

BAIL SLIP

Chenguttuvan, S/o. Karuppiyah, Male, age about 53 years / 2016 (Sole Accused) was released on bail vide Court Order dated 29.03.2016 made in CRL MP(MD) Nos.1926 and 1928 of 2016 in CRL RC (MD)Nos.117 and 118 of 2016 respectively.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B. PUGALENDHI**

Crl.R.C.(MD)Nos.117 and 118 of 2016

Chengutuvan ... Revision Petitioner/Appellant/Single Accused
in both cases

versus

State Rep. by
The Inspector of Police,
Kandavarayanpatti Police Station,
Sivagangai District.
(Cr. No.46/1999)

... Respondent/Respondent/Complainant
in both cases

Crl.R.C.(MD) No.117 of 2016: Criminal Revision filed under Section 397 r/w. 401 of Cr.P.C. against the Judgment dated 18.02.2016 made in C.A.No.88 of 2010 on the file of the learned Sessions Judge, Fast Track Mahila Court, Sivagangai.

Crl.R.C.(MD) No.118 of 2016: Criminal Revision filed under Section 397 r/w. 401 of Cr.P.C. against the Judgment dated 18.02.2016 made in C.A.No.89 of 2010 on the file of the learned Sessions Judge, Fast Track Mahila Court, Sivagangai.

For Revision Petitioner
in both cases : Mr.N.Mohideen Basha

For Respondent : Mr.A.Robinson,
in both cases Government Advocate (Crl. Side)

COMMON ORDER

These Criminal Revision Cases are filed by the revision petitioner, against the Judgment dated 18.02.2016 made in C.A.Nos.88 and 89 of 2010 respectively, on the file of the learned Sessions Judge, Fast Track Mahila Court, Sivagangai, confirming the Judgment of conviction and sentence imposed on the revision petitioner, dated 29.11.2010, made in C.C.No.214 and 215 of 2002 respectively, on the file of the learned District Munsif cum Judicial Magistrate, Tirupattur.



2. The case of the prosecution is that while the revision petitioner was working as a Branch Officer at Karaiyur Post Office from 11.03.1994 to 09.10.1996, he misappropriated the amount of Rs.82,410/- from the account of 17 postal savings scheme Account Holders by getting their signatures in the withdrawal slip and without making any entries in the Saving Account Register and also caused loss to the Department. Based on the complaint given by the Inspector of Postal Department, Sivagangai, two cases were registered as against the revision petitioner under Sections 408, 420 477(A) and 465 IPC. The respondent Police, after investigation, filed a final report for the offences under Sections 408, 420, 477A and 465 IPC and the same was taken on file in C.C.Nos.214 and 215 of 2002 by the learned District Munsif cum Judicial Magistrate, Tirupattur. Before the trial Court in both the cases, on the side of the prosecution, 20 witnesses were examined as P.W.1 to P.W.20 and 46 documents were marked as Exs.P1 to P46. On the side of the revision petitioner/accused, neither any witness was examined nor document was marked. In conclusion of trial, on 29.11.2010, the trial Court, in both the cases, acquitted the revision petitioner from the charge under Section 465 IPC, but, found him guilty in both the cases, for the offences under Sections 408, 420 and 477(A)IPC, convicted and sentenced him as follows:

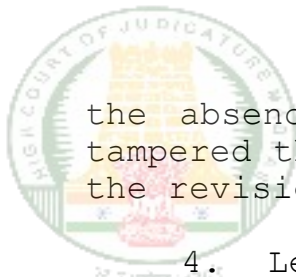
(i) Under Section 408 IPC, sentenced to undergo six months rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo two months rigorous imprisonment;

(ii) Under Section 420 IPC, sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, two months rigorous imprisonment;

(iii) under Section 477 IPC, sentenced to undergo six months rigorous imprisonment and the sentences were ordered to run concurrently.

Aggrieved over the same, the revision petitioner/accused preferred appeals in C.A.Nos.88 and 89 of 2010 before the Mahalir Fast Track Court, Sivagangai. The Appellate Court also, vide Judgment dated 18.02.2016, dismissed both the appeals, confirming the conviction and sentence imposed by the trial Court. Challenging same, the present Criminal Revision Cases are filed by the accused.

3. Mr.N.Mohideen Basha, learned counsel for the revision petitioner submitted that P.W.1, in his chief examination stated that the revision petitioner/accused misappropriated a sum of Rs.54,825/- from the account of 17 Account Holders, for which, he was dismissed from service, however, in his cross examination, he has stated that he has not given any relevant documents to the prosecution. Further, P.W.2, in his cross examination stated that the signature found in the disputed documents was not sent to the handwriting expert opinion. The prosecution has also failed to collect the specimen signature of the accused or any witness to the handwriting expert opinion and also failed take any efforts to verify the signature of the accused with the withdrawal slip. In



the absence of any evidence that the revision petitioner/accused tampered the evidence, it is not proper for the trial Court to found the revision petitioner guilty for the offences.

4. Learned counsel for the revision petitioner/accused further submitted that due to certain enmity, P.W.1 and P.W.2 lodged a false complaint as against the revision petitioner. It is further further submitted that P.W.3 to P.W.18, who are the account holders of postal scheme, in their evidence, admitted that the accused used to fill up the forms in his own handwriting. Moreover, they have not made any specific averments as against the revision petitioner and have not stated that the amount has not been misappropriated by anybody. Therefore, the allegation levelled against the revision petitioner is unsustainable in law.

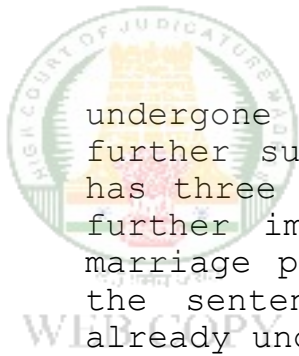
5. Learned counsel for the revision petitioner/accused further submitted that the revision petitioner has also paid the misappropriated amount to the Postal Department along with interest.

6. Mr.Robinson, learned Government Advocate (CrI. Side) submitted that there are sufficient evidence to prove the fraud played by the revision petitioner. Therefore, the allegation levelled against the revision petitioner is sustainable and there is no interference with the findings of the Courts below. However, the learned Government Advocate (CrI. Side) submitted that during the course of trial itself, the revision petitioner repaid a part of misappropriated amount and thereafter, he fully repaid the balance amount along with interest. To this effect, the Investigating Agency has also received a proceedings from the Postal Department, which reads as follows:

"It is intimated that Sri.K.Senguttuvan, Ex.BPM, Karaiyur BO a/w Tiruppattur SO had committed frauds in SB/RD/MSY accounts to the tune of Rs.82,410/- (Rupees eighty two thousand four hundred and ten only). The said Sri.K.Senguttuvan had credited the following amount under UCR towards frauds committed by him at Karaiyur Branch Post Office account with Tiruppattur Sub Post Office.

<i>Date of Credit</i>	<i>Amount (Rs.)</i>
15.10.1996	5,000.00
22.10.1996	12,000.00
05.11.1996	3,000.00
06.11.1996	1,000.00
30.09.2014	62,747.35
Total	83,747.35

7. At this juncture, the learned counsel for the revision petitioner submitted that the revision petitioner has already



undergone imprisonment for nearly 4 ½ months during trial. It is further submitted that the revision petitioner, who lost his job, has three daughters and they are yet to be married, therefore, any further imprisonment to the revision petitioner would affect the marriage prospects of his daughters. Hence, he requested to reduce the sentence imposed on the revision petitioner to the period already undergone by him.

8. In this regard, Mr. Robinson, learned Government Advocate (CrI. Side) has also stated that the revision petitioner has already undergone imprisonment for nearly four months and 10 days.

9. Heard the learned counsel for the revision petitioner and the learned Government Advocate.

10. It appears that though there is an allegation as against the revision petitioner that he has misappropriated a sum of Rs.82,410/-, he has paid the misappropriated amount to the Postal Department along with interest, i.e. Rs.83,747.35p and it could be seen from the proceedings of the Postal Department. Further, the witnesses have not stated anything wrong as against the revision petitioner. Considering the facts and circumstances of the case and also considering the fact that the revision petitioner has three daughters and since they are yet to be married, his further imprisonment would affect the marriage prospects of his daughters, this Court deems it fit to modify the sentence as that of the period already undergone by the revision petitioner.

11. Accordingly, both the Criminal Revision cases are partly allowed. The conviction imposed by the trial Court is confirmed. However, sentence is modified as that of the period already undergone by the revision petitioner.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The learned Sessions Judge,
Fast Track Mahila Court,
Sivagangai.

2. The learned District Munsif cum
Judicial Magistrate,
Tirupattur, Sivagangai District.



3.The Judicial Magistrate, Sivagangai.

4.-do-thro The Chief Judicial Magistrate, Sivagangai.

5.The Inspector of Police, Kandavarayanpatti, Police Station.

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

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

+1 CC to M/s.N. MOHIDEEN BASHA, Advocate (SR-14796[F] dated
24/08/2020)

Crl.R.C.(MD)Nos.117 and 118 of 2016
20.08.2020

SR(CO)
TR(09.11.2020) 5P 10C