

**Bail Slip**

Petitioner / Accused namely Bharathidasam, Male, 49 years was released on bail as per order of this Court dated, 12/02/2015 made in MP(MD)No.1 of 2015 in CRL RC(MD)No.54 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.R.C. (MD) .No.54 of 2015

Bharathidasan

...Petitioner / Appellant /
Accused No.1

Vs.

State,
rep. by Inspector of Police,
District Crime Branch,
Thanjavur.
(Crime No.10/1996).

... Respondent / Respondent /
Complainant

Prayer:- Criminal Revision is filed under Sections 397 r/w 401 of Criminal Procedure Code, against the Judgment, dated 21.11.2014 passed by the learned II Additional District and Sessions Judge, Thanjavur in Crl.A.No.12 of 2011, confirming the conviction and sentence imposed by the learned Judicial Magistrate, Thiruvaiyaru in C.C.No.285 of 2002, dated 22.01.2011 and set aside the judgments of the Courts below and acquit the petitioner.

For Petitioner : Mr.M.Karunanithi

For Respondent : Mrs.S.Bharathi
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition has been filed against the Judgment, dated 21.11.2014 passed by the learned II Additional District and Sessions Judge, Thanjavur in Crl.A.No.12 of 2011, confirming the conviction and sentence imposed by the learned

Judicial Magistrate, Thiruvaiyaru in C.C.No.285 of 2002, dated 22.01.2011.

2.The case of the prosecution is that a sum of Rs.1,70,000/- was deposited in Thirupanthuruthi Post Office Savings Bank Account No.927871 by P.W.2, who is an employee of Thiruppanthuruthi Town Panchayat. The said amount was received by the petitioner /A1, who was working as Post Master in the said Post office and endorsement to that effect was made in the pass book on 28.12.1994. But the accused entered only a sum of Rs.70,000/- in the said account and illegally gained Rs.1,00,000/- and cheated the Post Office and a sum of Rs.40,000/- was credited into the S.B.Account of one Nepoliyan, who is the friend of the first accused in Account Number.927760 and he has withdrawn the same by using withdrawal slip, in which, already the signature of the said Nepoliyan was obtained.

3.1 Thereafter, the accused removed the pages of the relative ledger. For the above said act, the second accused assisting the first accused, the petitioner herein, for the mischievous act with common intention. Thereafter, on perusal of the pass book, the difference amount of Rs.1,00,000/- came to light. The same was intimated to the Senior Post Master, who made an oral complaint before P.W.1-Assistant Superintendent of Post Office. Thereafter, an enquiry was conducted by P.W.1 and on enquiry he arrived at a conclusion that a sum of Rs.1,00,000/- was misappropriated by the first accused and for that misappropriation, the second accused assisted him. Hence, he gave a complaint to the District Crime Branch, Thanjavur.

4. On receipt of Ex.P.1 / Complaint from P.W.1, the then Inspector of Police (P.W.12) registered the complaint in Crime No.10 of 1990 and conducted investigation and on his transfer, P.W.13 / Inspector of Police took up the investigation, leading to filing of the charge sheet against the accused for the offences as shown above.

5. On appearance of the accused / petitioner, the provisions of Section 207 Cr.P.C., was complied with and the case was committed for trial in C.C.No.285 of 2002.

6. After trial, the trial Court found guilty of both the accused and convicted the petitioner / A.1 for the offences under Sections 409 and 477 (A) IPC and sentenced him to undergo one year Rigorous Imprisonment and imposed a fine of Rs.500/-, in default to undergo one month Rigorous Imprisonment for the offence under Section 409 IPC and sentenced him to undergo Rigorous Imprisonment for one year for the offence under Section 477(A). Challenging the said conviction and sentence, the petitioner / A.1 has filed an appeal in CrI.A.No.12 of 2011 before the II Additional District and Sessions Judge, Thanjavur, whereby and where under, the Judgment of the trial Court was confirmed. Challenging the same, the present Revision has been filed by the petitioner / first accused.



7. The learned counsel appearing for the petitioner would submit that the alleged occurrence took place on 28.12.1994 and P.W.1 has inspected and found the misappropriation of Rs.1,00,000/- in Account No.927871 on 23.07.1996 and thereafter P.W.1 gave the complaint only on 01.08.1996 and that there is no proper explanation for the inordinate delay in launching the prosecution by P.W.1 before the respondent police. The said account was periodically operated right from 1994 onwards. However, there is no complaint as against the petitioner. However, the trial Court convicted the petitioner for the above said offence. He would further submit that the co-accused/A.2 was acquitted. Therefore, he submitted that the judgments of the Courts below are perverse and accordingly, the same have to be set aside.

8. The learned Government Advocate appearing for the respondent / State would submit that to prove the charge against the accused, they have examined 13 witnesses and 32 documents were marked. P.W.1 is the defacto complainant and P.W.2 is an employee of the Town Panchayat, who has deposed in his evidence that the sum of Rs.1,70,000/- has been given to the petitioner to deposit the same in the Town Panchayat Account No. 927871, but he has deposited only a sum of Rs.70,000/- and the balance sum of Rs.1,00,000/- has been misappropriated by the petitioner /A.1 with the help of the second accused and there is no proper explanation to that effect. Hence, the courts below have rightly convicted the petitioner. Accordingly, he prayed for dismissal of this revision.

9. This Court heard the submissions of the learned counsel appearing for the petitioner and the learned Government Advocate (crl.side) appearing for the respondent and perused the materials available on record.

10. While dealing with the scope of revisional jurisdiction, this Court, in the decision in **S.S.Krishnamurthi Iyer Vs. State** reported in **(1957 SCC OnLine Mad 70 : 1957 MWN (Cri) 115)**, has held as follows:-

The scope of the revisional jurisdiction of this Court in cases arising from concurrent findings of fact by the Courts below has been the subject matter of a large volume of decisions which have been analysed and set out in the following standard commentaries on the Criminal Procedure Code : A.I.R. Commentaries Code of Criminal Procedure Fifth edition 1956 Vol. IV S. 439 Pt. 1, 15, 16; M.L.J. Commentaries on the Code of Criminal Procedure Third edition (1956) P. 1546 to 1548; B.B. Mitra. The Code of Criminal Procedure Twelfth edition (1954) Vol. II P. 1741 etc. S. Ranganadhiyar Code of Criminal Procedure Seventh edition (1954) Part II P. 1688.



The object of revisional jurisdiction is to confer upon superior Criminal Courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice, arising from misconception of law, irregularity of procedure, neglect of proper precautions, or apparent harshness of treatment which has resulted, on the one hand, in some injury to the due maintenance of law and order or, on the other hand, in some undeserved hardship to individuals.

The powers of this Court are limited by the provisions of s. 537 Criminal Procedure Code. But within the said limits, however, this Court has wide jurisdiction which will be exercised in each case according to the view which the Court may take of the requirements of justice. This discretion cannot be crystalised by attempting to provide definite rules of the exercise thereof. But at the same time it is necessary in practice to recognise certain principles of interference so that the whole time of the High Court may not be consumed in applications for revision 1954 Assam 83 - 1954 Cr. L.J. 721; 1954 Madh. B. 8-1954 Cr. L.J. 334; 1951 Him Pra 25 - 1952 Cr. L.J. 258; 1954 Hyd. 129 - 1954 Cr. L.J. 1093 F.B. 1931 Mad 242 - 32 Cr. L.J. 763; 1925 Bom 138; 1931 Cal. 619; 1937 Sind 293; 60 M.L.J. 370 -1931 (AIR) M. 242; 86 L.J. (KB) 28 foil in 8 Pat 235 at 241.

Thus the High Courts have as a matter of practice recognized a rule that ordinarily a finding of fact or an order of acquittal should not be interfered with in revision though there is no doubt about the jurisdiction to interfere in proper cases : 1954-S C 726; 1955 Andhra 59; 1953 Cal. 560; 1953 Kutch 41; 1952 Ajmer 17; 1952 Cal. 494; 1950 All 42; 1945 Mad 145; 1950 Mad 777; 1948 Nag 28; 1944 All 247; 1942 Mad 666; 1942 Mad 473; 1940 Mad 111; 1926 Mad 154.

This is especially so in the case of concurrent findings of facts of the lower courts : 1956 Bhopal 14, 1956 Cr. L.J. 374; 1953 All 315; 1953 Him. Pra. and Bilaspur 27; 1951 Assam 151; 1944 Nag 285; 1942 Mad 668; 1927 M. 397;

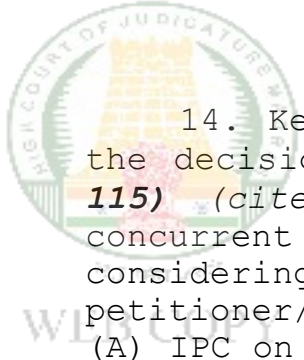


In special and exceptional circumstances this Court is entitled to go into questions of fact and do justice, though the power should be sparingly exercised where an occasion arises for going into the facts of the case, this Court will not interfere as readily as it would if it was a matter of appeal and not revision, the distinction being that in disposing of a criminal appeal the Court will interfere unless it is satisfied as to the guilt of the accused, while in revision the Court will not interfere unless the conscience of the Court is aroused to such an extent as to compel the Court to expressly say that the applicant ought not to have been convicted on the evidence A.I.R. 1951 H.P. 25; A.I.R. 1952 HP and B. 27."

11. Keeping in view the above principles laid down by this Court, this Court put to task to analyze the present case. On perusal of the records, it is seen that P.W.1-Superintendent has made a complaint before the respondent police, after investigation a sum of Rs.1,00,000/- has been misappropriated by the petitioner and that a sum of Rs.40,000/- was credited to the account of Nepolian-P.W.5, the friend of the petitioner. Thereafter, that amount was withdrawn by the petitioner. It is also relevant to note that P.W.2, who is the employee of Town Panchayat in his evidence clearly deposed that the petitioner / A1, who was working as Post Master in the said Post Office, has received the sum of Rs.1,70,000/- and he endorsed everything and given the counter foil to P.W.2.

12. Thereafter, the fraud came to light only after issuing of cheque by Thirupanthuruthi Town Panchayat for a sum of Rs.7,000/- for withdrawal. Therefore, P.W.6, who was working as Cashier in the Post office, entered the difference in amount in the Objection register, which is marked as Ex.P.9. P.W.6 has also clearly narrated in her evidence as to how the misappropriation came to light. On perusal of the entire records, it is found that the prosecution has placed sufficient materials proving that the petitioner had misappropriated the amount of Rs.1,00,000/-. Therefore, the Courts below have rightly held that the prosecution has established the case beyond reasonable doubt, as against the petitioner and accordingly, convicted him. Having gone through the Judgments and careful analysis of the findings rendered by the courts below and other relevant materials, this Court finds that it is very difficult to come to a different conclusion and that the findings of the Courts below is ought to be confirmed.

13. However, the learned counsel for the petitioner/A.1 would submit that the petitioner is now aged about 54 years and he is suffering from old age ailments and hence, he requested this Court to show some leniency and prayed for reduction of sentence.



14. Keeping in view the principles laid down by this Court in the decision reported in **(1957 SCC OnLine Mad 70 : 1957 MWN (Cri) 115)** (cited supra), I am not inclined to interfere with the concurrent findings rendered by the Court below. However, considering the passage of time and the age of the petitioner/accused, the sentence imposed under Sections 409 and 477 (A) IPC on the petitioner is reduced to six months from one year. In all other aspects, the Judgment of the trial Court is confirmed. The sentences are ordered to run concurrently.

15. In the result, the Criminal Revision is dismissed, subject to the modification of the sentence as stated above. It is reported that the petitioner is on bail. The bail bond executed by the petitioner shall stand cancelled and the trial Court is directed to take steps to secure the petitioner/A.1 and send him to jail to undergo the remaining period of sentence, as per this Judgment.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The II Additional District and Sessions Judge,
Thanjavur.
2. The Judicial Magistrate, Thiruvaiyaru, Thanjavur District.
3. Do through The Chief Judicial Magistrate,
Thanjavur at Kumbakonam.
4. The Inspector of Police,
District Crime Branch, Thanjavur.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Record Keeper / Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.

Cr1.R.C. (MD) .No.54 of 2015

17.03.2020