Crl.R.C.68 to 77/2012
Bail Slip

The Petitioner herein/Accused namely Arokiyaraj , was directed to be released on bail as per order dated 24.07.2019 made in M.P. 1/2012 in Crl.R.C.68 to 77/2012 and subsequently directed to secure the custody of the accused vide order dated 01.07.2019 in Crl.R.C.68 to 77/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.Nos.68 to 77 of 2012

Crl.RC.No.68 to 77 of 2012

Arokiyaraj Richard ... Petitioner/Accused(in all)

Vs.

State rep by SHO,
CCIW, Cuddalore.
Cr.No.6 of 1997 ..Respondent(in all)

Prayer: This Criminal revision case is filed under Section 397 of Criminal Procedure Code to call for the records and to set aside the judgment dated 16.12.2011 made in CA.No.54 of 2010, 56/2010, 53/2010, 52/2010, 57/2010, 58/2010, 59/2010, 60/2010, 61/2010 and 55/2010 respectively on the file of the Learned Principal Sessions Judge, Cuddalore confirming the judgment of the learned Judicial Magistrate No.II, Cuddalore made in CC.No.210 of 2001, 212/2001, 209/2001, 208/2001, 213/2001, 214/2001, 215/2001, 216/2001, 217/2001 & 211/2001 respectively dated 23.04.2010.

For Petitioner : Mr.N.R.Elango, SC
for Mr.E.Rajthilak.

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (crl.side)

COMMON ORDER

These Criminal revisions are filed to set aside the judgment dated 16.12.2011 made in CA.Nos.54, 56, 53, 52, 57, 58, 59, 60, 61 and 55 of 2010 on the file of the learned Principal District and Sessions Judge, Cuddalore confirming the judgment of the learned Judicial Magistrate No.II, Cuddalore made in CC.Nos.210, 212 209, 208, 213, 214, 215, 216, 217 and 211 of 2011 dated 23.04.2010 respectively.

2. The respondent/police registered the above cases against the revision petitioner in Cr.No.6 of 1997. After completing investigation, the respondent police laid the charge sheet against the revision petitioner before the learned Judicial Magistrate No.II, Cuddalore for the offences under Sections 465, 468, 471, 477(a) and 408 IPC. The learned Judicial Magistrate taken up the charge sheets on file in CC.Nos.210 212 209, 208, 213, 214, 215, 216, 217 and 211 of 2011 respectively. After completing procedural formalities framed charges against the petitioner for the offences stated supra. After completing trial, the Judicial Magistrate found that the petitioner committed the offence under Sections 465, 468, 471, 477(a) and 408 IPC and convicted and sentenced to undergo simple imprisonment for a period of six months each of the offences under Sections 465 and 471 IPC and sentenced to undergo simple imprisonment for one year and also to pay a fine of Rs.500/- each in default to undergo simple imprisonment for one month each for the offences under Section 468, 477(a) and 408 IPC.

3. Challenging the said judgment, the petitioner preferred an appeals before the learned Principal District and Sessions Judge, Cuddalore in CA.Nos.54, 56, 53, 52, 57, 58, 59, 60, 61 and 55 of 2010 respectively, after hearing the arguments advanced on either side and on a perusal of the materials produced before the trial Court and the judgments of the trial Court, the learned Sessions Judge dismissed the appeals by confirming the judgment of the trial Court. There against the judgments of the learned District and Sessions Judge, the revision petitioner is before this Court with the present revisions.

4. The learned counsel for the petitioner would submit that before filing the cases, sanction were not obtained from the competent authority. The learned counsel for the petitioner would submit that the shop in which the petitioner was employed has been functioning under the Cooperative Societies Act and as per the Act, a body has been elected, as such, the President of the body is receiving the amount and the President would pay the money to the cashier. If at all, if there is any defect, the cashier and the President alone are responsible. The enquiry report also reveal that the cashier and the President alone are responsible for the shortage of any thing or money. The work was entrusted to the petitioner herein, only the Registrar or a person permitted by him in writing has been done. In this case,

there is no document to show that the petitioner was entrusted with this work and he is responsible for the alleged shortage of amount. Therefore, the prosecution has failed to prove its case beyond reasonable doubt and both the Courts below failed to consider the legal as well as factual aspects and wrongly come to the conclusion that the petitioner has committed the said offences and convicted and sentenced for the above said offences which warrants interference of this Court.

5. The learned Government Advocate (Criminal side) would submit that in this case, the offences committed under Sections as stated supra, the charges levelled against the petitioner are under the provisions of IPC. It is crystal clear that the allegations against the petitioner for forging the cheque and misappropriating the funds thereby committed the offences. Therefore, there is no necessity to obtain any sanction for prosecution under Section 164(3) of the Cooperative Societies Act. The oral and documentary evidences also would clearly prove that the petitioner has committed the offences as stated supra. Further, he would submit that even during the proceedings under Section 81 of the Act, the petitioner himself admitted the offence, therefore, from the oral and documentary evidences, the prosecution has proved its case beyond reasonable doubt and there is no reason to interfere with the judgment of both the Courts below.

6. Heard the rival submissions made on both sides and the perused the materials available on record.

7. The case of the prosecution is that the petitioner was working as Clerk in the South Arcot District Sales Committee Employees Cooperative Society for the period from 31.10.1984 to 22.01.1996. while he was on duty misappropriated the following cheques from the Society in the below mentioned criminal revisions :-

(i) Crl.RC.No.68 of 2012

The cheques dated 21.09.1994, 25.10.1994 and 26.10.1994 from Society Savings Bank Account No.165, the petitioner fraudulently affixed society seal in the name of the witnesses Jayaveeran and obtained his signature as witness and created forged document and forged cheques to the tune of Rs.40,000/- from the Society through witnesses Ranganathan and Devanathan and caused loss to the Society.

(ii) Crl.RC.No.69 of 2012

The cheques dated 19.02.1995, 15.03.1995 and 13.04.1995 from Society Savings Bank Account No.165, the petitioner fraudulently affixed society seal in the name of the witnesses Jayaveeran and obtained his signature as witness and created forged document and forged cheques to the tune of Rs.40,000/- from the Society and caused loss to the Society.

(iii) Crl.RC.No.70 of 2012

The cheques dated 07.07.1994, 22.07.1994 and 11.08.1994 from Society Savings Bank Account No.165, the petitioner fraudulently affixed society seal in the name of the witnesses Jayaveeran and obtained his signature as witness and created forged document and forged cheques to the tune of Rs.41,500/- from the Society through witnesses Ranganathan, Sekaran and Devanathan and caused loss to the Society.

(iv) Crl.RC.No.71 of 2012

The cheque dated 08.03.1993 from Society Savings Bank Account No.165, the petitioner fraudulently affixed society seal in the name of the witnesses Venugopal and obtained his signature as witness and created forged document and forged cheques to the tune of Rs.10,000/- from the Society and caused loss to the Society.

(v) Crl.RC.No.72 of 2012

The cheques dated 10.05.1995, 26.05.1995 and 08.06.1995 from Society Savings Bank Account No.165, the petitioner fraudulently affixed society seal in the name of the witnesses Jayaveeran and obtained his signature as witness and created forged document and forged cheques to the tune of Rs.37,200/- from the Society and caused loss to the Society.

(vi) Crl.RC.No.73 of 2012

The cheques dated 30.06.1995, 16.08.1995 and 31.08.1995 from Society Savings Bank Account No.165, the petitioner fraudulently affixed society seal in the name of the witnesses Jayaveeran and obtained his signature as witness and created forged document and forged cheques to the tune of Rs.58,000/- from the Society through witness Ranganathan and caused loss to the Society.

(vii) Crl.RC.No.74 of 2012

The cheques dated 16.09.1995, 05.10.1995 and 11.10.1995 from Society Savings Bank Account No.165, the petitioner fraudulently affixed society seal in the name of the witnesses Jayaveeran and obtained his signature as witness and created forged document and forged cheques to the tune of Rs.42,000/- from the Society through witness Ranganathan and caused loss to the Society.

(viii)Crl.RC.No.75 of 2012

The cheques dated 02.11.1995, 05.11.1995 and 04.12.1995 from Society Savings Bank Account No.165, the petitioner fraudulently affixed society seal in the name of the witnesses Jayaveeran and obtained his signature as witness and created forged document and forged cheques to the tune of Rs.48,600/- from the Society through witnesses Ranganathan and Devanathan and caused loss to the Society.

(ix)Crl.RC.No.76 of 2012

The cheque dated 27.12.1995 from Society Savings Bank Account No.165, the petitioner fraudulently affixed society seal in the name of the witnesses Jayaveeran and obtained his signature as witness and created forged document and forged cheques to the tune of Rs.18,000/- from the Society through witness Sekaran and caused loss to the Society.

(x)Crl.RC.No.77 of 2012

The cheques dated 19.12.1994, 06.01.1995 and 03.02.1995 from Society Savings Bank Account No.165, the petitioner fraudulently affixed society seal in the name of the witnesses Jayaveeran and obtained his signature as witness and created forged document and forged cheques to the tune of Rs.32,800/- from the Society through witness Sekaran and caused loss to the Society.

8. Therefore, the petitioner had committed the misappropriation, the case was registered against the petitioner by the respondent/police for the above said offences punishable under Sections 465, 468, 471, 477(a) and 408 IPC. The trial Court after framing charges and after conducting the trial, found the petitioner guilty for the offences under Sections as stated above and convicted and sentenced him to undergo simple imprisonment for a period of six months each of the offences under Sections 465 and 471 IPC and sentenced to undergo simple imprisonment for one year and also to pay a fine of Rs.500/- each in default to undergo simple imprisonment for one month each for the offences under Section 468, 477(a) and 408 IPC.

9. Though, the learned counsel for the petitioner would submit that the sanction before prosecuting against the petitioner is necessary, whereas in this case, the sanction has not been obtained is fatal to the case of the prosecution. Section 81 enquiry reveal the President and the Cashier are responsible, but no case was registered against them. Therefore, mere admission made during the enquiry under Section 81 of the Act would not bind the petitioner in the criminal offences and both the Courts below failed to appreciate the oral and documentary evidence and violation of the mandatory provisions.

10. On reading of the entire materials, before the trial Court on the side of the prosecution 8 witnesses were examined and 20 documents were marked in Crl.RC.Nos.68, 69, 73 and 74 of 2012, 9 witnesses were examined and 21 documents were marked in Crl.RC.No.70 of 2012, 8 witnesses were examined and 18 documents were marked in Crl.RC.No.71 of 2012, 8 witnesses

were examined and 19 documents were marked in Crl.RC.Nos.72 and 77 of 2012, 8 witnesses were examined and 22 documents were marked in Crl.RC.No.75 of 2012, 8 witnesses were examined and 17 documents were marked in Crl.RC.No.76 of 2012. In Section 81 enquiry, the petitioner himself admitted that he had committed the offence and caused loss to the society. In this case, no charge has been framed against the petitioner, it was the case registered against the petitioner for the offence under Sections 465, 468, 471, 477(a) and 408 IPC, therefore, no sanction has been obtained from the Registrar of the Cooperative Society, the same is not fatal to the case of the prosecution and the trial Court and the lower appellate Court referred to the case laws referred to by the counsel for the petitioner and rejected the contention of the petitioner and no sanction of prosecution is necessary. Under Section 164 (3) of the Cooperative Societies Act, when case was registered and tried for the offences under IPC.

11. Further, the allegations against the petitioner is that he has forged the seal and signatures of the customers and also forged the seal of the Society and misappropriated the funds and committed the offences as stated above. Therefore, non prosecuting the persons Secretary and Cashier is not fatal to the case of the prosecution, the prosecution has proved its case beyond reasonable doubt. The question of law raised by the petitioner and on the side of the defence are answered by both the Courts below, both the Courts below appreciated the evidence and found guilty of the revision petitioner. While exercising the revisional jurisdictional, this Court cannot exercise the power of the appellate and reappreciate the entire evidence.

12. In this case, there is no perversity in reappreciating the evidence by the Courts below. Since, the lower appellate Court is the final Court of fact finding had reappreciated the entire evidence let in by the prosecution and also the documentary evidences produced before the trial Court and found that the revision petitioner had committed the offence and dismissed the appeal by confirming the judgment of the trial Court. This Court also does not find any perversity in reappreciating the evidence by the appellate Court. This Court does not find any merits in the revision and finds no sound ground and reason to interfere with the judgments of the appellate Court and the criminal revisions are liable to be dismissed as devoid of merits.

13. These cases are of the year 2001, both the Courts below have not imposed any condition for recovering the misappropriated amount and this Court is inclined to modify the sentence imposed on the revision petitioner for the offences under Sections 465 and 471 IPC from six months simple

imprisonment for each of the offences to three months and for the offences under Section 468, 477(a) and 408 IPC from one year simple imprisonment to three months and to pay the misappropriated cheques amount of Rs.3,28,100/- towards compensation within a period of one month from the date of receipt of a copy of this order, after deducting the amount already paid, if any. Failure to pay the compensation within the stipulated period of time, the conviction and sentence imposed by the trial Court will be restored without any further reference.

14. With the above modification, all the criminal revision cases are dismissed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To
1.The Principal Sessions Judge
Cuddalore.

2.The Judicial Magistrate No.II
Cuddalore

3.Do Thro The Chief Judicial Magistrate
Cuddalore.

4.The Station House officer
CCIW, Cuddalore.

5.The Public Prosecutor
High Court, Madras 104.

Copy to
The Section officer
Criminal Section(Records)
High Court, Madras 104.

+1 CC to Mr.E.Rajthilak, Advocate sr 64358.

Crl.RC.Nos.68 to 77 of 2012

GJII(CO)
SP(15/10/2019)