

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2020

CORAM:

THE HON'BLE Mr. JUSTICE M.NIRMAL KUMAR

CRL.MP.No.4002 of 2020
in
CRL.RC.No.497 of 2020

1. R.Sengodn,
S/o.Ranganathan,
No40, Kamaraj Street,
Senthamarai Nagar, Muthialpet,
Puducherry-3.

2. M.Sridharan
S/o.Manavalan,
No.18, Pillayar Koil Street,
Nallur, Madhagadipet,
Puducherry-605 107.

... Petitioners

Versus

The State Rep. by
The Inspector of Police,
Vigilance & Anti Corruption Unit,
Puducherry.
(Crime No.6/2020)

.. Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 397(1) of Criminal Procedure Code, to suspend the sentence passed by the learned Chief Judicial Magistrate, Puducherry, by its order dated 14.12.2016 which was confirmed by the First Appellate Court in C.A.No.3 of 2017 on the file of the learned II Additional Sessions Court at Puducherry by its order dated 16.03.2020 and release the petitioners on bail.

For Petitioners : Mr.J.Suresh

For Respondent : Mr.D.Bharatha Chakravarthy
Public Prosecutor, Puducherry

ORDER

The petitioners, who are the accused filed this Criminal Miscellaneous Petition to suspend the sentence passed by the learned Chief Judicial Magistrate, Puducherry, made in C.C No.102 of 2006, dated 14.12.2016. The Trial Court convicted the petitioners/accused for the offence under Sections 409, 468, 477(A) r/w 34 IPC and sentenced to undergo Simple imprisonment for six months each and to pay a fine of Rs.500/- each, in default to undergo one month simple imprisonment each for the offence under Section 409 r/w 34 IPC; to

undergo Simple imprisonment for six months each and to pay a fine of Rs.500/- each, in default to undergo one month simple imprisonment each for the offence under Section 468 r/w 34 IPC and to undergo Simple imprisonment for six months each and to pay a fine of Rs.500/- each, in default to undergo one month simple imprisonment each for the offence under Section 477(A) r/w 34 IPC. The Trial Court directed the sentences to run concurrently. There against, the petitioners filed C.A.No.3 of 2017 before the III Additional Sessions Judge, Puducherry and the same was dismissed by judgment dated 16.03.2020 confirming the conviction and sentence imposed by the Trial Court. Against the said judgment, the present revision has been filed before this Court.

2. The case of the prosecution is that the Vigilance and Anti-Corruption Unit of Puducherry has filed the charge sheet against the petitioners, who are Manager and Clerk respectively of Karayanputhur Primary Agricultural Co-Operative Bank Limited, Puducherry and they had misappropriated the funds of the Co-Operative Bank. The amount were not properly credited as remitted by the borrowers. Further, the entire loan was not properly disposed to the members and only a portion of the loan amount was disbursed to the members and the balance was taken away by the petitioners. The Cash certificate was utilized without the knowledge of the holder of the cash certificate and monies have been withdrawn based on the amounts paid by the members and they were not given for credit. The entries in the stock register were corrected by suppressing the true facts of the same and suppressing sale proceeds, the amount has been misappropriated. Thus, the petitioners had manipulated the loan ledger, fixed deposit register, cash certificate deposit and savings deposit registers. Hence, they had committed the offence. PW-5 is the Deputy Registrar of Co-Operative Bank, PW-1 is the Senior Inspector in the Co-Operative Bank, who conducted audit for the year 1994-1995 in the Primary Agricultural Co-Operative Bank Ltd., Karaiyanputhur. At the relevant time, A1 as working as Manager and A2 was working as Clerk. During his audit, the said misappropriation and forgery of documents came to light. PW-43, then Deputy Registrar directed PW-1 to prefer the complaint before the Vigilance and Anti-corruption unit based on the audit report. Along with Ex.P1-complaint, he enclosed Ex.P2 account particulars. Further, he also handed over the account books, re-auditing report Ex.P3 and short term loan register Ex.P4 and corresponding registers. The prosecution, in this case, had examined PW-1 to PW-15 and marked Exs.P1 to P105. The defence had examined DW-1 and DW-2 and marked Ex.D1. The Trial Court, on completion of investigation, had convicted the accused as stated above, which was confirmed by lower Appellate Court.

3. The contention of the petitioners is that they are elder persons, who are having severe health ailments and they have been now arrested and confined in Central Prison, Kalapet, Puducherry. The petitioners submits that in this case, except for the official witness, all the beneficiaries and members of the Society viz., PWs-4 to 42 have not supported the case of the prosecution. None of the witnesses have stated that they have given money to the petitioners, which was not accounted properly and misappropriated by the

petitioners. He would further submit that in this case, DW-1 and DW-2 were examined. DW-1 is the President of the Society in the year 1997-1998 states that the members of the Society directly paid their loan amount to the Society. Auditor obtained letters from them as if they had not availed loan from the Society. DW-2-Assistant Manager of the said Co-Operative Bank elaborately stated about the loan particulars and the payments found in Ex.D1. PWs-1 to 3 had stated that the prosecution had proved the case. PW-1 is the auditor, who had conducted audit, PWs-2 and 3 are the members of the society. Only these two witnesses have stated that they have paid the loan amount to A1, which was not credited into the Bank account. PW-43 is the Deputy Registrar, who had forwarded the Auditor's report and directed PW-1 to lodge the complaint. The entire case reveals around auditor's report, which is not correct. Further, the lower Court has placed reliance upon the statement said to have got before PW-1 that if they admitted the charges during audit, the case could be dropped. This charge has not been proved. When the same was questioned by PW-1, the lower Court adverted that the denial of any such admission by the petitioner was made after 20 years. Only during the trial, the petitioners had opportunity to deny the same with PW-1. Without considering these aspects, the Trial Court had convicted the petitioners only on moral grounds for a period of six months. The petitioners further submitted that it is a known fact that the Co-Operative Bank has governed and run by the President of the Society and the petitioners, being the employees of the societies have to obey the orders of the elected members. In this case, the president of the Society had stated that the petitioners had worked for the welfare of the Society. The finding of the Trial Court is that A1 misappropriated a sum of Rs.3,62,612.35/- and both A1 and A2 misappropriated a sum of Rs.27,055/- is without materials. The lower Appellate Court had not marshalled and appreciated the evidence in its right perspective and merely gone on the findings of the trial court and dismissed the appeal by confirming the findings and conviction of the trial Court.

4.The learned Public Prosecutor (Puducherry) appearing for the respondent submitted that in this case, PW-1 is the auditor, who had conducted audit of the Primary Agricultural Co-Operative Bank, Karaiyanputhur. During his audit, he has found misappropriation and falsification of records by the petitioners. The loan amounts repaid by the members were not properly credited in the relevant Registers. The Bahour Co-operative bank advanced loan to the Karaiyanputhur Co-Operative Society, but the same was not properly accounted from 01.04.1994 to 31.03.1995 and both the accused misappropriated a sum of Rs.3,89,667/-. After PW-1 was conducting his re-audit and the audit report was perused by PW-43, the then Deputy Registrar directed him to prefer complaint before Vigilance and Anti-Corruption unit. Ex.P1 is the complaint, Ex.P2 is action particulars, Ex.P3 is the audit report, Ex.P4 is the term loan register, Ex.P5 is the loan register and therefore, he had examined Ex.P7 to P29, which are the loan documents and relevant registers. Further, in a fertilizer loan, it was found the misappropriation entries and the relevant entries are Ex.P82 to Ex.P86 and some of the loan amount without being disbursed the funds of the Society, were misappropriated. The

entire misappropriation done by A1 and A2 and the same has been found in the Registers and in the relevant entries. PWs-47 and 50 were the Investigating Officers attached to the respondent police. The trial Court, after considering the oral and documentary evidence, had rightly convicted the accused and that the accused have been taken into custody and they are now confined in Central Prison, Kalapet, Puducherry.

5. This Court considers the rival submissions and perused the materials available on record.

6. PWs-1, 42, 43, 44 are the officers of the Society, PWs-47 and 50 are the Investigating Officers. Except PWs-2 and 3, who are the members of the Society, the majority members of the Society i.e., PWs-4 to 44 have not supported the case of the prosecution. There is some discrepancy between the audit report and the registers and documents produced. The amounts have not been repaid to the Society are due from the members of the Society, who are no more and not available. Therefore, this Court finds that there are arguable points in the revision, it would take some time for the revision to be taken up for final disposal and hence, this Court is inclined to suspend the sentence and grant bail to the petitioners till the disposal of the revision.

7.(i) Accordingly, the substantive sentence of imprisonment imposed on the petitioners alone is suspended till the disposal of the appeal and the petitioners/accused are ordered to be enlarged on bail.

(ii) The petitioners are directed to execute personal bond for Rs.10,000/- before the Superintendent of Prison, in which, they are confined now. After the release from prison, the petitioners shall execute a separate bond for a sum of Rs.10,000/- (Rupees ten thousand only) each along with two sureties for like sum before the learned Chief Judicial Magistrate, Puducherry, within 15 days from the date of lifting down of lock down and commencement of regular functioning of Court below.

(iii) the petitioners are directed to appear before the trial Court on the first working day of every English month at 10.30 a.m., after lifting of the lockdown.

8. With the above directions, the Criminal Miscellaneous Petition is ordered.

-sd/-

12/08/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE CHIEF JUDICIAL MAGISTRATE
PUDUCHERRY

2 THE SUPERINTENDENT,
CENTRAL PRISON, KALAPET, PUDUCHERRY

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI
CORRUPTION UNIT PUDUCHERRY.

C.C. to M/S.J.SURESH Advocate on payment of necessary charges

Order
in
CRL MP.4002/2020
in
CRL RC.497/2020
Date :12/08/2020

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RD 18/08/2020

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