

Bail Slip

The Appellant/Accused, namely R.Krishnappa was directed to be released on bail as per order of this Court dated 18.03.2013 in CRL MP.NO.1/13 IN CRL RC.NO.1125/2012 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1125 of 2012 and

M.P.No.1 of 2013

R.Krishnappa

...Petitioner

Vs.

State represented by
The Inspector of Police,
CCIW, Krishnagiri.
(Crime No.3/2002)

...Respondent

The Criminal Revisions is filed under Sections 397 and 401 of Code of Criminal Procedure to call for the records in Crl.A.No.21 of 2005 dated 04.04.2012 on the file of the learned Additional Sessions Judge, Krishnagiri and the order passed in C.C.No.69 of 2003 dated 23.03.2005 by the learned District Munsif-cum-Judicial Magistrate, Denkanikottai and set aside the same by allowing this criminal revision and consequently acquit the petitioner.

For Petitioner : Mr.C.Prabhakaran for
M/s.T.Sundaravadanam
For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

ORDER

This criminal revision case has been filed against the concurrent judgment of conviction made by both the Courts below.

2 The respondent police registered a case against the petitioner and two others for the offence punishable under Section 408 and 477(A) of IPC against A1 and this petitioner,

who was arrayed as A2 and 408 r/w 109 & 477(A) r/w 109 of IPC against A3, stating that between the period of 01.10.1999 and 31.12.2000, A1 & A2, being a Secretary and Office Assistant of Bairamangalam Primary Co-Operative Bank, with connivance of A3, had misappropriated a sum of Rs.3,06,403.57/- by making false entries in the concerned registers. The respondent police after investigation laid a charge sheet before the learned District Munsif-cum-Judicial Magistrate, Denkanikottai, which was taken on file in C.C.No.69 of 2003. The learned trial Judge, after an elaborate trial, by judgment dated 23.03.2005 convicted A1 and the petitioner herein and sentenced them to undergo simple imprisonment for a period of 24 months with fine of Rs.2500/- each, in default, to undergo simple imprisonment for a further period of six months for the offence under Section 408 and to undergo simple imprisonment for a period of 24 months with fine of Rs.2500/- each, in default, to undergo simple imprisonment for a further period of 6 months for the offence under Section 477(A), and acquitted the third accused from all the charges. Aggrieved against the judgment of conviction, the petitioner has filed an appeal in Criminal Appeal No.21 of 2005. The learned Additional Sessions Judge, Krishnagiri, after hearing the appeal, by judgment dated 04.04.2012, dismissed the appeal and confirmed the judgment of conviction. Challenging the concurrent judgments of conviction, the petitioner is before this Court with the present criminal revision case.

3 The learned counsel appearing for the revision petitioner would submit that the petitioner/A2 was originally appointed as night watchman and was given additional charge of selling of fertilizers. The revision petitioner has discharged his duties as directed by the A1/Secretary and A3/President and in that way only the goods were supplied to the staff members of the Society by loan and the said loan is recoverable only. Further, prosecution has not proved the fact in what way the loss has been caused to the society due to the act of this petitioner. The trial Court had failed to note Ex.P44, By-laws of the Society, which clearly speaks about the role of the President and Secretary. The trial Court has come to the conclusion that the A3, who is the president has not committed any offence and acquitted him, but, erroneously held that the petitioner has committed offence and convicted him. The lower appellate Court has also without appreciating the evidence rendered by the prosecution witnesses properly, has confirmed the conviction recorded by the trial Court, which warrants interference.

4 The learned Government Advocate (Crl.Side) would submit that the petitioner was salesman and was incharge for sales of fertilizers at the relevant point of time. Before the Investigating officer, the petitioner has admitted that he has

not produced any vouchers for the amount misappropriated at the relevant point of time. Being a salesman, he is bounded to produce the vouchers at any time. Therefore, the Investigating Officer has fixed liability on the petitioner for a sum of Rs.97,888/- and witnesses have also clearly spoken about the involvement of the petitioner in the misappropriation. The trial Court has rightly appreciated the evidence of prosecution witnesses and convicted the petitioner and the lower appellate Court has also confirmed the same, which does not call for any interference.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is seen that the petitioner was initially appointed as night watchman and later was given additional charge of sale of fertilizers in the Society. It was alleged by prosecution that the petitioner along with the two others had misappropriated a sum of Rs.3,06,403.57/-. It is contended by the learned counsel for petitioner that the petitioner had discharged his duties as directed by A1/Secretary and A3/President and the petitioner has no independent power. But, the fact remains that as per the minutes Book and the resolutions of the Society, it is very clear that the petitioner, being the in-charge of sale of fertilizers, he is responsible for the sale and as rightly contended by the learned Government Advocate (Crl.Side) appearing for the prosecution, the petitioner should have produced vouchers for every sale of fertilizers. Therefore, on reading of the entire evidence on record and the judgments of both the Courts below, this Court does not find any perversity in the judgment of conviction. However, it was stated the petitioner has repaid the amount of Rs.97,888/- towards the loss caused to the Society. Considering the age of the petitioner and nature of offence and also the fact that the petitioner has repaid the loss caused to the society, this Court is inclined to modify the sentence alone imposed on the petitioner.

7 In the result, the criminal revision case stands dismissed. Consequently, connected miscellaneous petition is closed. The period of imprisonment already undergone by the petitioner shall be treated as sentence for the offence under Sections 408 & 477(A) of IPC and the petitioner shall pay the fine alone imposed by the trial Court, if already not paid.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

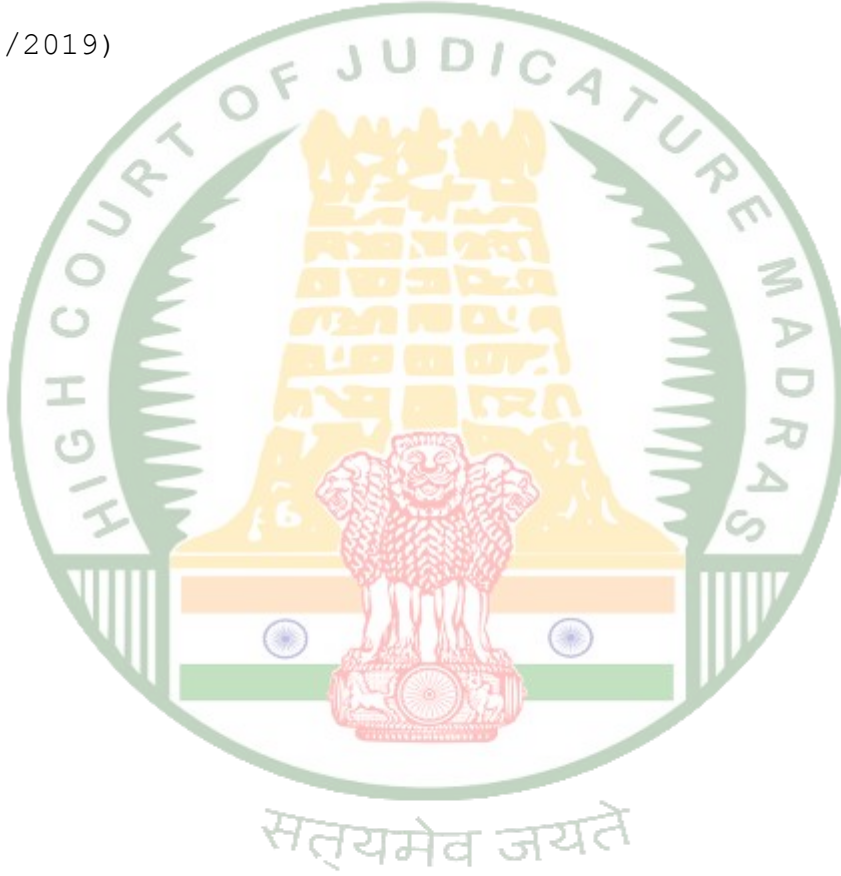
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To

1. The Additional Sessions Judge, Krishnagiri.
2. The District Munsif-cum-Judicial Magistrate, Denkanikottai.
3. The Public Prosecutor, High Court of Madras.
4. The Inspector of Police, CCIW, Krishnagiri.

+lcc to Mr.T.Sundaravadanam , Advocate SR.No. 61448

CrI.R.C.No.1125 of 2012 and
M.P.No.1 of 2013

A.SK(18/12/2019)



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