



BAIL SLIP

Mrs.V.Rajakumari W/o.Kumaresan accused in C.C.No.251 of 2007 on the file of Judicial Magistrate at Polur, Tiruvannamalai District was enlarged on bail by this High Court order dated 28.03.2017 in CrI.M.P.No.4611 of 2017 in CrI.R.C.No.522 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2021

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

CrI.R.C.No.522 of 2017

V.Rajakumari

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
Chetpet Police Station,
Thiruvannamalai District.

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to set aside the order dated 03.01.2017 in C.A.No.3 of 2009 passed by the Learned Principal District and Sessions Judge at Thiruvannamalai, confirming the order of conviction and sentence dated 28.04.2009 passed as against the petitioner by the Learned Judicial Magistrate, Polur, Thiruvannamalai District in C.C.No.251 of 2007.

For Petitioner	:	Mr.S.Shanmuga Velayutham Senior Advocate for M/s.S.Anil Sandeep
For Respondent	:	Mr.A.Gopinath Government Advocate (CrI.Side)

O R D E R

This Criminal Revision case has been preferred challenging the judgment of the learned Sessions Judge, Tiruvannamalai dated 03.01.2017 made in C.A.No.3 of 2009 confirming the judgment of the learned Judicial Magistrate, Polur dated 28.04.2009 in C.C.No.251 of 2007.

2. Short facts of the prosecution case is as under:

The accused was working as an Assistant Postmaster at Nambodu branch post office; she was the custodian of the entire cash at the post office;



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in an audit conducted at the post office, it was found that the accused had misappropriated a sum of Rs.6,900/-; the said misappropriation was found on 08.10.2002 when PW2/the then Inspector of Posts (PW2) inspected the Nambedu branch post office.

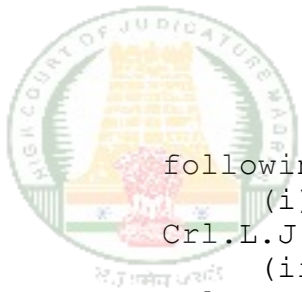
3. On the complaint given by PW1/Karunakaran, Inspector of Post office, PW10/Venkatesan, Inspector of Police, Thimiri police station has given a CSR.No.119 of 2004 and made a formal enquiry. Thereafter, the case was registered in Crime No.26 of 2007 under Section 409 IPC and he prepared the FIR (Ex.P2). After taking the case for investigation, he went to the place of occurrence, recovered the relevant registers and enquired the witnesses. PW11/Arunachalam, Inspector of police, who succeeded PW10 had continued the investigation. After completing the investigation, he filed the charge sheet against the accused on 30.09.2007 under Section 409 IPC. After the case was taken on file and after complying the legal mandates, the learned trial Judge framed the charges against the accused under Section 409 IPC and questioned him. Since the accused denied the charges and claimed to be tried, the trial was conducted.

4. During the course of trial, on the side of the prosecution 11 witnesses were examined as PW1 to PW11, 18 documents were marked as Exs.P1 to P18. On the side of the defence, no witness was examined and no document was marked.

5. After completing the trial and on considering the materials available on record, the learned trial Judge found the accused guilty for the offence under Section 409 IPC and convicted and sentenced him to undergo three months Simple Imprisonment. The appeal filed by the accused before the learned Sessions Judge, Tiruvannamalai in C.A.No.3 of 2009 was also dismissed by confirming the judgment of the trial Court. Aggrieved over that, the present revision has been filed.

6. Heard the learned counsel for the revision petitioner and the learned Government Advocate (Cr1. Side) appearing for the respondent and perused the entire materials available on record.

7. The learned counsel for the revision petitioner/accused submitted that the accused was convicted solely on the basis of her alleged confession given to PW2 and PW4; the learned Appellate Judge had failed to appreciate the weakness of the alleged confession; the person to whom the confession is said to have been given was the enquiry officer and he could have influence on the accused. It is further submitted by the learned counsel for the revision petitioner that unless an extra judicial confession is found to be voluntary and without any coercion that cannot be accepted and the accused cannot be convicted on the basis of the said confession. In support of his contentions, he cited the



following decisions:-

(i) Ismail Ibrahim Sayed Vs. State reported in 1975 Crl.L.J 1335

(ii) Jadumani Khanda Vs. State reported in 1993 Crl.L.J.2701

(iii) Gopal Sah Vs. State of Bihar reported in (2008) 17 SCC 128

8. The learned Government Advocate (Crl. Side) appearing for the respondent submitted that the confession given by the petitioner/accused is an extra-judicial confession and it was given voluntarily. He further submitted that if the confession itself is found to be valid and trustworthy and it does not require any corroboration and the accused can be convicted on the basis of the said confession; the records produced before the Court also prove the criminal act of the petitioner/accused and hence this revision should be dismissed.

9. Point for consideration:

Whether the conviction and sentence of the first accused for the offence under Section 409 IPC by the learned Sessions Judge based on the materials available on record is fair and proper?

10. On perusal of the records, it is seen that one vital piece of evidence, which was instrumental for the decision of this case is the alleged extra judicial confession given by the accused to PW2. It is seen from the evidence of PW2 that the petitioner/accused has given confessions on three different dates to him and the said confessions have been marked as Exs.P7, P9 and P11. The allegation against the petitioner/accused is that by making use of her official position and taking advantage of her custody over the registers pertaining to the recurring deposits of the post office, she had misappropriated a sum of Rs.6,900/- on various dates. It is further alleged that by admitting her guilt, the petitioner/accused has repaid the said amount of Rs.6,900/-.

11. The learned Government Advocate (Crl.side) for the respondent/State relied on the judgment of the Hon'ble Supreme Court in the case of State of Rajasthan Vs. Raja Ram reported in (2003) 8 SCC 180 in support of his contention that extra-judicial confession if found credible, it should be accepted.

12. Yet another judgment in Gura Singh Vs. State of Rajasthan reported in (2001) 2 SCC 205, wherein the Hon'ble Supreme Court has held that only if the extra judicial confession is true and voluntary, it can be relied upon for convicting the accused. However, it is observed that despite inherent weakness in extra judicial confession as an item of evidence, it cannot be ignored. The relevant portion is extracted as below:-



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"6.It is settled position of law that extra-judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [1954 SCR 1098], this Court again in Maghar Singh v. State of Punjab [AIR 1975 SC 1320] held that the evidence in the form of extra-judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In Narayan Singh v. State of M.P. [AIR 1985 SC 1678] this Court cautioned that it is not open to the court trying the criminal case to start with presumption that extra judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extra-judicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. In Kishore Chand v. State of H.P. [AIR 1990 SC 2140] this Court held that an unambiguous extra judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The Court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinised. To the same effect is the judgment



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in Baldev Raj v. State of Haryana [AIR 1991 SC 37]. After referring to the judgment in Piara Singh v. State of Punjab [AIR 1977 SC 2274] this Court in Madan Gopal Kakkad v. Naval Dubey & Anr. [JT 1992 (3) SC 270] held that the extra judicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration."

13. It is to be noted that PW2 to whom the alleged confessions (Exs.P7, P9 and P11) were given, is the enquiry officer, who had conducted the enquiry on these allegations. Hence the petitioner/accused would have had fear and insecurity towards PW2. It is seen from the evidence of PW3 that when PW2 enquired the accused on 18.10.2002, she had given a statement and he had affixed his signature under the same. But unfortunately, the alleged confession dated 18.10.2002 was not marked as a document before the Court.

14. However, it is submitted by the learned counsel for the petitioner/accused that in the case on hand, the confession alleged to have been given by the accused does not meet the parameters set by the Courts to accept the same and act upon it. He has further submitted that PW2 being the superior officer, the accused would not be in a free state of mind to give a confession to him. At a time when the enquiry was made and the sword was hanging on her head, with a fond of getting rid of further action, she could have given the statements. Hence, it cannot be stated that the elements of voluntariness and freeness are present in the confessions said to have been given by the accused to her officer.

15. The Hon'ble Supreme Court held in Munna Kumar Upadhyaya alias Munna Upadhyaya Vs. State of A.P. [2012 SCC CR1.L.J.3068], as under:-

"42. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it."

16. If the extra-judicial confession is found to have been obtained from a subordinate staff, by her officer, the inherent threat cannot be ruled out. No doubt the pending enquiry proceedings against the accused could have affected her and she would have thought that the statement before her Enquiry Officer could be the best way out to her. It is



appropriate to refer the judgement held in Satbir Singh and another etc., Vs. State of Punjab [AIR 1977 SC 1294] in this context. And it reads as under:-

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"27. In deciding whether a particular confession attracts the frown of S.24 of the Evidence Act, the question has to be considered from the point of view of the confessing accused as to how the inducement, threat or promise proceeding from a person in authority would operate in his mind.

28. the evidence of this witness, we are unable to hold that the confessions made by the accused before Mr.Kapur on July 19, 1970, were free from the taint of infirmity within the mischief of S.24 of the Evidence Act. We are, therefore, clearly of opinion that the extra-judicial confessions by the two accused Shiv Narain and Harbhajan Singh have to be completely excluded from consideration being hit by S.24 of the Evidence Act."

17. Canvassing the same point, the learned counsel for the petitioner cited the decision of the Delhi High Court in the case of Anil Kumar Vs. State reported in 2010 CRL.L.J. 1806, wherein it has observed as under:-

"23. Deposition by witnesses cannot be treated as mathematical formula and broken into sub-components i.e., as in Algebra, complex equations for resolution thereof, being broken into linear equations. We agree with the submission made by the learned counsel for the appellant that it appears that the appellant was made to confess to the crime by the Vice-Principal under threat of being handed over to the police. The words "proceeding from a person in authority" in Section 24 of the Evidence Act are broad enough to include any person having dominion over the accused. A Vice-Principal of a school would be a person in authority vis-a-vis student. We thus exclude the extra judicial confession made by the appellant. But, the deposition of the Vice-Principal of the school that when the appellant was brought before him, he was perplexed and that he became more perplexed when he told him that the police would be summoned is admissible in evidence pertaining to the conduct of the accused; admissibility being by virtue of Section 8 of the Evidence Act."

18. In totality, the extra judicial confession is not a strong piece of evidence. Before convicting an accused based on the extra judicial confession, the Court should exercise



utmost caution to find out whether the confession was given out of inducement, threat or any other anxiety of getting out of the legal proceedings. Admittedly, in the official hierarchy between PW2 and the accused, PW2 stood higher and also happened to be the Enquiry Officer. Any Government servant like the petitioner/accused would have felt the fear and compulsion for giving statement before the Superior authority. Unless it is proved before the Court that despite PW2 stood as a superior officer, she did not suffer from fear or anxiety or she was placed under no compelling circumstances, the accused cannot be convicted solely on the basis of the confession.

19. It is also shown that except the inspection report, no other complaint has been received from any depositor that the petitioner/accused had misappropriated the amount deposited in the post office and because of that the depositors were not able to realise the benefits of their deposit in the post office. The prosecution has not even established before the Court that the manner in which the petitioner/accused had misappropriated the amount. Just because the accused reimbursed the loss, it cannot be presumed that she had committed misappropriation. The Courts below ought to have appreciated the validity of the extra judicial confession in a right perspective before relying on it. Since the petitioner/accused was convicted on the basis of the extra-judicial confession which is not proved to be free and voluntary, I feel that the judgment of the Court below warrants interference.

20. In the result, this Criminal Revision is allowed and the judgment of the learned Principal District and Sessions Judge, Thiruvannamalai dated 03.01.2017 made in C.A.No.3 of 2009 is hereby set aside. The petitioner/accused is acquitted from all charges. Fine amount, if any, paid shall be refunded. Bail bond, if any executed shall be cancelled.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

kmi

To

1.The Principal District and Sessions Judge,
Thiruvannamalai.

2.The Judicial Magistrate,
Polur, Thiruvannamalai District.



3.The Chief Judicial Magistrate,
Tiruvannamalai (For information)

4.The Inspector of Police,
Chetpet Police Station,
Thiruvannamalai District.

5.The Public Prosecutor,
High Court of Madras,
Chennai-600 104.

+2ccs to Mr.S.Anil Sandeep, Advocate SR. No.64551

Cr1.R.C.No.522 of 2017

SS (CO)
PR (01/03/2022)