

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.328 of 2015

Suresh Kumar

.. Petitioner/1st Accused

Vs.

State represented by
The Inspector of Police,
C.C.I.W., C.I.D.,
Vellore.

.. Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 29.10.2009 passed in C.C.No.32 of 2008 on the file of the Judicial Magistrate Court No.II, Vellore, confirmed by the judgment and order dated 17.03.2015 passed in C.A.No.88 of 2009 on the file of the I Additional District and Sessions Court, Vellore.

For Petitioner : Mr.B.Nambiselvan

For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(CrI.Side)

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 29.10.2009 passed in C.C.No.32 of 2008 on the file of the Judicial Magistrate Court No.II, Vellore, confirmed by the judgment and order dated 17.03.2015 passed in C.A.No.88 of 2009 on the file of the I Additional District and Sessions Court, Vellore.

2. The facts of the case in a nutshell are as under:

2.1 It is the case of the complainant that the petitioner (A1) was working as a Salesman in Santhanpakkam Primary Agricultural Cooperative Bank. During inspection, it was found that there was deficit of stock to the tune of Rs.51,015.20 in the fair price shop of the bank. Proceedings were initiated

under the Tamil Nadu Cooperative Societies Act, against Suresh Kumar (A1), the petitioner herein and Muralidharan (A2), the Secretary of the bank.

2.2 Simultaneously, a complaint was lodged, based on which, the respondent/police registered a case in Crime No.2 of 2008 for the offences under Sections 408 and 408 r/w 35 IPC, against Suresh Kumar (A1) and Muralidharan (A2), respectively.

2.3 After completing the investigation, the police filed a final report in C.C.No.32 of 2008 before the Judicial Magistrate Court No.II, Vellore, for the offences under Sections 408 and 408 r/w 34 IPC, against Suresh Kumar (A1) and Muralidharan (A2), respectively.

2.4 The trial Court framed charges for the aforesaid offences against Suresh Kumar (A1) and Muralidharan (A2) and when questioned, they pleaded "not guilty".

2.5 To prove the case, the prosecution examined eight witnesses and marked fifteen exhibits.

2.6 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. On behalf of the accused, one Natarajan was examined as DW1 and two exhibits were marked.

2.7 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 29.10.2009 in C.C.No.32 of 2008, acquitted Muralidharan (A2), but, convicted the petitioner (A1) of the offence under Section 408 IPC and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months simple imprisonment.

2.8 The appeal in C.A.No.88 of 2009 filed by the petitioner (A1) was dismissed by the I Additional District and Sessions Court, Vellore, on 17.03.2015.

2.9 Challenging the concurrent findings of fact arrived at by the Courts below, the petitioner (A1) has preferred the present revision under Section 397 r/w 401 Cr.P.C.

3. Heard Mr.B.Nambiselvan, learned counsel for the petitioner (A1) and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

4. Before advertng to the rival submissions, it may be necessary to state here that, while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.¹ Very recently, in Bir Singh vs. Mukesh Kumar², the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error." (emphasis supplied)

5. The learned counsel for the petitioner (A1) submitted that both the Courts have failed to note that the prosecution had failed to prove the entrustment which is essential to convict a person under Section 408 IPC. He also submitted that the prosecution has not established that there was a deficit of Rs.51,015.20.

6. Per contra, the learned Government Advocate (Crl.Side) refuted the submissions made by the learned counsel for the petitioner.

7. On perusal of the evidence of Kuzhandhaivelu (PW7), who had conducted the inspection in the fair price shop, it is seen that serious discrepancies were noticed in the stock register, accounts book and the actual stock in the fair price shop. After carefully analyzing the records, he (PW7) had found that there has been defalcation of stocks worth of Rs.51,015.20 have been sold out.

8. The evidence of Thiruguna Iyappadurai (PW1) and Gurunadhan (PW2) clearly show that the petitioner (A1) was the Salesman in the said fair price shop during the period from 15.10.1999 to 12.01.2002.

9. In the cross-examination of these witnesses, the defence was not able to make any serious dent in their testimonies. The petitioner (A1) also has not given any plausible explanation

1(2004) 7 SCC 659

2(2019) 4 SCC 197

when he was examined under Section 313 Cr.P.C.

10. In such perspective of the matter, it cannot be stated that the trial Court and the appellate Court had failed to appreciate the evidence on record in the right perspective, warranting interference by this Court in exercise of its revisional jurisdiction.

11. However, the learned counsel for the petitioner (A1) prayed for leniency in the sentence.

12. Accepting the submission made by the learned counsel for the petitioner (A1), the conviction of the petitioner (A1) for the offence under Section 408 IPC is confirmed, but, the substantive sentence of imprisonment of one year rigorous imprisonment is reduced to six months rigorous imprisonment and besides, the petitioner (A1) is directed to pay a compensation of Rs.50,000/- to the Santhanpakkam Primary Agricultural Cooperative Bank, since the money is public money, in default to undergo three months simple imprisonment.

In fine, this criminal revision is partly allowed. The trial Court is directed to secure the petitioner (A1) and commit him to prison to serve out the sentence. The Registry is directed to return the original records to the Courts below concerned.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate No.II,
Vellore.

2. The I Additional District and
Sessions Judge, Vellore.

3. The Deputy Registrar (Crl.Section),
Madras High Court,
Chennai - 104.

(for information the Registry is directed to return the original records to the court before concerned)

+1cc to Mr.B.Nambiselvan, Advocate SR.91744

Cr1.R.C.No.328 of 2015

AD (CO)
CB (20/12/2019)



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