



BAIL SLIP

The Petitioner in CRL.RC No.1010 of 2014 and CRL.RC 1013 of 2014 viz., Manthan S/o P.K. Natesan aged 85 years was directed to be released on Bail as per order of this Court dated 30-09-2014 made in MP.No.1/2014 in CRL.RC No.1010 of 2014 and MP.No.1/2014 in CRL.RC No.1013 of 2014.

BAIL SLIP

The Petitioner in CRL.RC No.1011 of 2014 and CRL.RC 1012 of 2014 viz., Shanmugam S/o Duraikannu aged 60 years was directed to be released on Bail as per order of this Court dated 30-09-2014 made in MP.No.1/2014 in CRL.RC No.1011 of 2014 and MP.No.1/2014 in CRL.RC No.1012 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY
Crl.R.C.Nos.1010 to 1013 of 2014

Manthan ... Petitioner
(in Crl.R.C. Nos.1010 & 1013 of 2014)

Shanmugam ... Petitioner
(in Crl.R.C. Nos.1011 & 1012 of 2014)

Versus

The State rep. by
The Inspector of Police,
CCIW, Chengai East. ... Respondent
(Crime No.1 of 2002) (in all cases)

Prayer in all cases: Criminal Revision Petitions filed under Section 397 (1) r/w. 401 of the Criminal Procedure Code against the judgment in Crl.A. Nos.20, 21, 19 & 18 of 2011 on the file of the Court of Sessions Judge, Sessions Court-II, Kancheepuram dated 15.09.2014 confirming conviction in the judgment in C.C. Nos.88 & 87 of 2003 on the file of the Judicial Magistrate-I, Poonamallee dated 04.04.2005.

For Petitioners in all cases : Mr.D.J.Venkatesan



For Respondent in all cases : Mr.L.Baskaran,
Government Advocate
(Crl.side)

COMMON ORDER

WEB COPY

These four Criminal Revisions are connected to each other and therefore, taken up for common disposal.

2.On 25.05.2001, one Khader Moideen, the Special Officer, who was appointed in respect of the Kollachery Industrial Stone Quarry Co-operative Society, lodged a complaint before the CCIW, CID, Chengai East on 25.05.2001.

3.The gist of the complaint is that the 1st accused, namely Shanmugam, who was the Cashier of the Society, the 2nd accused Abdulgani, who was the Secretary of the Society and Manthan, who was the President of the Society, have colluded with each other and misappropriated totally a sum of Rs.4,33,500.70. Upon receipt of the complaint, the Inspector of Police, CCIW, CID, Chengai East registered a case in Crime No.1 of 2002 under Sections 408 IPC r/w. 109 and 34 IPC on 09.04.2012. One Mr.Balakrishnan, the Inspector of Police took up the case for investigation and in the course of the investigation, he found that the allegations related to two Co-operative Societies, namely, Kollachery Harijana Industrial Co-operative Society and Kollachery Industrial Stone Quarry Co-operative Society and therefore, he filed two final reports proposing three accused guilty of charges under Sections 408 r/w. 109 and 34 IPC. In respect of Kollachery Harijana Industrial Co-operative Society, the case was taken on file as C.C. No.87 of 2003 and in respect of Kollachery Industrial Stone Quarry Co-operative Society, the case was taken on file as C.C. No.88 of 2003. By a judgment dated 04.04.2005, the Trial Court convicted all the three accused for the offence under Section 408 r/w.34 I.P.C., imposing rigorous imprisonment of two years and a fine of Rs.1,000/- and in default of payment of fine to undergo six months simple imprisonment and for the offence of 408 r/w.109 I.P.C., two years rigorous imprisonment and fine of Rs.1,000/- and in default, to undergo six months simple imprisonment. All the accused preferred appeals in C.A. Nos.18 and 20 of 2011 on the file of the II Additional Sessions Judge, Kancheepuram and by a judgment dated 15.09.2014, confirmed the findings in respect of all three accused and imposed only a fine on the second accused considering the fact that he has repaid the amounts and as far as the 1st and 3rd accused are concerned, it convicted them for the offence under Section 408 r/w. 34 I.P.C. alone and reduced the imprisonment from two years to six months. As against the said judgment, the 1st accused in the case, has preferred Crl.R.C. No.1011 of 2014. As against the conviction



and sentence imposed in C.C. No.88 of 2003 and C.A. No.20 of 2011, the 3rd accused in the same case has preferred Crl.R.C. No.1010 of 2014. Similarly, the 1st accused has preferred Crl.R.C. No.1012 of 2014, aggrieved by the conviction and sentence imposed in C.C. No.87 of 2003 and C.A. No.19 of 2011 and the 3rd accused in the same case Manthan has preferred Crl.R.C. No.1013 of 2014.

A. CC No. 87 of 2003 :

4.As far as C.C. No.87 of 2003 is concerned, since the accused had denied the charges and stood trial, the prosecution examined one Somasundaram, Special Registrar, Kancheepuram as P.W.1, who deposed the factum regarding the complaint of the Special Officer to the Superintendent of Police, one Chellakavi, Special Registrar, Kancheepuram as P.W.2, who deposed about the conduct of enquiry, one Kadar Moideen, the Special Officer as P.W.3, who deposed about the forwarding of complaint, one V.Udhayakumar, Enquiry Officer as P.W.4, who submitted the 81 enquiry report and one Tamilarasi as P.W.5, who deposed evidence regarding the registration of F.I.R. and one Balakrishnan as P.W.6, the Sub Inspector and the Investigating Officer in the case, who filed charge sheet against the accused persons. On behalf of the prosecution, Exs.P1 to P43 were marked.

5.Upon questioning with reference to the evidence let in against the accused and the incriminating circumstances, all the accused denied the same as false evidence. No evidence was let in on behalf of the defence.

6.Under these circumstances, the Trial Court, proceeded to hear the arguments of the learned Assistant Public Prosecutor on behalf of the prosecution and the learned counsel for the accused and by the judgment dated 04.04.2005, convicted the first and second accused for the offence under Section 408 r/w. 34 I.P.C. and the third accused the offence under section 408 r/w. 109 I.P.C. and sentenced them as aforesaid. Aggrieved by the same, all the accused preferred separate appeals. and after appraising the evidence on record, the appellate court, in respect of accused Nos.1 and 3, confirmed the conviction, however, reduced the imprisonment to six months from that of two years. Aggrieved by the same, accused Nos.1 and 3 have preferred the revision cases as mentioned above before this Court.

7.Mr.D.J.Venkatesan, the learned counsel for the accused/petitioners would submit that there are several flaws in the 81 enquiry report and without conducting any investigation whatsoever, by merely relying upon the evidence of Co-operative Society's officials inquiry alone, the Investigating Officer had conducted tabletop investigation and therefore, the entire



findings of the Trial Court as well as the First Appellate Court are liable to be set aside.

8. On the other hand, Mr. C. Baskaran, learned Government Advocate (Crl. side) appearing on behalf of the prosecution submitted that in these cases, apart from the Section - 81 inquiry report, the relevant documents evidencing the misappropriation of the amounts, were produced before the Trial Court as Exs. P1 to P.43 and the prosecution has proved the offence beyond any doubt. As a matter of fact, the second petitioner had also paid the amounts misappropriated by them and which would also let in further credence to the prosecution case and therefore, he would submit that these are not the cases for an interference by exercise of revisional jurisdiction.

9. I have considered the rival submissions made on behalf of both sides. As rightly pointed out by the learned Government Advocate, these are the cases, which are borne out of records and the relevant documentary evidences were produced before the Trial Court and the Courts below have considered the same in detail and have come to the conclusion that the petitioners have misappropriated the amount. In that view of the matter, I am not inclined to interfere with the findings of the guilt by the Trial Court as well as the Lower Appellate Court.

B. CC. No. 88 of 2003:

10. As far as C.C. No. 88 of 2003 is concerned, since the accused had denied the charges and stood trial, the prosecution examined one Somasundaram, Special Registrar, Kancheepuram as P.W.1, who deposed the factum regarding the complaint of the Special Officer to the Superintendent of Police, one Chellakavi, Special Registrar, Kancheepuram as P.W.2, who deposed about the conduct of enquiry, one Kadar Moideen, the Special Officer as P.W.3, who deposed about the forwarding of complaint, one V. Udhayakumar, Enquiry Officer as P.W.4, who submitted the 81 enquiry report and one Tamilarasi as P.W.5, who deposed evidence regarding the registration of F.I.R. and one Balakrishnan as P.W.6, the Sub Inspector and the Investigating Officer in the case, who filed charge sheet against the accused persons. On behalf of the prosecution, Exs. P1 to P43 were marked.

11. Upon questioning with reference to the evidence let in against the accused and the incriminating circumstances, all the accused denied the same as false evidence. No evidence was let in on behalf of the defence.

12. Under these circumstances, the Trial Court, proceeded to hear the arguments of the learned Assistant Public Prosecutor on behalf of the prosecution and the learned counsel for the



accused and by the judgment dated 04.04.2005, convicted the petitioners for the offence under Section 408 r/w. 34 I.P.C. and also the offence of 408 r/w. 109 I.P.C. and sentenced them as aforesaid. Aggrieved by the same, all the accused preferred separate appeals and after appraising the evidence on record, the Appellate Court, in respect of accused Nos.1 and 3, confirmed the conviction, however, reduced the imprisonment to six months from that of two years. Aggrieved by the same, accused Nos.1 and 3 have preferred the revision cases as mentioned above before this Court.

13.Mr.D.J.Venkatesan, the learned counsel for the accused/petitioners would submit that there are several flaws in the 81 enquiry report and without conducting any investigation whatsoever, by merely relying upon the evidence of Co-operative Society's officials inquiry alone, the Investigating Officer had conducted tabletop investigation and therefore, the entire findings of the Trial Court as well as the First Appellate Court are liable to be set aside.

14.On the other hand, Mr.C.Baskaran, learned Government Advocate (Crl. side) appearing on behalf of the prosecution submitted that in these cases, apart from the Section - 81 inquiry report, the relevant documents evidencing the misappropriation of the amounts, were produced before the Trial Court as Exs.P1 to P.43 and the prosecution has proved the offence beyond any doubt. As a matter of fact, the second petitioner had also paid the amounts misappropriated by them and which would also let in further credence to the prosecution case and therefore, he would submit that these are not the cases for an interference by exercise of revisional jurisdiction.

15.I have considered the rival submissions made on behalf of both sides. As rightly pointed out by the learned Government Advocate, these are the cases, which are borne out of records and the relevant documentary evidences were produced before the Trial Court and the Courts below have considered the same in detail and have come to the conclusion that the petitioners have misappropriated the amount. In that view of the matter, I am not inclined to interfere with the findings of the guilt by the Trial Court as well as the Lower Appellate Court.

C. On the sentence in both CC Nos. 87 & 88 of 2003 :

16.But, however, considering the fact that the 1st accused is presently, aged 68 years and the 3rd accused is presently aged 91 years and are in a physically fragile condition, considering the fact that the offences took place in the year 2001, considering the efflux of time, considering the fact that a sum of Rs.1,00,000/- was repaid on 16.06.2001, a sum of Rs.33,557/-



was repaid on 21.06.2001, a sum of Rs.46,650/- was repaid on 26.06.2001, a sum of Rs.55,000/- was repaid on 03.07.2001 and considering the fact that both the accused were under incarceration for a total period of 16 days, pending the Trial, I am inclined to modify the sentence and imprisonment in both Calender cases, that is, in all the four Revision Petitions, by reducing it from the period of six months that of the period already undergone by the petitioners/accused 1 & 3, while the fine amounts remain the same.

17.All the four Criminal Revision Cases are partly allowed as indicated above.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vga

To

1. The Sessions Judge, Sessions Court-II,
Kancheepuram.
2. The Judicial Magistrate-I, Poonamallee.
3. The Public Prosecutor, High Court, Madras.
4. The Chief Judicial Magistrate,
Thiruvallur District.
5. The Inspector of Police,
CCIW, Chengai East
6. The Superintendent,
Central prison, Vellore.

7.Copy to

The Section Officer,
Criminal Section, (Records)
High Court, Madras-104.

Cr1.R.C.Nos.1010 to 1013 of 2014

PM(CO)
CT 10/01/2022