

**BAIL SLIP**

Kombu Maharaja, Male, aged 35 years, S/o, Thangaraj, Petitioner/Petitioner/Appellant/Accused was released on bail of this Court dated 07.12.2009 made in MP(MD)No.4 of 2009 in CRL RC(MD) No.673 of 2009.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	01.07.2019
Date of Judgment	18.10.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Cr1.RC(MD)No.673 of 2009**

Kombu Maharaja : Petitioner/Appellant/Accused

Vs.

State represented by
CCIW-CID,
Thoothukudi,
Crime No.4 of 2000

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the judgment of the Additional Sessions Judge/Fast Track Court, Thoothukudi, dated 26.06.2007, passed in C.A.No.113 of 2004, confirming the judgment of the Judicial Magistrate No.II, Tirunelveli, passed in C.C.No.39 of 2002, dated 29.03.2004.

For Petitioner : Mr.T.A.Ebenezer

For Respondent : Mr.A.Robinson,
Government Advocate (Cr1.side)

J U D G M E N T

The Criminal Revision is directed against the judgment passed by the Additional Sessions Judge/Fast Track Court, Thoothukudi, dated 26.06.2007, in C.A.No.113 of 2004, confirming the judgment of the Judicial Magistrate No.II, Tirunelveli, passed in C.C.No.39 of 2002, dated 29.03.2004.

2.According to the prosecution, while the revision petitioner/Accused acting as President of Ottapidaram Primary Agricultural Co-operative Bank, on 07.12.198, he has taken the matured Kishan Vikas Pathiram for the value of Rs.62,000/- from the Bank for renewal, but without renewing the same, he committed misappropriation. The Inspector of Police attached to CCWCID, Tuticorin has filed a final report against the accused by examining the witnesses.



3. The trial court, after proper appreciation of the evidence, both oral and documentary, convicted the revision petitioner/Accused and sentenced him to undergo each one year of rigorous imprisonment and imposed a fine of Rs.500/- each, in default to undergo 2 months rigorous imprisonment for the offences under Section 409 and 420 IPC. Aggrieved by the judgment of the trial court, the revision petitioner/Accused preferred appeal before the Additional Sessions Judge/Fast Track Court No.II, Thoothukudi, in C.A.No.113 of 2004, which was dismissed on 26.06.2007. Against which, the revision petitioner/Accused is before this court.

4. Heard both sides and perused the materials available on record.

5. The contentions raised on the side of the revision petitioner/Accused is that there was no legal entrustment on the petitioner, since PW5 in her evidence admitted that the Kisan Vikas Pathram was under her custody and in her cross examination admitted that it is the bounden duty of the Secretary to keep the Kisan Vikas Pathram with her and the same was sustained by the Investigating Officer PW7 and the accused has not cheated and deceived to deliver any of the property and the offence under Section 420 IPC is not made out and Ex.P18 is not a genuine one and the signature of the accused was not sent to the expert opinion and hence, the signature found in Ex.P18 is not proved and hence, there was no valid proof that the accused received Rs.62,000/- from the Post Office and there are discrepancies in the testimony of the prosecution witnesses and prays that the accused is entitled to acquittal.

6. PW6 is the Enquiry Officer appointed to conduct the enquiry against the accused. PW6 deposed that as per Ex.P22, the accused was appointed as President of the said Co-operative Society and as per Ex.P22, the duties and responsibilities, the accused was given power to maintain all the account of the Bank and to manage the bank account and Exs.P30 to P33 and P25 were received by the accused and he put his signature and he has not entered the matured amount in the register and the accused received the Kisan Vikas Pathram and gave Ex.P18 acknowledgement to PW5 and the accused without paying the maturity amount to the concerned persons, he misappropriated it.

7. The learned counsel appearing for the petitioner/accused argued that during the cross examination of PW5, he has stated that he received 4 Kisan Vikas Patram from his predecessor and it is his duty to pay the matured amount or re-invested it and hence, it reveals that the disputed Kisan Vikas Pathram are in the custody of PW5 and hence, the accused has not received the Kisan Vikas Pathram and hence, the offence under Sections 409 and 420 IPC are not made out and prays that the accused/A1 is entitled to acquittal.

8. In this case, PW5 deposed that the accused asked him to give the disputed Kisan Vikas pathiram and after obtaining acknowledgement, he entrusted the disputed Kisan Vikas Pathiram to



the accused, but after the Pathiram matured, the accused failed to pay the matured amount to the concerned parties or reinvested it. The acknowledgement given by the accused for the receipt of the Kisan Vikas Pathiram was marked as Ex.P18.

9. On perusal of Ex.P18, it is seen that the accused received the disputed Vikas Patram. No document was filed to prove that the matured amount was given to the concerned persons and the accused has taken steps to reinvest it.

10. Further, the learned counsel appearing for the accused argued that to prove that the matured amount for the disputed Kisan Vikas Pathiram were received by the accused, no official from the Post Office was examined and hence, it is fatal to the prosecution.

11. In this case, PW6 categorically stated that after obtaining acknowledgement, he had handed over the disputed Kisan Vikas Pathiram to the accused. Hence, from Ex.P8, it reveals that the disputed Kisan Vikas Pathirams are in the custody of the accused. Hence, it is his bounden duty to receive the mature amount. But no document was filed to prove that he paid the matured into the Bank. As per Ex.P18, It is proved that the accused only received the disputed Kisan Vikas Pathiram. Hence, it is his bounden duty to prove that he paid the matured amount to the bank. Hence, it reveals that he had bad intention to cheat and misappropriated the amount.

12. Further, PW5 sent complaint to the Deputy Registrar of Co-operatives in respect of the misappropriation of the matured amount in respect of Exs.P30 to P33. Hence, from the evidence of PW5 and PW6, it reveals that the accused only received the disputed Kisan Vikas Pathiran and failed to pay the matured amount back and thereby misappropriated the above amount and cheated.

13. The learned counsel appearing for the petitioner/Accused argued that the petitioner/Accused is not a public servant and hence, the offences under Sections 406 and 420 IPC are not made out. For that, the learned counsel for the petitioner/A2 submitted a ruling reported in **1990 L.W.Crl.172 (Somasundaram Vs. State rep. By Inspector of Police)**. In that case, it has been held as follows:-

"To find the petitioner guilty of the offence under Section 409 IPC, he must be a public servant, banker, merchant or agent. There is a plethora of authorities that the President of a Cooperative Society will not be a public servant as defined in Section 21 IPC."

The Supreme Court has held that a Cooperative Society is not a statutory body because it is not created by a statute. It is a body created by an act of a group of individuals in accordance with the



provisions of a statute. A Co-operative Society is, therefore, not a Corporation established by or under an Act of the Central or State Legislature. Therefore, on the enunciation of law detailed, the petitioner cannot be deemed to be a public servant. If that be so, it is not possible to affirm his conviction for the offence under Section 409 IPC."

14. In this case, the duties and responsibilities of the petitioner was stated in Ex.P22. The petitioner/Accused was given power to maintain the Current Account, Savings Account and all other accounts. Hence, it reveals that the petitioner/accused was given power to maintain all the accounts and he is responsible for the account. It is not denied on the side of the accused.

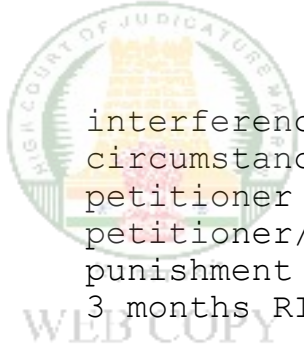
15. At this juncture, it is necessary to refer Sections 409 and 420 IPC, which would run thus:-

"409. Criminal breach of trust by public servant, or by banker, merchant or agent.—whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

16. On coming to the instant case on hand, while the revision petitioner/Accused acting as President of Ottapidaram Primary Agricultural Co-operative Bank, he has taken the matured Kishan Vikas Pathiram for the value of Rs.62,000/- from the Bank for renewal, but without renewing the same and thereby he committed misappropriation.

17. Both the courts below, after proper appreciation of the entire materials available on records, had given a concurrent finding, which according to this court, it does not require any



interference by this court. However, consider the facts and circumstances of the case and also consider the fact that the petitioner is the only breadwinner, the punishment imposed on the petitioner/Accused requires modification and accordingly, the punishment imposed on the revision petitioner/Accused is reduced to 3 months RI.

18.In the result, the criminal revision is **partly allowed**. The punishment imposed on the revision petitioner/Accused for the offences under Sections 409 and 420 IPC is reduced to 3 **months RI for each offence**. In respect of fine amount, the findings of the Courts below are confirmed. The sentences imposed on the revision petitioner/Accused are directed to run concurrently with the sentence imposed in other connected cases viz., CrI.RC(MD)Nos.658 and 659 of 2009. The period of sentence, if any, already undergone by the revision petitioner/Accused shall be given set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To,

1.The Additional Sessions Judge,
Fast Track Court, Thoothukudi.

2.The Judicial Magistrate No.II,
Tirunelveli.

3.CCIW-CID,
Thoothukudi.

Copy to

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

Judgment made in
CrI.RC.(MD)No.673 of 2009
18.10.2019