BAIL SLIP

The Petitioner/ Appellant/ Accused namely E.Subramanian, S/o.Eswaran, aged about 50 years was released on bail vide order made in MP(MD)No.1 of 2014 in Crl RC(MD)No.416 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 06.11.2019
PRONOUNCED ON : 31.01.2020
CORAM:
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C(MD)No.416 of 2014

E.Subramanian ...Petitioner/Appellant/Accused

Vs.

State through
The Inspector of Police,
C.C.I.W-CID,
Thoothukudi.
[Crime No.2 of 2011] ...Respondent/Respondent/Respondent

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the order of conviction passed in C.A.53 of 2013 dated 09.12.2013, on the file of the I Additional District Sessions Judge, Thoothukudi by confirming the conviction passed by the Judicial Magistrate No.II in C.C.No.12 of 2011 dated 14.06.2013 on the file of the Judicial Magistrate No.II, Tirunelveli.

For Petitioner : Mr.K.R.Laxman
For Respondent : Mr.K.K.Ramakrishnan, Additional Public Prosecutor

ORDER

The Criminal Revision Case has been filed by the petitioner / accused No.1 as against the judgment dated 09.12.2013 passed in C.A.No.53 of 2013 by the I Additional District Sessions Judge, Thoothukudi and the order of conviction and sentence imposed by the learned Judicial Magistrate No.2, Tirunelveli in C.C.No.12 of 2011, dated 14.06.2013 for the commission of offence under Sections 467, 468, 477(A) and 408 IPC.

2.The revision petitioner [A1] was tried for the offence under Sections 467, 468, 471, 477(A) and 408 IPC along with other accused, before the learned Judicial Magistrate No.II, Tirunelveli in CC No.12 of 2011 and the learned Judicial Magistrate by order dated 14.06.2013 found the revision petitioner / A1 guilty for the commission of offence under Sections 467, 468, 471, 477(A) and 408 IPC and convicted and sentenced him to undergo imprisonment for a period of six months with a fine of Rs.1,000/- for each offence, in default to pay the fine amount, one month of simple imprisonment for each offence was also ordered and the other accused was acquitted from the charges.

3.As against the order of conviction and sentence, the petitioner / A1 has preferred an appeal before the I Additional District Sessions Judge, Thoothukudi in C.A.No.53 of 2013 and the same was dismissed by judgment dated 09.12.2013 confirming the order passed by the learned Judicial Magistrate No.II, Tirunelveli. As against the order of conviction imposed by the trial Court as well as the appellate Court, the present revision petition has been filed.

4.The case of the prosecution in brief are as follows:

(i) One E.Subramaniyan, petitioner/A1 was working as an Accountant cum Secretary in TNVXSG 47 Tiruchendur Taluk Co-operative Housing Society and one Thangaraj the accused No.2 was working as Senior Inspector/ Special Officer. During the period from 30.09.2008 to 16.06.2009, one member namely S.Rajakumari has repaid the loan amount of Rs.59,114/-. However, the petitioner has not issued any receipt for remittance and made entries only in the pass book. The petitioner, without necessary resolution of the Society, without getting permission from the authority concerned, has created forged cheques, forged the signature of the members, as if, the Society has paid loan to members as follows: Rs.1,30,065/- to S.Anthonyammal; Rs.1,50,000/- to K.Jansirani; Rs.1,20,000/- to Paulsamraj; Rs.70,000/- to Vasuki; Rs.1,00,000/- to T.Murugesan, thereby the petitioner has not remitted the amount to the tune of Rs.5,93,915.30 with the society and the accused No.2 has aided the petitioner in misappropriating the money of the Society to the tune of Rs.12,18,486.60 and caused loss to the Society.

(ii) On complaints from some of the members that they have applied for loan, but they have not been given loan for a long time, PW1, then Special Officer of the above said Society, has verified the records and the records reveal that the said members have been provided with loan by way of cheques.

(iii) Having felt that some irregularities might have taken place, on 03.08.2009, PW1 requested for an enquiry under Section 81 of the Co-Operative Societies Act through ExP1. Accordingly an enquiry was ordered by proceedings dated 20.08.2009 [ExP2]. Enquiry was conducted and the enquiry report has been submitted to PW2 then Deputy Registrar of Co-Operatives, on 27.05.2010, which is marked as ExP7 and according to the enquiry report, the petitioner / A1 and accused No.2 have misappropriated a sum of Rs.12,18,486.60.

(iv) Based on the enquiry report, PW2 preferred a complaint [ExP8] to the Deputy Superintendent of Police, CCIW, Chennai, which was forwarded to the first respondent Police Station. PW15, then Sub Inspector of Police, CCIW, Thoothukudi received the complaint and registered the same in Crime No.2 of 2011 for the offence under Sections 408, 467, 468, 471, 477(A) r/w 109 IPC, which is marked as ExP61. PW16 then Inspector of Police, CCIW, Thoothukudi, conducted the investigation in this case. He collected the documents and recorded the statements of the witnesses and after completion of the investigation, he has filed a final report before the learned Judicial Magistrate No.II, Tirunelveli on 13.06.2011 as against the petitioner and other accused.

5.On the side of the prosecution 16 witnesses have been examined and 61 documents were marked. The incriminating materials were put to the accused and the same was denied. on the side of the accused, no witness was examined, but, one document was marked.

6.In conclusion of the trial, the trial Court found this petitioner guilty, convicted and sentenced him and acquitted other accused stated supra. As against the order of conviction and sentence, the revision petitioner [A1] filed an appeal before the I Additional District Sessions Judge, Thoothukudi in C.A.No.53 of 2013 and the appeal was dismissed by confirming the order of the trial Court. As against the dismissal, this present criminal revision case has been filed.

7.Heard Mr.K.R.Laxman, learned Counsel for the revision petitioner and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the State.

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

(i) According to the prosecution case, cash balance to the tune of Rs.5,93,915.60 has not been remitted to the Society Account. But, there is no misappropriation in this case. This is a delayed remittance by the Clerk Essakiammal and Balakumar, who have been assigned such duties by way of resolution. There is no role for this revision petitioner in remitting the cash balance.

(ii) It is the prosecution case that Rs.59,114/- paid by one S.Rajakumari was not remitted, no receipt was issued and not entered in ledger book, though it was entered in the pass book. But, PW5 in his cross examination deposed that the said Esakkiammal and Balakumar were entrusted with the duty of maintaining cash. This statement clearly shows that there is no involvement of this petitioner in handling the cash.

(iii) It is stated that loan amount was not disbursed to some of the members of the society [PW10 to PW14], whereas, S.Anthony Ammal [PW10], Jansirani [PW11], Poulsamraj[PW12], Murugesan [PW13] and Vasuki [PW14] have specifically admitted in their cross examination that they have received the loan amount, totalling to Rs.5,70,065/-. The evidence of the Investigating Officer [PW16] also corroborates the same.

(iv) The trial Court and the first appellate Court have not appreciated the evidence of PW4 to PW6, PW10 to PW14 and PW16 properly.

(v) In the documents marked as ExP15 and ExP56, there is no signature of this revision petitioner. Therefore, the petitioner cannot be held responsible for non remittance of the money paid by one Rajakumari.

(vi) When both the Courts below has acquitted the second accused, the order of conviction against the revision petitioner is liable to be set aside.

9.Per contra, the learned Additional Public Prosecutor appearing for the State submitted that a sum of Rs.5,93,915.60, balance cash, was not remitted to the Society Account. A member had settled the entire loan amount of Rs.54,506/-, but it was not credited to the society account and a forged receipt has been given. A sum of Rs.5,70,065/- has been misappropriated by forging the signatures of PW10 to PW14, as if they have received the loan amount. A total amount of Rs.12,18,486.60/- has been misappropriated and the enquiry report ExP7 reveals the same.

10.This Court has paid its best attention and anxious consideration to the rival submissions made and perused the materials placed on record.

11.It is the case of the petitioner that the alleged transactions are relating to the period from 30.09.2008 to 16.06.2009 and even before that on 04.09.2009, the collection and remittance of money has been entrusted to PW6 Balakumar and PW7 Issakiyammal and it is evident from the evidence of the Special Officer PW5. But, according to the PW6 and PW7, despite the resolution passed entrusting the collection and remittance of money to PW6 and PW7, such duties were not entrusted with them and retained with the revision petitioner himself. They have deposed the same before the Enquiry Officer as well as before the trail Court. Further the trial Court has also held that as per ExsP.10,11,13,13 and 14, the petitioner is having authority in maintaining the accounts and the registers relating to deposit and disbursement of money. Therefore, the ground raised by the petitioner in this regard cannot be sustained.

12.Insofar as the cash balance is concerned, as on 16.06.2009, Rs.5,93,915.60 was the cash balance as per ExP49. PW4 has deposed that the petitioner has not handed over the balance cash as on 16.06.2009. When it was enquired by the Special Officer, the petitioner had admitted in ExP34 that is responsible for the cash balance of Rs.5,93,915.60 and on 31.03.2010 he had paid Rs.1,00,000/- and he would pay the remaining amount soon as well as he has admitted the same before the Enquiry Officer in ExP33. Thus the petitioner him self has admitted his guilt in respect of the cash balance of Rs.5,93,915.60. However, the petitioner raised a ground that it is a delayed remittance by the petitioner. When the petitioner himself has admitted his guilt, such a ground cannot be raised at this stage. Therefore, it is clear that the petitioner has committed the offence.

13.The petitioner had misappropriated Rs.54,506/- remitted by one member Rajakumari [PW9]. He issued a receipt [EXP18] for remittance Rs.54,506/- and made entries in her pass book [ExP17]. But there are no entries in the Society's records in respect of the remittance of money and he has misappropriated the said money. This charge is corroborated by the evidence of PW4. The trial Court also came to the conclusion that ExP17 and ExP18 prove the remittance and the petitioner has misappropriated the remitted money. Therefore, the ground raised by the petitioner that it is a delayed remittance by the petitioner and not misappropriation, cannot be acceptable, since there is no remittance by the petitioner at all.

14.By referring the evidence of PW10, PW11, PW12, PW13 and PW14 the learned Counsel for the petitioner submitted that according to PW10, PW11, PW12, PW13 and PW14 they received the loan amount, whereas the prosecution has projected as if, the petitioner/Secretary of the Society availed the loan without their knowledge and misappropriated the loan amount. On verifying whether the trial Court has not appreciated the evidence properly, it is found that PW10, PW11, PW12, PW13 and PW14 clearly stated that they have applied for loan and they have not availed any loan amount, but, the respective cheques given to them by the petitioner, on presentation for collection, have been returned as insufficient money. The above witnesses have specifically stated that they have not signed in any cheque or register in respect of receipt of the loan and the signatures found in the cheques are signed by them. Further, the petitioner himself has admitted before the Enquiry Officer [PW4] that due to some urgency he has presented the cheques for collection through some other persons and obtained the cheque amounts. Further, the Enquiry officer in his report [ExP7] that on verification of the signatures of the above witness found in their loan application with the signatures found in the cheques are different and they are not matching and he has also deposed in the same manner. Therefore, it is clear that the petitioner has forged the signatures of the above witnesses/loanees and obtained the money fraudulently. Though, in some cases, the witnesses have stated that they received part amount from the petitioner as loan, it is to be noted that they have received the money, only after the enquiry under Section 81 of Act was ordered. Thus, it is clear the petitioner has committed the offence as above. Therefore, this ground also cannot be sustained.

15.The trial Court as well as the appellate Court has rightly appreciated the evidence and came to the conclusion that the petitioner has committed the offence as alleged by the prosecution. This Court finds there is no perversity in the concurrent findings of the Courts below and this revision has no merit.

16.In the result, the criminal revision case is dismissed. The judgement dated 09.12.2013 passed in C.A.53 of 2013, by the I Additional District Sessions Judge, Thoothukudi is confirmed. The trial Court is directed to secure the accused and confine him to prison to undergo the remaining period of imprisonment.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.I Additional District Sessions Judge,
Thoothukudi.

2.The Judicial Magistrate No.II,
Tirunelveli.

3.The Chief Judicial Magistrate, Tirunelveli.

4.The Superintendent, Central Prison, Palayamkottai,
Tirunelveli.

5.The Inspector of Police,
C.C.I.W-CID,
Thoothukudi.

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

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

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31.01.2020

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