

Bail Slip

The Appellant/Accused, namely A.Rajangam was already directed to be released on bail as per order dated 24.03.2014 and made in crl mp.1/2013 in Cr1.R.C.No.1539 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2018

PRONOUNCED ON : 16.09.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Cr1.R.C.No.1539 of 2013

A.Rajangam

... Petitioner/Accused

- Vs -

The State,
represented by the
Sub-Inspector of Police,
Kalavai Police Station,
Kalavai, Vellore District.
(Crime No.180/2006)

.. Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., praying to set aside the conviction and sentence ordered by the judgment dated 29.08.2013 made in Cr1.A.No.156 of 2012 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet confirming the judgment dated 31.07.2012 made in C.C.No.107 of 2007 on the file of the learned District Munsif-cum-Judicial Magistrate at Arcot.

For Petitioner : Mr.P.Kamarasu

For respondent : Mr.R.Ravichandran

Government Advocate (Cr1. Side)

O R D E R

This Criminal Revision Case has been filed by the petitioner/accused seeking to set aside the judgment dated 29.08.2013 passed in Cr1.A.No.156 of 2012 by the II

Additional District and Sessions Judge, Vellore at Ranipet, by confirming the judgment dated 31.07.2012 passed in C.C.No.107 of 2007 by the learned District Munsif-cum-Judicial Magistrate at Arcot.

2. The respondent police registered a case in Crime No.180 of 2006 against the revision petitioner/accused for the offence under Section 409 of IPC and after completing investigation, laid a charge sheet before the learned Judicial Magistrate, Arcot. The learned Magistrate taken the charge sheet on file in C.C.No.107 of 2007 and framed charge against the revision petitioner/accused. After trial, the learned Magistrate found guilty of the revision petitioner/accused for the offence under Section 409 of IPC, convicted and sentenced him to undergo 3 years Rigorous Imprisonment and fine of Rs.5000/-, in default, 6 months Rigorous Imprisonment, by judgment dated 31.07.2012. Challenging the said judgment, the convict filed an appeal in Crl.A.No.156 of 2012 before the learned Principal Sessions Judge, Vellore. The learned Principal Sessions Judge, Vellore made over the appeal to the II Additional District and Sessions Judge, Vellore at Ranipet for disposal. After hearing the arguments advanced on either side, the learned II Additional Sessions Judge dismissed the appeal and confirmed the judgment of the trial Court, by judgment dated 29.08.2013. Challenging the said judgment, the convict has filed the present revision before this Court.

3. The learned counsel appearing for the revision petitioner would submit that as the petitioner being a public servant, the mandatory requirement of previous sanction under Section 197 of Cr.P.C to prosecute the petitioner has not been obtained. Therefore, the judgment of the Trial Court is liable to be set aside. The Appellate Court also failed to consider the legal provisions and confirmed the judgment of the Trial Court, which is also liable to be set aside. The prosecution failed to establish the ingredients for the offence under Section 409 of IPC against the revision petitioner. The alleged occurrence had taken place as early as on 01.09.2004 at Kalavai Sub-Post Office, but, the F.I.R was registered only on 28.07.2006 through the respondent Police station is situated at the same place itself. Therefore, the delay in registering the case is not properly explained by the prosecution. The unexplained delay is fatal to the case of the prosecution. The allegation is that the petitioner had been given as the in-charge of Kalavai Sub-Post Office on 30.08.2004 itself by means of Ex.P9, whereas the seal affixed in Ex.P9 bears the date as 01.09.2004,

which shows that the petitioner was not in-charge of Kalavai Post Office at the time of occurrence. Both the Courts below failed to consider these facts. PWs-2 and 3 have not supported the case of the prosecution, who were employed in Kalavai Post Office at the time of occurrence and they turned hostile. Therefore, the non-corroboration of the evidence of PW-1 is fatal to the case of the prosecution. PW-1, in his evidence had stated in one place that he verified three days accounts and at another place he had stated that he has verified only the accounts pertaining to 01.09.2004, which shows, there is a material contradiction from his own evidence. It creates suspicion, as to whether he verified accounts for three days or for one day. The evidence of PW-1 is not trustworthy and hence, the same cannot be relied on. Based on the evidence of PW-1, the conviction cannot be recorded. PW-1 admitted during the course of cross examination that he saw accounts only for 01.09.2004 and further he has deposed that according to him, the opening balance on 01.09.2004 was Rs.53,699.55/- and the expenditure for 01.09.2004 was Rs.32,821/- and the available balance was Rs.22,097.55 and hence, there was no misappropriation at all. PW-7, who investigated the matter, has deposed that there was no details regarding the opening balance, expenditure and balance pertaining to 01.09.2004. Therefore, the prosecution has failed to establish its case on the date of commission of offence the revision petitioner was in-charge of the Post Office concerned. There is no material to prove that the petitioner misappropriated the fund. However, after filing of the complaint, the petitioner repaid the entire amount alleged to have been misappropriated and hence, there is no loss to the Government. The sentence imposed by the trial Court is not proportionate for the alleged offence said to have committed by the petitioner. Both the Courts below failed to consider the legal as well as the factual aspects and also subsequent to the complaint that he remitted alleged misappropriated amount and hence, the judgements of the Courts below warrants interference. The learned counsel placed reliance on the following judgments in support of his contention:-

- (i) Sardar Singh Vs. State of Haryana [AIR 1977 SC 1766]
- (ii) Om Prakash Vs. State of Haryana [1979 (4) SCC 550]
- (iii) Verghese Vs. M.K. Singhi and another [1997 CrLJ 3282]
- (iv) State of U.P. Vs. Amin Beg [1998 CrLJ 1964]
- (v) Janeshwar Das Aggarwal Vs. State of Uttar Pradesh [1981 (1) SCC 10]
- (vi) Kailash Kumar Sanwalia Vs. State of Bihar and another

- [2003 (7) SCC 399]
(vii) State of Himachal Pradesh Vs. Karanvir [2006(5) SCC 381]
(viii) Sahadevan and another Vs. State of Tamil Nadu [(2012) 6 SCC 403]
(ix) Er.M.Anbazhagan B.E. And others Vs. State rep. by The Deputy Superintendent of Police, CB CID, Vellore [(2014) 1 MLJ (Cr1) 435]

- (x) Sivakumar and 2 others Vs. State by the Inspector of Police [2017 (1) MWN (Criminal) 334 (DB)].

4. The learned Government Advocate (Cr1. Side) appearing for the respondent would submit that while the petitioner was working as Clerk, who was in-charge of Kalavai Post Office at the time of occurrence. On the instruction of Superintendent, PW-1 conducted surprise inspection on 01.09.2004 and found that a sum of Rs.22,097.55/- cash only was being available on hand, whereas, the accounts revealed that a sum of Rs.53,699.66/- was colluded as the cash on hand a sum of Rs.31,602/- was not found there. Therefore, explanation was called for and subsequently filed a complaint and hence, there is no delay in filing the FIR. It is not barred under Section 468 of Cr.P.C. The sanction of the prosecution is not necessary at the time of charging the Petitioner. There is no perversity in the judgments of the Courts below and there is no merit in the present revision and the same is liable to dismissed.

5. Heard the learned counsel for the revision petitioner and the learned Government Advocate (Cr1.Side) appearing for the respondent and also perused the entire materials available on records.

6. The case of the prosecution is that on 01.09.2004, while the Deputy Superintendent, Ranipet Postal Sub Division made a surprise inspection and on verification of accounts maintained in the Sub Post Office, Kalavai found that instead of Rs.53,609.55- only Rs.22,097.55/- cash was available on hands and Rs.31,602/- cash was found missing. The petitioner was placed temporarily in-charge of Sub Post Office, Kalavai and he dishonestly misappropriated the said amount and used the same for his personal expenses. Therefore, PW-1 lodged a complaint before the respondent police.

7. On reading of the entire materials, the citations referred to by the learned counsel for the petitioner are not helpful to decide this case, since the prosecution

proved its case beyond reasonable doubt and the petitioner also subsequently, accepted the misappropriation and repaid the amount. From the oral and documentary evidence, both the Courts found that the prosecution has proved its case. Hence, this Court does not find any perversity in the judgments of the Courts below. The lower Appellate Court, being the final Court of fact finding, rightly re-appreciated the entire evidence of prosecution and found guilty of the revision petitioner for the offence under Section 409 of IPC and dismissed the appeal by confirming the judgment of Trial Court. This Court, while exercising the revisional jurisdiction cannot exercise the power of the Appellate Court and cannot go beyond the scope and power of the revisional jurisdiction, when there is no perversity in the appreciation of the evidence by the lower Appellate Court. In the circumstances, there is no merit in the present revision and the same is liable to be dismissed.

8. In the result, this Criminal Revision Case is dismissed. The judgment dated 29.08.2013 made in CrI.A.No.156 of 2012 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet, is hereby confirmed. The Trial Court is directed to secure the revision petitioner/accused to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The II Additional Sessions Judge,
Vellore @ Ranipet.

2. Do thro the Principal/Sessions Judge, Vellore

3.The District Munsif-cum-Judicial Magistrate,Arcot.

4. Do thro the Chief Judicial Magistrate,Vellore

5. The Sub-Inspector of Police,
Kalavai Police Station,
Kalavai, Vellore District.

6.The Public Prosecutor, High Court of Madras
+1cc to Mr.P.Kamarasu , Advocate SR.No. 79620

CrI.R.C.No.1539 of 2013

A.SK(30/10/2019)