

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.Nos.1496 and 1498 of 2012

The Periyar Nagar Educational &
Charitable Society, represented
by M.S.Kanakasabai,
Secretary of the Society,
5th Street, Periyar Nagar,
Chennai - 600 082.

... Revision Petitioner
in both revision cases

Vs.

1. K.R.Rengaram

2. The Inspector of Police,
Central Crime Branch,
Egmore,
Chennai - 600 008.

.... Respondents
in both revision cases

Criminal Revision Cases in Crl.R.C.Nos.1496 and 1498 of 2012
filed under Section 397 and 401 Cr.P.C., to set aside the
judgments dated 12.01.2012 in C.A.Nos.30 and 31 of 2009,
respectively, on the file of the IV Fast Track (Sessions) Court,
Chennai, and to confirm the judgment dated 28.01.2009, passed in
C.C.Nos.8359 and 8360 of 1997, respectively, on the file of the
Court of the Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioner: Mr.M.Karthik
for Mr.M.Balasubramanian
in both revision cases

For R1 : Mr.K.V.Shanmuganathan
in both revision cases

For R2 : Mr.R.Surya Prakash
Government Advocate (Crl. Side)
in both revision cases

C O M M O N O R D E R

These Criminal Revision Cases are filed to set aside the
judgments dated 12.01.2012, in C.A.Nos.30 and 31 of 2009,
respectively, on the file of the Fast Track Court No.IV,
Chennai, and to confirm the judgment dated 28.01.2009, passed in
C.C.Nos.8359 and 8360 of 1997, respectively, on the file of the
Court of the Chief Metropolitan Magistrate, Egmore, Chennai.

2.For the sake of convenience, the parties will be referred

Primary, and Matriculation Schools. For all the schools, there was a common Secretariat, in which, Premkumar (A1) was the Accountant and Komalavalli (P.W.2) was a Clerk. Tarabai (A2), Giruba (A3) and P.R.M.Karmalitta (A4) were the Headmistresses of the schools. Rengaram (A5), Kuppusamy (A6), Kasinathan (A7) and Somanathan (A8) were the Treasurer, President, Secretary and Auditor, respectively, of the said Society, which runs these three schools. It is alleged that a sum of Rs.4,46,392.05 for the period from 01.04.1994 to 31.03.1995 and a sum of Rs.10,46,789/- for the period from 01.04.1995 to 18.01.1996 (totally a sum of Rs.14,93,181.05) were collected as fees from the students of the schools and were misappropriated by the accused. On these allegations, a complaint was lodged by Perumal (P.W.1), the Secretary, who succeeded Kasinathan (A7) and the police registered a case in Crime No.225 of 1996 and after completing the investigation, filed a final report in C.C.No.8359 of 1997 (for the period from 01.04.1994 to 31.03.1995 for Rs.4,46,392.05) and in C.C.No.8360 of 1997 (for the period from 01.04.1995 to 18.01.1996 for Rs.10,46,789/-) against the eight accused, before the Court of Chief Metropolitan Magistrate, Egmore, Chennai. At the time of trial, since Tarabai (A2) had absconded, the case against her was split up as C.C.Nos.10071 and 10072 of 1998.

4.The trial Court framed a charge for the offence under Section 408 IPC against Premkumar (A1). A3 to A8 were charged of the offence under Section 406 r/w.109 IPC for abetment. When questioned, the accused pleaded 'not guilty'.

5.To prove the case, the prosecution examined 7 witnesses and marked 29 Exhibits.

6.When the accused were questioned under Section 313 Cr.P.C., they denied the allegations. Rengaram (A5) examined himself as D.W.1. From the side of the accused, Exs.D1 to D8 were marked.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 28.01.2009, in C.C.Nos.8359 and 8360 of 1997, convicted Premkumar (A1), Rengaram (A5), Kuppusamy (A6) and Kasinathan (A7), but acquitted the other accused. The convicted accused were sentenced to various terms of imprisonment and we are now concerned only with the case of Rengaram (A5), who was convicted of the offence under Section 406 r/w. 109 IPC and sentenced as follows :

Case in which convicted	Sentence
C.C.No.8359 of 1997	Rigorous imprisonment for three years and a fine of Rs.25,000/-, in default, to undergo simple imprisonment for three months
C.C.No.8360 of 1997	Rigorous imprisonment for two years without fine
Both sentences were directed to run consecutively.	

9.It may be pertinent to state here that the appellate Court has also acquitted Premkumar (A1), Kuppusamy (A6) and Kasinathan (A7). Challenging the acquittal of Premkumar (A1), the de facto complainant filed a revision case with a delay of 239 days, which was not condoned by this Court. The de facto complainant approached the Supreme Court, but the Special Leave Petition was dismissed. However, the revision case filed by the de facto complainant against the acquittal of Kuppusamy (A6) and Kasinathan (A7) were taken on file, but were also closed on the ground that Kuppusamy (A6) and Kasinathan (A7) died in the meantime. Therefore, we now have only the revision cases filed by the de facto complainant as against the acquittal of Rengaram (A5).

10.Heard learned counsel for the de facto complainant, learned Government Advocate (Crl. Side) and learned counsel for Rengaram (A5).

11.The fulcrum of the prosecution case rests on the evidence of Komalavalli (P.W.2), Punithavelu (P.W.3), and Jegadeesan (P.W.4). Jegadeesan (P.W.4) was the internal Auditor, who was appointed by the Society to investigate into the misappropriation. He (P.W.4) submitted his report (Ex.P24) to the Society quantifying the misappropriation for the two periods at Rs.14,93,181.05.

12.Punithavelu (P.W.3), the Branch Manager of Chennai Central Co-operative Bank where the school and Society were having their account, has marked the statement of accounts to show that the money collected by the schools were not deposited in the Bank.

13.Komalavalli (P.W.2), in her evidence, has stated that she was working as Clerk in the school and was entrusted with the work of collection of schools fees, special fees and tuition fees from the students. She has further stated that, after collecting the amounts, Premkumar (A1) asked her to hand over the same to him and that he would reconcile the amounts. She has further stated that the office bearers of the Society had also instructed her to hand over the amounts to Premkumar (A1).

14.During trial, the prosecution marked 2 Exhibits, viz., Ex.P4 and P5, which are the letters written by Premkumar (A1) to Rengaram (A5) accusing him of misappropriation. The trial Court had based its findings on these materials to convict Rengaram (A5). However, the appellate Court has considered Exs.P4 and P5 in extenso and has held that those letters are not confessional in nature, but are exculpatory in nature, inasmuch as Premkumar (A1) had not confessed to the commission of the offence, but had only alleged that he had collected the amounts on the instructions of Rengaram (A5) from Komalavalli (P.W.2). These letters cannot be used to fasten criminal liability on Rengaram (A5) and at the most, it can be used in terms of Section 21 of the Evidence Act only against its maker, namely, Premkumar (A1), and that too, where the admission made by him in those letters is against his interest.

15.Regarding the evidence of Komalavalli (P.W.2), she initially stated that, on the instructions of the office bearers, she handed over the fees collected to Premkumar (A1).

16.Thus, the evidence on record falls short to sustain the conviction of Rengaram (A5) for abetment. In a revision against acquittal, filed by the de facto complainant, this Court cannot convict the accused, but can only set aside the order of acquittal and remit the matter back to the trial Court for retrial or to the Appellate Court for fresh consideration, as held by the Supreme Court in K.Chinnaswamy Reddy v. State of Andhra Pradesh and another [AIR 1962 SC 1788].

17.However, Rengaram (A5) came forward to give Rs.3,00,000/- (Rupees three lakhs only) to the Society for purchasing peace. Accordingly, he handed over a Demand Draft drawn on State Bank of India bearing No.612472 dated 26.02.2020 for Rs.3,00,000/- in favour of "Periyar Nagar Educational & Charitable Society" to C.Thankamony, the President of the Society, who was present in the Court and identified by the learned counsel for the parties.

18.Mr.M.Karthik and Mr.M.Balasubramanian, learned counsel appearing the petitioner/Society submitted that they would withdraw A.S.No.353 of 2013, which is pending on the file of this Court, as against Rengaram (A5) alone. This submission is recorded.

As a result, these Criminal Revision Cases stand dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court No.IV,
Chennai-1.
2. The Chief Metropolitan Magistrate,
Egmore,
Chennai.
3. The Inspector of Police,
Central Crime Branch,
Egmore, Chennai - 600 008.
4. The Additional Public Prosecutor,
High Court, Madras.

5.The Deputy Registrar|with a direction to send back the original
<https://hcservices.ecourts.gov.in/hcservices/>
(Criminal Section),|records to the respective Courts below,
High Court, Madras.|if received

+1cc to Mr.M.Balasubramanian, Advocate, S.R.No.17162
+1cc to Mr.K.V.Shanmuganathan, Advocate, S.R.No.18063