THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.8821 of 2020
in
CRL.R.C.No.1254 of 2020

K.Aruljothi ... Petitioner

Vs.

State rep.by
Inspector of Police,
CCIW (Rural), Coimbatore.
Crime No.18 of 2020 ... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 482 of Criminal Procedure Code to suspend the substantive sentence imposed by the learned Judicial Magistrate No.IV, Coimbatore, by a judgment dated 23.12.2014 in C.C.No.102 of 2001 for offence under Section 408 IPC to undergo RI for two years and to pay a fine of Rs.3000/- which was confirmed by the order of the learned IV Additional District and Sessions Judge, Coimbatore in Crl.A.No.11 of 2015 dated 23.06.2020.

For Petitioner : Mr.A.M.Rahamath Ali

For Respondent : Mr.C.Iyyappa Raj
Additional Government Pleader

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the substantive sentence imposed by the learned Judicial Magistrate No.IV, Coimbatore, by a judgment dated 23.12.2014 in C.C.No.102 of 2001 for offence under Section 408 IPC to undergo RI for two years and to pay a fine of Rs.3000/- which was confirmed by the order of the learned IV Additional District and Sessions Judge, Coimbatore in Crl.A.No.11 of 2015 dated 23.06.2020.

2. The petitioner was tried along with other accused in C.C.No.102 of 2001 for the offence under Sections 408 & 477A IPC. On conclusion of trial, the Trial Court convicted the petitioner for the offence under Section 408 and sentenced him to undergo two years Rigorous Imprisonment and pay a fine of Rs.3000/-, in default, to undergo two months simple imprisonment and the other accused/A2 in this case was acquitted by the trial Court. Aggrieved against the conviction, the petitioner had preferred an appeal in C.A.No.11 of 2015 before the learned IV Additional District and Sessions Judge, Coimbatore. The learned Sessions Judge, by judgment dated 23.06.2020, dismissed the appeal confirming the conviction. Against which, the present petition has been filed.

3. The case of the prosecution is that the petitioner was employed as Secretary and the acquitted accused was the President of Thulukkamuthur Primary Agricultural Co-operative Bank. On 30.05.2000, P.W.9, who is the Sub-Registrar of Co-operative Society, conducted surprise check and found that Rs.19,53,774.30/- cash in hand as recorded in the Register/Ex.P10 was not available and only Rs.6,420/- was available. Hence, he prepared a report and sent it to P.W.1/ The Regional Deputy Registrar, which is marked as EX.P1. P.W.1, on receipt of the report, issued an Office Order to conduct an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act which is marked as Ex.P2. Thereafter, from the enquiry report, it was found that in the Society, there was shortage of not only cash but stocks of fertilizer to a value of Rs.13,64,147.86 was not available. Hence, he lodged a complaint on 03.10.2000, which is marked as Ex.P3, he annexed enquiry report. On receipt of the complaint, an F.I.R was registered by P.W.10 in Crime No.18 of 2000, for the offence under Sections 408, 409, 477A r/w 109 IPC, which is marked as Ex.P29. Thereafter, P.W.10 examined P.W.2/a Member of the Society and P.W.3 to P.W.6/the Executive Committee Members of the Society and P.W.7/Assistant Secretary and P.W.8/Accountant and P.W.9/ the Sub-Registrar of the Co-operative Society. Thereafter, on collection of materials, the same was produced before the trial Court. The trial Court examined the witnesses P.W.1 to P.W.10 and marked exhibits as Ex.P1 to Ex.P29. On the side of the defence, D.W.1 was examined and two documents i.e., Ex.D1 and D2 were marked. The trial Court, on considering the materials and evidence, had convicted the petitioner as stated above and the Lower Appellate Court dismissed the appeal, confirming the conviction.

4. The contention of the petitioner is that the petitioner is only a Secretary and the acquitted accused is the President of the Society and the witnesses namely P.W.3 to P.W.6 are the Executive Committee Members and P.W.7 is the Assistant Secretary and P.W.8 is the Accountant. The Society is working under a prescribed procedure and rules. Each of them have been allocated with their responsibilities and no single person can conduct day to day affairs of the Society independently. All the communications and the documents are put to the petitioner through the Assistant

Secretary. As regards the fertilizer accounts, it is for P.W.8, who is the Accountant, who has got joint responsibility. The overrule responsibility is with the President, who was acquitted from all the false charges. The Executive Committee Members namely P.W.3 to P.W.6 admit that the working of the Society is through resolution and a system is followed. Despite the same, the petitioner is made as scape goat. He further submitted that the petitioner was a Secretary and even before the elected members taking over the charge, the petitioner was functioning in the society and an Office Order was issued to the petitioner and he is working as per Office Order. After taking over the charge by the elected members, the functioning of the Society had been completely changed. The President took over charge on 24.03.1999, at that time, he had verified all the documents specifically Ex.P5/Cash in hand, resolution book, cheque book and other documents of the society and accepted that all the documents were proper. Further, prior to the surprise check, an inspection was conducted. At that time, nothing was found. On 30.05.2000, P.W.9 conducted a surprise check and found shortage of cash in the Register, likewise in the fertilizers Register. P.W.8 admits that she is jointly responsible as Accountant for the fertilizer accounts and during that time, she was on medical leave and thereafter, she joined back. The Enquiry Officer given a finding that since P.W.8 was on medical leave, she was not responsible for shortage in the fertilizers, which is contrary to the records and evidence. P.W.9 is the Co-operative Sub-Registrar, who conducted a surprise check and given a report, the same Officer was appointed as Enquiry Officer under Section 81 of the Tamil Nadu Co-operative Societies Act, which amounts to pre-judging a issue, since he had already given a report against the President and the Secretary of the Society. Hence, there is nothing surprising that the enquiry report is also in conformity to the earlier report. Thus, the enquiry was not properly conducted following the principles of natural justice. In this case, the Trial Court found that as per the Office Order, the President is responsible for day to day affairs of the Society, for maintenance of the records. Despite the same, the Trial Court gave a finding that though the President had not properly conducted the affairs of the Society and found that he had no proper supervision and control over the affairs of the Society, acquitted the President. Further, the Lower Court placing heavy reliance on the enquiry report and the statement given, convicted the petitioner. The prosecution had not preferred an appeal against the acquittal of the President of the Society. The petitioner is similarly placed person as that of the acquitted accused. Further, in this case, the liability amount was paid by the President of the Society. Further, he submitted that the Lower Appellate Court had failed to independently assess the evidence and mechanically dismissed the appeal.

5. The learned Additional Public Prosecutor would submit that in this case, P.W.1 is the complainant/Deputy Registrar of the Co-operative Society and he received a complaint from P.W.9/Sub-Registrar of the Co-operative Society, who conducted surprise check on 30.05.2020. During inspection, he found that there is a

huge difference between amounts shown as cash-in-hand in the Register and the actual amount available. Hence, there was a shortage of Rs.19,47,374/-. Thereafter, P.W.1 issued an Office Order and ordered enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, to be conducted by P.W.9, the enquiry was conducted which is marked as Ex.P4. P.W.1 had lodged a complaint to the respondent along with enquiry report and the F.I.R came to be registered by P.W.10, who visited the scene of occurrence, prepared mahzaar and enquired the witnesses namely P.W.2, who is one of the Member of the Society, P.W.3 to P.W.6/the Executive committee Members, P.W.7/ Assistant Secretary and P.W.8/ Accountant of the Society, collected various documents, such as Resolution Book, statements of President of the Society, Assistant Secretary, Accountant. The petitioner had given a statement that he is the responsible for day to day affairs of the Society and also about the shortage of funds and fertilizers. The Daily Register, Stock Register, Cash Register and other documents were received and examined. The petitioner failed to participate in the enquiry, despite service of notice and Ex.P27 and P28 are the copies of the notice. During investigation, the petitioner involvement in forgery was revealed and the report submitted by P.W.9 has elaborated about the involvement of the petitioner. Further, during enquiry, the evidence collected and the statement recorded are in conformity to the enquiry report. All the witnesses and the documents were produced before the trial Court. The Trial Court, on considering the materials and evidence, acquitted the President finding that the petitioner is solely responsible for misappropriation and convicted the petitioner as stated above. The Lower Appellate Court considered the contention of the petitioner and for the specific contention, with regard to P.W.7, finding no reason to interfere with the trial Court judgment, dismissed the appeal.

6. Considering the materials and evidence, it is seen that the Enquiry Officer had conducted Surprise check on 30.05.2000 and gave report to P.W.1. Based on the reports, P.W.1 lodged a complaint to the respondent police. P.W.2 is the Member of the Society, who state about the resolution passed in the Society. P.W.3 to P.W.6 are the Executive Committee Members, who state about the functioning of the Society. P.W.7 is the Assistant Secretary of the Society and P.W.8 is the Accountant . During the enquiry, the petitioner as well as the President, Accountant, Assistant Secretary and others had given statements, which is heavily relied by the Trial Court. These statements are only taken as a corroborative material and cannot be a basis for the conviction. P.W.8/Accountant, gave a statement that she was on medical leave for a short period and after joining the duty, the petitioner continued to look the fertilizer account is not supported with any other materials has been accepted, which is not proper . These aspects have not been properly considered by the trial Court.

7. There is force in the submission made by the petitioner. Further, by recovery from the President of the Society, the lose has been made good. In view of the above, this Court is inclined to suspend the sentence imposed on the petitioner. Accordingly, the petitioner is directed to be enlarged on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.IV, Coimbatore within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court once in three months at 10.30 a.m. till the disposal of the revision.

-sd/-
23/12/2020

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 JUDICIAL MAGISTRATE NO.IV,
COIMBATORE.

2 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE [FOR INFORMATION]

3 THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE,
COIMBATORE

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
CCIW (RURAL)
COIMBATORE.

+1C.C. to M/S. A.M.RAHAMATH ALI Advocate on payment of necessary charges SR NO.8647

Order

in
CRL.MP.NO.8821/2020
in
CRL.RC.NO.1254/2020

Date :23/12/2020

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MK:29/01/2021