order, there is no irregularity. The illegal omission done with the culpable state of mind dishonestly to screen the irregularity squarely falls within the amit of 408 of I.P.C and 109 of I.P.C, therefore, the finding of the Courts below is in order.

24. The learned counsel appearing for the revision petitioner would submit that the entire money misappropriated has been repaid by the other accused and there is no loss to the bank. This may, at the most mitigate the sentence but will not exonerate the revision petitioner from his dishonest act of abating.

25. Therefore, the Criminal Revision Case is dismissed. The conviction and sentence imposed by the Court below is hereby confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Additional District and Sessions Judge,
Fast Track Court No.1,
Salem.

2. The Judicial Magistrate No.2,
   Salem.

3.The Chief Judicial Magistrate, Salem.

4.The Inspector of Police, CCIW,
  CID, Salem.

5.The Public Prosecutor,
  High Court, Madras.

+2ccs to Mr.K.V.Sridharan, Advocate, S.R.No.20883

Crl.R.C.No.1473 of 2011

GP(CO)

RRS(24/04/2019)