

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.07.2019

CORAM:
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.550 of 2012

V.Vellore Primary Co-operative Bank Ltd.,
Udumalpet Taluk,
Rep. By its Secretary,
Mr.L.Easwaran.

...Petitioner/P.W.3/Defacto Complainant

Vs.

1. R.RukmangathanRespondent/Accused

2. State rep. By
The Inspector of Police,
C.C.I.W.CID., Coimbatore. ...Respondent/Complainant

Prayer: The Criminal Revision case filed under Section 397 read with 401 of Code of Criminal Procedure, to call for the records and to set aside the order dated 27.02.2004, in C.C.No.144 of 2000 on the file of the learned Judicial Magistrate-IV, Coimbatore.

For Petitioner : Mr.D.Ramalingam

For Respondents : Mr.S.N.Arunkumar - For R1
for Mr.Camyles Gandhi

Mr.T.Shanmugarajeswaran - For R2
Govt. Advocate (Crl. Side)

O R D E R

This revision has been filed by the petitioner to set aside the order dated 27.02.2004, in C.C.No.144 of 2000 on the file of the learned Judicial Magistrate-IV, Coimbatore.

2. The first respondent herein is the Secretary of the revision petitioner's society. The allegations against the first respondent are that he has mis-appropriated the society's fund when he was functioning as Secretary, during the period from 15.06.1996 to 07.05.1997, and also he has created the false records.

3. A case was registered against the first respondent for the offence under Section 408 and 477(a) IPC and after

investigation, the second respondent police laid charge sheet before the learned Magistrate-IV, Coimbatore and the same was taken on file in C.C.No.144 of 2004. Before the trial Court, on the side of the prosecution, the respondent police has examined 16 witnesses viz., P.W.1 to P.W.16 and marked 43 documents viz., Ex.P1 to Ex.P43. After completion of the oral and documentary evidences on the prosecution side, the petitioner was questioned under Section 313(1)(A) Cr.P.C. The petitioner denied the incriminating circumstances and denied all evidences as false. On the side of the defence, one witness was examined and six documents were marked. After full fledged trial, the learned Magistrate found the first respondent not guilty for the offence under Section 408 and 477(a) IPC and acquitted him from all the charges.

4. Challenging the said judgment of acquittal, the defacto complainant/Society has filed the present revision before this Court.

5. The learned counsel for the revision petitioner would submit that during the relevant point of time, the first respondent herein was the Secretary to the revision petitioner's society and he has mis-appropriated the funds and also false accounts has been shown. Therefore, the department has initiated proceedings and enquiry was conducted. Before the Enquiry Officer(E.O.), the first respondent has also admitted the fact about the mis-appropriation. He has only sought time for repayment of the mis-appropriated amount. Based on his statement, the Enquiry Officer. has given the findings. Against which though he has filed an appeal before the appellate authority, subsequently, he has not appeared. The appellate authority, after considering the material placed before him, confirmed the order of the Enquiry Officer and dismissed the appeal. Thereafter, the first respondent has not filed further appeal or revision. Subsequently, the first respondent was dismissed from service. Even then he has not challenged the order of dismissal. The first respondent given a letter to the President and admitted the same. The said letter was marked as Ex.P13. Before the learned Magistrate, he has stated that the letter was obtained by force. He has not given any letter voluntarily. The learned Magistrate has not considered the admission made before the Enquiry Officer.

6. On a reading of Ex.P14, Ex.P24 and Ex.P8, statements given before the Enquiry Officer, the first respondent has admitted that he has given the letter Ex.P13. The learned Magistrate failed to consider the entire materials placed before it and has only given much importance to the evidence of the first respondent. During the cross examination, the respondent revealed that he has given the letter by force of the defacto complainant. But the first respondent has not denied either

Ex.P13 and Ex.P14 in earlier occasions at any point of time. Therefore, he has admitted that he has misappropriated the fund, and also given the letter viz., Ex.P13 and that was not been retracted at any point of time in earlier occasion and also he has admitted the guilt before the departmental proceedings. Based on the departmental proceedings, action was taken and he was dismissed from service, which was also not challenged by the first respondent. Though the records in departmental proceedings may not be binding on the criminal Court, the learned Magistrate has to deal the matter independently, with the aid of evidence on record before the Court.

7. On a reading of the entire records, it is evident that the prosecution has proved its case beyond reasonable doubt and the first respondent has committed the offences under Section 408 and 477(a) IPC but the learned Magistrate has failed to consider it.

8. The learned counsel for the first respondent would submit that the revision Court cannot interfere with the well founded decision of the trial Court. The scope of the revision is very limited and unless there is any perversity, the revisional Court cannot interfere with the judgment of the trial Court. In support of his contention, the learned counsel has placed reliance on the judgment of the Hon'ble Apex Court in the matter of Bindeshwari Prasad Singh V. State of Bihar and another (2002) 6 SCC 650 and K.Chinnaswamy Reddy V. State of Andhra Pradesh.

9. Heard the learned counsel for the petitioner/defacto complainant as well as the learned counsel for the first respondent/accused and the learned Government Advocate (Criminal side) and perused the material available on record.

10. The citations referred to by the learned counsel for the first respondent are not applicable to the present case on hand. There is no quarrel with the well settled proposition of law that the scope of revision is very limited.

11. On a perusal of the entire records, it is seen that the first respondent has admitted all the statements given before the Enquiry Officer. in the departmental proceedings and the order in departmental proceedings was marked before the Magistrate. The first respondent has not denied any of th said documents. Then the Magistrate has not given any reason to reject the records filed by the prosecution before the Court and erroneously held that the first respondent has not committed the offence.

12. It is well settled proposition of law that while exercising the revisional jurisdiction, the scope of interference is very limited. However, when it is brought to the notice of this Court that the order passed by the trial Court is otherwise tantamount to gross miscarriage of justice, this Court is empowered to interfere with the judgment of the Courts below. This is one such case where to interference of this Court is absolutely necessary. The first respondent has swindled public money and created false documents. The prosecution has proved its case beyond reasonable doubt through oral and documentary evidence. Therefore, this court has no hesitation to interfere with the order of the trial Court.

13. In the result, the revision is allowed and the matter is remitted back to the learned Magistrate for considering the facts for awarding the conviction and sentence. With the above directions, this revision is allowed.

14. Registry is directed to send the original papers along with impugned judgment and also copy of the order of this Court. Since the matter is pending from the year 2012, the learned Magistrate is directed to dispose the case in C.C.No.144 of 2000 within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

rli

To

1. The Judicial Magistrate-IV,
Coimbatore.

2. The Inspector of Police,
C.C.I.W.CID., Coimbatore.

+1cc to M/s.W.Camyles Gandhi, Advocate, S.R.No.57642

+1cc to Mr.S.D.Ramalingam, Advocate, S.R.56751

CrI.R.C.No.550 of 2012

SJ(CO)

RRS (12/07/2019)