IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.03.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.1675 of 2011

A.Kuppuswamy .. Petitioner

/versus/

The State rep.by
Inspector of Police,
Negamam, Police Station,
Coimbatore District.
Crime No.281 of 1999 .. Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code to set aside the order passed in C.A.No.103 of 2008 imposing additional fine of Rs.4500/- in addition to ordinary fine of Rs.500/- dated 15.04.2009 by learned I Additional Sessions Judge at Coimbatore against the sentence of 6 months Rigorous Imprisonment and fine of Rs.500/- by the Judicial Magistrate No.II, Pollachi in C.C.No.56 of 2000 dated 06.03.2008 by allowing the revision petition.

For Petitioner :No appearance

For Respondent :Mr.T.Shunmuga Rajeswaran
G.A.(crl.side)

ORDER

This revision is directed against the concurrent finding of the Courts below holding the revision petitioner guilty of offence under Section 409 of IPC.

2. The brief facts of the case is that the revision petitioner while serving as Village Administrative Officer(VAO) at Chandrapuram, Coimbatore District, has misappropriated the land tax paid by the public in between 15.11.1996 and 29.11.1996 and 01.12.1996 and 15.12.21996. The said misappropriation came to light during the audit conducted in the month of 1997. From the Audit Report, it came to light that a sum of Rs.2,529/-

collected during 15.11.1996 and 29.11.1996 and a sum of Rs.10,790/- collected during 01.12.1996 and 15.12.1996 were found not been remitted in the treasury immediately, but, it had been remitted belatedly on 26.09.1997. Having found committed temporary misappropriation, the complaint was lodged by the PW-1 to the respondent police.

3. From the documents, viz., receipts issued by the accused for the concerned tax payers and the conciliation account maintained by the revenue Department and the Bank, the prosecution had established the fact that a total sum of Rs.10,790/- collected by the accused from the tax payers under receipts issued by him marked as Ex.P7 to Ex.P46 was not remitted immediately, but remitted belatedly after 9 months. The fact has been discovered during the audit. The trial Court, therefore, held the accused guilty of offence under Section 409 of IPC and sentenced him to undergo 6 months Rigorous Imprisonment and imposed a fine of Rs.500/-. On appeal, the lower appellate Court while confirming the conviction considering the other factors modified the sentence of imprisonment 6 months to one of fine of Rs.5000/-. Out of which Rs.4,500/- to be paid as compensation. Aggrieved by that, the present revision petition is filed by the accused through one Counsel Mr.R.Y.George Williams. Later when the matter was taken up for final hearing, there was no representation for the revision petitioner. Hence, the matter was posted on 24.08.2008 under the caption “for dismissal”.

4. On that day, this revision petitioner was present and reported that he has engaged a new counsel and sought time. Accordingly, this Court granted time and the matter was listed, again but adjourned at the request of the counsel for the past few hearings. Today, when the matter was listed, there is no representation for the revision petitioner.

5. This Court, after hearing the learned Government Advocate (crl.side) representing the respondent and on perusal of the records finds no illegality or perversity in the order passed by the Courts below. The only contention raised in the grounds of revision is that the witnesses have not implicated the accused and the complaint was given belatedly much after the remittance of the money collected.

6. No doubt, it is a fact that the complaint was given by PW-1 only on 27.08.1999 and none of the tax payers has said anything about the misappropriation money given by them towards tax by the revision petitioner. It is to be borne in mind that the Village Administrative Officer is responsible to collect tax and bound to remit the amount on the same day or on the next working day. The money has to be deposited in the treasury at

the earliest point of time. In the case in hand, the revision petitioner has collected money from the tax payers and issued receipt to them. Therefore, there is no reason for the tax payers to suspect the Village Administrative Officer to say anything incriminating against him except the fact of paying the tax to him and issuance of receipt by him. The Audit Report, which is part of the prosecution document marked as Ex.P2 and Ex.P3 has brought to light that the money which was collected and receipt issued between the 2nd week of November till 2nd week of December was not properly remitted into the treasury account.

7. Admittedly, the accused has remitted the money only on 29.09.1997. He has not come forward with any explanation for not remitting the money immediately. Since the accused has misappropriated and has paid the collected money belatedly, the Courts below have taken note of the fact that the misappropriation is of temporary in nature. Since the accused was holding the public money for more than 9 months, the appellant is liable for punishment. While, the trial Court has sentenced him to undergo 6 months imprisonment, the lower appellate court has considered the medical history of the petitioner and has imposed only fine of Rs.5,000/-.

8. In the light of the above, this Court does not find any perversity or illegality in the order passed by the Courts below to exercise the revision jurisdiction. Hence, this Criminal Revision Case is liable to be dismissed.

9. Accordingly, this Criminal Revision Case is dismissed. The judgment of the lower appellate Court in C.A.No.103 of 2008, dated 15.04.2009 is confirmed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
1.I Additional Sessions Judge at Coimbatore .
2.The Judicial Magistrate No.II, Pollachi.
3.Inspector of Police,Negamam,
Police Station,Coimbatore District.
4.The Public Prosecutor, High Court, Madras.

Crl.R.C.No.1675 of 2011

PPA(CO)
CS/15/05/2019