



BAIL SLIP

The Petitioner/Accused Viz., R.Murugesan, S/o.Ramasamy was directed to be released on bail as per Order of this Court dated 04.04.2017 in Crl.M.P.Nos.4703 & 4704 of 2017 in Crl.R.C.No.530 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CRL.R.C.NO.530 OF 2017

R.Murugesan

... Petitioner/
Appellant/Accused

Vs

The State represented by
Inspector of Police,
CCIW CID, Tiruvannamalai.

... Respondent/
Respondent/Respondent

PRAYER: This Criminal Revision Case is filed under Section 397 r/w.401 Cr.P.C., praying to set aside the judgment dated 16.02.2017 passed by the I Additional District and Sessions Court, Vellore made in C.A.No.163 of 2011, confirming the judgment dated 20.07.2011 passed by the learned Judicial Magistrate II, Vellore made in C.C.No.23 of 2007, wherein, the petitioner was convicted and sentenced to undergo one year Rigorous Imprisonment and pay a fine of Rs.1,000/-, and in default to undergo Simple Imprisonment for one month for each of the offence under Sections 408 and 477(A) of IPC and further ordered that both the sentences shall run concurrently.

For Petitioner : Mr.S.Venkataraman

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)



O R D E R

This Criminal Revision Case has been filed by the petitioner/accused challenging the judgment passed by the learned I Additional District and Sessions Judge, in CrI.A.No.163 of 2011 dated 16.02.2017, confirming the Judgment passed by the learned Judicial Magistrate-II, Vellore, in C.C.No.23 of 2007 dated 20.07.2011, wherein, the petitioner was convicted and sentenced to undergo one year Rigorous Imprisonment and imposed to pay a fine of Rs.1,000/-, and in default to undergo Simple Imprisonment for one month for each of the offences under Sections 408 and 477-A IPC and both the sentences were ordered to run concurrently.

2. The case of the prosecution is that the petitioner was appointed as Secretary in Chengam Agricultural Producers Co-operative Marketing Society and functioned as the Secretary from 01.04.2001 to 30.01.2004. PW1-Mr.Pandurangan, Deputy Registrar of Co-operative Societies, Tiruvannamalai, had passed an order under Section 81 of the Tamil Nadu Co-operative Societies Act 1983, and nominated PW6-Mr.Banu, to conduct enquiry relating in connection with certain irregularities in the Chengam Agricultural Products and Marketing Co-operative Society vide Ex.P1 proceedings dated 01.03.2004 and the enquiry period was extended through Ex.P2 proceedings. PW6 conducted enquiry and submitted Ex.P43 report to the Deputy Registrar. PW1 perused the report and preferred EX.P3 complaint to S.P.CCIW Wing, Chennai. Then it was assigned to D.S.P.CCIW Wing, Villupuram and then forwarded to CCIW Wing of Tiruvannamalai for investigation. On receiving the complaint, PW7, Inspector of Police(CCIW) registered a case in Ex.P44 (FIR) and PW8, another Inspector of Police conducted the investigation and recorded the statement of witnesses, including PWs.2 to 5 and seized the records from the Society and filed the charge sheet against this petitioner and two others for the offences under Sections 408 and 477(A) IPC.

3. After the case was taken on file and complying with all the legal mandates, the petitioner/accused was questioned. Since the petitioner/accused pleaded innocence and claimed to be tries, the trial was conducted.

4. During the course of trial, on the side of the prosecution, 8 witnesses have been examined as PW1 to PW8 and 44 documents were marked as Exhibits P1 to P44. PW2 and PW5 deposed that they have availed loan by pledging their paddy and they have repaid the loan amount and released the paddy bags to them. The appellant entered the loan repayment in loan ledger, but not entered in the Day Book and this petitioner has misappropriated the society amount, and when the 2nd accused not being the member



of the society, the petitioner/1st accused entered in admission register as if the 2nd accused was member and fabricated the records as if rice were purchased from him on 30.12.2002 for Rs.12,262.50p, on 15.02.2002 for Rs.30,750/-, on 19.02.2002 for Rs.60,325/- on 14.05.2002 for Rs.55,000/- and on 18.05.2002 for Rs.80,000/- and issued cheque in favour of 2nd accused and encashed them through current account and this petitioner misappropriated society fund along with 2nd accused, and without purchasing rice from Asimkhan, created record as if rice purchased for Rs.1,34,500/- and send it to Salem and created false lorry bill for RS.2,500/- and misappropriated RS.1,34,500/- and from 10.04.2001 to 29.03.2002 this petitioner made false amount entry in credit and debit accounts and misappropriated a sum of Rs.2783.35 p. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating materials available in the evidence, he denied the same. On the side of the defence, no witness was examined and no documents were marked.

5. After conclusion of the trial and considering the materials available on record, the trial Court has found the accused guilty of the offence under Sections 408 and 477-A of IPC and convicted and sentenced as follows:

Rank	Offence under Sections	Punishment imposed on the accused
A1	408 IPC	To undergo One Year Rigorous Imprisonment and to pay a fine of RS.1000/-. In default to undergo Simple Imprisonment for one month.
A1	477-A IPC	To undergo One Year Rigorous Imprisonment and to pay a fine of RS.1000/-. In default to undergo Simple Imprisonment for one month.

6. Aggrieved by the same, the accused had preferred an appeal before the learned I Additional District and Sessions Judge, Vellore in Crl.A.No.163 of 2011, dated 16.02.2017 and the said appeal was dismissed by confirming the judgment passed by the learned trial Judge. Aggrieved by that, the accused has preferred this Revision Case before this Court.

7. Heard the learned counsel for the petitioner and the learned Government Advocate(Crl.Side) appearing for the respondent and perused the materials available on record.



8. During the course of arguments, it is fairly conceded by the learned counsel for the petitioner that the only indulgence he expects from the Court is to show leniency in the matter of punishment. Considering the fact that the petitioner has paid the entire sum of Rs.21,32,833/- which is found to be the total misappropriated sum in all the four cases along with interest. In fact, the total misappropriated sum in all four cases is Rs.8,82,557.15 without interest.

9. During recovery proceedings of the misappropriated money, the property belonging to the wife of the petitioner/accused had been attached and brought to auction proceeding by the Registrar of Co-operative Societies. Mrs.Chandra Bai, wife of the accused had paid whole of the misappropriated money along with interest before the auction was conducted and released the attachment. The proceedings to that effect has been passed by the Sub-Registrar of Co-operative Societies on 22.02.2020 and the same has been produced before this Court for perusal.

10. The genuineness of the said proceedings is not disputed by the prosecution. The accused has been convicted and sentenced to undergo one year Rigorous Imprisonment and was also imposed with a fine of Rs.1000/-. It has been ordered to undergo sentences for the offences under Sections 408 and 477-A IPC concurrently. The fine amount has already been paid.

11. It is submitted by the learned counsel for the petitioner that the accused is the first offender and he had no criminal antecedents. He has further submitted that he is now 74 years old and he is facing the criminal proceedings for nearly 16 years and hence, his case may be considered sympathetically. He also drew the attention of this Court to similar such cases, where the Court has considered the similar circumstances, and given the benefit of Probation of Offenders Act. He also cited the following decisions of this Court.

1. Varadhan vs. State, by Inspector of Police, CCIW CID, [Crl.R.C.Nos.163 to 177 of 2016] etc., batch dated 06.09.2017.
- 2.Ponnuswamy vs. Inspector of Police, CCIW, [Crl.R.C.No.231 of 2001] dated 28.06.2006.
- 3.V.G.Rajendran vs. State, by Inspector of Police, CCIW CID, [Crl.R.C.No.1396 of 2017] dated 01.07.2015.
4. Shanmugam vs. 1. The Inspector of Police, CCB, 2. K.Arulmani [Crl.O.P.No.13374 of 2021] dated 30.07.2021.
5. T.Tamilselvan vs. State, Inspector of Police, CCIW, dated 11.02.2008.
- 6.Varadhan vs. State, Inspector of Police, CCIW [Crl.R.C.No.499 of 2008] dated 28.03.2018.



12. It is seen from the above cases, similar such circumstances were taken up for consideration and this Court has considered the nature of the offence, in the light of the family circumstances of the accused and the length of the period for which the accused had undergone mental and physical stress and economical issues due to loss of employment. The petitioner had no previous adverse remarks in his career. In order to get the benefits under Section 4(1) of Probation of Offenders Act, the accused must be directed to make good the loss caused to the institution, in accordance with Section 5(1) (A) of the Probation of Offenders Act, 1958.

13. In this case, loss caused to the Society has been compensated by way of repaying the amount along with interest. The accused is 74 years old and his family members themselves have deserted him, because of this criminal case. The circumstances of the petitioner show that he had suffered more than the punishment. But, the learned Government Advocate submitted that the offence under Section 477-A IPC is not compoundable and hence the payment of loss will not absolve the criminal liability of the accused.

14. Since the accused had made good the loss caused to the Society by paying the misappropriated sum along with interest, I feel that this case should be considered sympathetically. Further, the petitioner is the first offender and there is no previous case pending against him. The accused is 74 years old now and by this time, he would have realised his mistake. The accused is not involved in any other case after this case. Considering all these factors and in the interest of justice, I feel that the accused can be given with the benefits under Section 4(1) of the Probation of Offenders Act.

15. Accordingly, this Criminal Revision Case is partly allowed and this Court would confirm the findings of conviction and sentence of the Courts below, but invoke provision 4 of the Probation of Offenders Act. Consequently, this Court directs the revision petitioner be released on probation of good conduct, on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties in a like sum to the satisfaction of the trial Court, viz., the learned Judicial Magistrate II, Vellore, within one month from the date of receipt of this order, undertaking to appear and receive sentence when called upon to do so, during a period of two years of the date of the bond and in the mean time to keep peace and good behaviour. It is made clear that in keeping with Section 12



WEB COPY

of the Probation of Offenders Act, the revision petitioner shall not suffer disqualification, attaching to this conviction.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The I Additional District and Sessions Court,
Vellore.
2. The Judicial Magistrate II,
Vellore.
3. -do- through The Chief Judicial Magistrate,
Vellore.
4. The Inspector of Police,
CCIW CID,
Tiruvannamalai.
5. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.S.Venkataraman, Advocate, S.R.No.69627

Cr1.R.C.No.530 of 2017

NRL(CO)
RLP(25/02/2022)