BAIL SLIP

Petitioner/ Appellant/ Accused namely K.Sethuramalingam was released on bail vide order made in MP(MD)No.1 of 2008 in Crl RC(MD) No.1058 of 2008.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.09.2019
PRONOUNCED ON : 20.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C(MD)No.1058 of 2008

1.K.Sethuramalingam ...Petitioner/Appellant/ Accused

Vs

State represented by
The Inspector of Police,
Pattiveeranpatti Police Station,
Nilakottai,
Dingidul District. ...Respondent/Respondent/ Complainant

PRAYER: Criminal Revision Cases have been filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the order passed by the learned Fast Tract Court Additional District and Sessions Judge, Dindigul dated 05.08.2008 in C.A.No.17 of 2008 confirming the order dated 19.03.2008 passed in C.C.No.239 of 2002 on the file of the Judicial Magistrate, Nilakottai and set aside the same.

For petitioner : Mr.T.Antony Arul Raj

For Respondent : Mrs.S.Bharathi,
Government Advocate (Crl Side)\

ORDER

This criminal revision case has been filed as against the concurrent findings of the learned Judicial Magistrate, Nilakottai in C.C.No.239 of 2002 and the Additional District and Sessions Judge [Fast Track Court], Dindigul in C.A.No.17 of 2008, on the complaint filed by the respondent under Sections 409 and 477(A) IPC.

2.The case of the prosecution is that the petitioner, while he was working as Village Administrative Officer at Sevugampatti Village, Nilakottai Taluk, Dindigul District, during the year 1986 to 1987, collected Land Tax, Panchayat Tax, etc., from the residents of the village and remitted the same to the Government belatedly and thereby the petitioner has committed offence of temporary embezzlement of the Government money to the tune of Rs.7790.10 and he also corrected the dates on the entries for having collected the tax.

3.Based on the instructions of the Revenue Divisional Officer, Dindigul and District Collector, Dindigul, The Thasildar, Nilakottai preferred a complaint to the respondent Police and based on the complaint a case in Crime No.410 of 1997 on the file of the respondent Police was registered and the Inspector of Police, Pattiveeranpatti Police Station took the investigation and recorded the statement of PW1 to PW 13, he collected tax receipt book Nos.662201 to 662250 [ExP4], appointment order of the petitioner [ExP6], the details of embezzlement by the petitioner [ExP7], Sevugampatti village Fasali 1396 Register No.13 [ExP9] and Mallanampatti Village Fasali 1396 Land Tax Register Series [ExP5]. After completion of the investigation, the Investigating Officer filed a final report before the learned Judicial Magistrate, Nilakottai, as against the petitioner for the offence under Sections 409 and 477(A) IPC.

4.The learned Judicial Magistrate took the final report on file in C.C.No.239 of 2002 and after conclusion of the trial, the learned Magistrate found the appellant guilty, convicted and sentenced him as follows:

Section of Law	**Sentence of imprisonment**	**Fine amount**
409 IPC	To undergo rigorous imprisonment for one year	Rs.500/-, in default to undergo rigorous imprisonment for one month.
477(A) IPC	To undergo rigorous imprisonment for one year	Rs.500/-, in default to undergo rigorous imprisonment for one month.

5.As against the conviction and sentence imposed by the learned Judicial Magistrate, the petitioner filed an appeal before the Court of Sessions, Dindigul and the same was taken on file in C.A.No.17 of 2008 by the learned Additional District and Sessions Judge, (Fast Track Court), Dindigul and the appellate Court by judgment dated 05.08.2008 dismissed the appeal by confirming the order of the trial Court.

6.Aggrieved over the judgment of the appellate Court, the petitioner has preferred the present Criminal Revision Case.

7.Heard Mr.T.Antony Arul Raj, learned Counsel for the petitioner and Mrs.S.Bharathi, learned Government Advocate (Crl Side), appearing for the State.

8.The learned Counsel appearing for the revision petitioner has raised the following points:

(i) The complaint itself was preferred after several years in the year 1997, whereas occurrence is alleged to have taken place during the year 1986 - 1987 and there is no explanation for the inordinate delay in preferring the complaint after several years.

(ii) The evidence of PW1 and PW2 are bereft of particulars with regard to the allegations levelled against the petitioner.

(iii) PWs.3,4,5,6,7,8,9,10,12 and 14 are the land owners of Sevugampatti Village and they did not support the case of the prosecution, since PWs,3,4,8,9 and 12 have turned hostile.

(iv) None of the prosecution witnesses deposed that the petitioner dishonestly misappropriated the amount and in the absence of any vital ingredient, the petitioner cannot be convicted under Section 409 IPC.

(v) There is no evidence that the petitioner fabricated any document and hence, the petitioner cannot be convicted under Section 477(A) IPC also.

(vi) The learned Counsel also relied on the decision of the Hon'ble Supreme Court in ***N.K.Illiyas Vs State of Kerala***, reported in ***AIR 2012 SC 3790***, wherein it has been held as follows:

> *"2. We have heard the learned Counsel for the parties and also gone through the records. We are of the opinion that the evidence against the appellant points to an offence of temporary embezzlement only for a few days and no case whatsoever under the Prevention of Corruption Act is thus wholly unwarranted.*
>
> *3.We are further of the opinion that the offences under the IPC alleged against the appellant are so trivial and have caused no harm and are in act no offences in the eye of law and the benefit of Section 95 of Indian Penal Code is thus available to the appellant. Admittedly, a sum of Rs.1839/- had been deposited in the post office before the due date, i.e.,4th March, 1992 and that no loss had been caused to the Department, even if it is assumed that a false entry had been made in the record to show the payment on the 10th February, 1992."*

(vi)By referring the above decision, the learned Counsel for the petitioner submitted that the petitioner remitted the amount and he did not misappropriate any money of the Government and no harm or loss was caused by the petitioner to anybody and therefore, the benefit of Section 95 IPC be extended to the petitioner by setting aside the conviction and sentenced imposed on the petitioner.

9.Mrs.S.Bharathi, learned Government Advocate (Crl Side) appearing for the State submitted that the prosecution has established its case through the witnesses and the documents. PW1 clearly stated in his evidence that as per the direction of the Revenue Divisional Officer, Dindigul and the District Collector, Dindigul, he has lodged the complaint against the petitioner that the petitioner had misappropriated the money collected towards tax from the residents of the village and ExP7 would show that on what date the petitioner had collected the tax and on what date he had remitted the same to the Government and it reveals that the most of the cases, the collected money were remitted belatedly, even after nine months from the date of collection. Insofar as the delay in lodging the complaint is concerned, disciplinary proceedings were initiated against the petitioner in the year 1987 itself and based on the proceedings of the District Collector, Dindigul, during the year 1997, the present complaint was lodged by PW1 on 17.07.1997 and therefore, it cannot be said that there is a delay in lodging the complaint and therefore, the trial Court as well as the appellate Court rightly found the petitioner guilty, convicted and sentenced and therefore, prays for dismissal of this revision case.

10.This Court paid its anxious consideration to the rival submissions made on either side and perused the materials placed on record.

11.The scope of Criminal Revision under Section 397 r/w 401 CrPC is very limited and this Court cannot re-appreciate the evidence, unless and until there is a illegality, perversity or impropriety in the findings of the trial Court and the appellate Court.

12.This Court in Anbarasu Vs Mukanchand Bothra, reported in 2019 (3) MWN (Cr) DCC 1(Mad) held that while exercising the revisional powers under Section 397 r/w 401 CrPC, the Court is required to find out if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum.

13.According to the prosecution the petitioner had collected money from the residents of the village under various heads and remitted the same with a delay of several months and it is an offence of temporary embezzlement and further, to commit such an offence, the petitioner fabricated the records by changing the dates.

14.The main ground raised by the petitioner is that there was an inordinate delay of ten years in lodging the complaint in the year 1997, when the alleged offence is said to have been in the year 1987. The trial Court discussed the references made in the complaint [ExP1] about the charge memos of the Revenue Divisional Officer, Dindigul dated 18.04.1992 and 05.05.1992 and the proceedings of the District Collector, Dindigul, dated 29.04.1997. Therefore, it is clear that the proceedings were initiated in the year 1987 itself and based on the directions of the District Collector, Dindigul, in the year 1997, the present complaint was lodged on 17.07.1997. Therefore, it cannot be stated that there is a delay in initiating action against the petitioner.

15.It is further contended that the FIR reached the Court with a delay. It is seen that the FIR was registered on 07.10.1997 at 10.00am and the same reached the Court on 08.10.1997 at about 10.00am. Within 24 hours from registration, the FIR reached the Court. Therefore, this duration cannot be stated to be a delay.

16.Since some of the witnesses have turned hostile, the entire case of the prosecution cannot be discarded. The trial Court apart from discussing the evidence of the witnesses, also perused and discussed about the Tax receipt book Nos.662201 to 662250 [ExP4] and the particulars about the embezzlement committed by the petitioner [ExP7] and concluded that the petitioner has committed the offence as charged by the prosecution.

17.Though it is contended by the petitioner that the petitioner had remitted the amount to the Government, it is seen that in some categories the amount was remitted even after nine months. If there is a delay of one or two days due to unavoidable circumstances, it can be accepted. Nine months of delay in remitting the amount, when there is no acceptable reason and supporting material for the delayed remittance from the petitioner is not acceptable in the eye of law.

18.The judgment relied on by the petitioner is not applicable to the case on hand, since that case was registered under the Prevention of Corruption Act and in that case the amount was deposited within the due date. But, in this case the charge itself is for delayed remittance and fabrication of records.

19.The grounds raised by the petitioners do not lead to any illegality, perversity or impropriety in the findings of the Court below.

20.In view of the foregoing discussions, this Court is not inclined to interfere with the impugned order passed by the learned Additional District and Sessions Judge, Fast Track Court, Dindigul, in C.A.No.17 of 2008 dated 05.08.2008, confirming the order passed by the learned Judicial Magistrate, Nilakottai, in C.C.No.239 of 2002, dated 19.03.2008 and the same is confirmed and accordingly, this Criminal Revision Case stands dismissed. The trial Court is directed to secure the accused and confine him to prison to undergo the remaining period of imprisonment.

Sd/-

Deputy Registrar (Accounts)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dsk

To

1.The Additional District and Sessions Judge
(Fast Track Court),
Dindigul.

2.The Principal District and Sessions Judge,
Dindigul.

3.The Judicial Magistrate,
Nilakottai, Dindigul.

4.The Chief Judicial Magistrate,
Dindigul.

5.The Inspector of Police,
Pattiveeranpatti Police Station,
Nilakottai,
Dingidul District.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

7.The Section Officer,(2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Crl.R.C(MD)No.1058 of 2008
20.12.2019

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