



BAIL SLIP

A.Subramaniam Accused / Petitioner herein was released on bail vide order of this Court dated 17/11/2015 in MP.No.1/2015 in CrI.A 1184/2015, MP.No. 1/2015 in CrI A.1183/2015, MP.No.1/2015 in CrI A.No.1182/2015 and MP.No.1/2015 in CrI A.1185/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.R.C.Nos.1182 to 1185 of 2015

A.Subramaniam

.. Petitioner (in all CrI.R.Cs)

Versus

The State rep. By
Inspector of Police,
C.C.I.W., C.I.D,
Thiruvallur District.
Crime No.01 of 2001

.. Respondent
(in all CrI.R.Cs)

Prayer in CrI.R.C.No.1182 of 2015: Criminal Revision Case is filed under Section 397(1) r/w 401 of Cr.P.C., to set aside the judgment passed in C.A.No.29 of 2012 on 10.08.2015 by the learned IV Additional District and Sessions Judge, Ponneri, Thiruvallur District by confirming the conviction and partly modified the sentence passed in C.C.No.94 of 2002 on 29.02.2012 by the learned Judicial Magistrate No.II, Ponneri, Thiruvallur District.

Prayer in CrI.R.C.No.1183 of 2015: Criminal Revision Case is filed under Section 397(1) r/w 401 of Cr.P.C., to set aside the judgment passed in C.A.No.30 of 2012 on 10.08.2015 by the learned IV Additional District and Sessions Judge, Ponneri, Thiruvallur District by confirming the conviction and partly modified the sentence passed in C.C.No.95 of 2002 on 29.02.2012 by the learned Judicial Magistrate No.II, Ponneri, Thiruvallur District.

Prayer in CrI.R.C.No.1184 of 2015: Criminal Revision Case is



filed under Section 397(1) r/w 401 of Cr.P.C., to set aside the judgment passed in C.A.No.28 of 2012 on 10.08.2015 by the learned IV Additional District and Sessions Judge, Ponneri, Thiruvallur District by confirming the conviction and partly modified the sentence passed in C.C.No.93 of 2002 on 29.02.2012 by the learned Judicial Magistrate No.II, Ponneri, Thiruvallur District.

Prayer in Crl.R.C.No.1185 of 2015: Criminal Revision Case is filed under Section 397(1) r/w 401 of Cr.P.C., to set aside the judgment passed in C.A.No.27 of 2012 on 10.08.2015 by the learned IV Additional District and Sessions Judge, Ponneri, Thiruvallur District by confirming the conviction and partly modified the sentence passed in C.C.No.92 of 2002 on 29.02.2012 by the learned Judicial Magistrate No.II, Ponneri, Thiruvallur District.

For Petitioner : Mr.T.P.Sekar
(in all Crl.R.Cs)

For Respondent : Mr.L.Baskaran
(in all Crl.R.Cs) Government Advocate (Crl.Side)

COMMON ORDER

These four Criminal Revision Cases in Crl.R.C.Nos.1182 to 1185 of 2015 are filed by the petitioner/accused, namely A.Subramaniam, who was the Secretary to a co-operative society, namely Devathanam Primary Agricultural Co-operative Society, on allegation that on various check periods, he had falsified the accounts and misappropriated the sums mentioned therein and an enquiry, under Section 81 of the Co-operative Societies Act, was carried on and a report in Ex.P-3, dated 16.06.1995 was submitted on the basis of which a complaint was forwarded to the respondent Police. The respondent investigated the same and laid four final reports, since the charges related to four different periods, which were taken on file as C.C.Nos.92 to 95 of 2002, on the file of the learned Judicial Magistrate No.II, Ponneri at Thiruvallur District.

2. Upon framing of charges under Sections 408 and 477-A, the accused denied the same and stood trial. Common trial was conducted in all the four cases and on behalf of the prosecution, twenty witnesses were examined and Ex.P-1 to Ex.P-208 were marked. Thereafter, upon being questioned under Section 313 of Code of Criminal Procedure, the petitioner/accused denied the evidence as false. Thereafter, one Lakshmi, Deputy Registrar and Thiru.Radhakrishnan, Inspector



of Police were examined as D.Ws.1 and 2 on behalf of the defence. The Trial Court proceeded to hear the learned Assistant Public Prosecutor on behalf the prosecution and the learned Counsel for the petitioner/accused and found that on the basis of the Exhibits marked before the Trial Court, the prosecution has proved the offences of misappropriation as well as the falsification of the accounts. This apart, the Trial Court framed seven questions on the arguments on behalf of the learned Counsel for the petitioner and however, answered all the questions in favour of the prosecution. The Trial Court considered whether the delay in registering the F.I.R has caused prejudice to the accused and found that in view of the explanation given and since the offences are sought to be proved by documentary evidence, such delay does not cause prejudice to the petitioner/accused.

3. Upon considering the argument relating to the delay in submission of the enquiry report, the Trial Court, relying upon judgement of this court, in S.V.K.Sahasramam Vs. Deputy Registrar of Co-op. Societies, Tiruvannamalai Circle, Tiruvannamalai and Others¹, held that the period mentioned under Section 81(4) is held to be directory and not mandatory and therefore, the said argument will not in any manner entitle the accused for an acquittal. Similarly, the Trial Court rejected the contention that there is any bar under Section 87 and under Section 164 of the Tamilnadu Co-operative Societies act to prosecute the accused and also held that there was no defect in dropping P.W.6 as an accused and arraying him as a witness.

4. After finding these issues in favour of the prosecution and rejecting the defence of the accused, the Trial Court held that the prosecution proved the offences punishable under Section 408 as well as under Section 477-A beyond doubt. The Trial Court imposed a sentence of six months Simple Imprisonment for the offence punishable under section 408 of I.P.C and a fine of Rs.3000/- and in default to undergo Simple Imprisonment for one month and six months Simple Imprisonment for the offence under Section 477-A of Indian penal code.

5. Aggrieved by the same, the accused preferred CrI.A.Nos.27 to 30 of 2012 on the file of the learned IV Additional District and Sessions Judge, Ponneri and by judgement, dated 10.08.2015, the learned Appellate Court, after independently appraising the evidence and considering the findings of the Trial Court held that the prosecution has proved the offences beyond any doubt. But, however, considering the efflux of time and condition of the petitioner/accused that he was aged 55 years, at the time of disposal of the appeal, reduced the punishment of imprisonment alone for both offences from the period of six months Simple

¹ (2008) 8 MLJ 231



१२.५ : प्रमेय ५२८

9. He would also further submit that even the evidence of the investigation officer was not eschewed, as in view of his death, he could not be cross-examined. Therefore, that is yet another procedural error which has caused a serious prejudice to the defence and therefore, this case warrants interference by this court. Finally, he would submit that even though in the F.I.R, one Rushyendramani, who is also an Office Assistant working in the same society, was also named as an accused, without following any due procedure whatsoever and without any



justification whatsoever, he is suddenly dropped as an accused and included as a witness and was examined as P.W.6 in this case. Adding a person as an accused and thereafter, threatening him and extracting statements from him and using the same against co-accused, according to the learned Counsel, would vitiate all principles of fairness in the investigation and therefore, appropriate benefit of doubt should be given to the petitioner/accused and he should be acquitted.

10. Opposing the said submissions, Mr.L.Baskaran, the learned Government Advocate (Criminal Side) appearing on behalf of the prosecution would submit that this case is gone out of records. Each and every record, totalling to 280 exhibits, relating to the individual transactions, are marked before the Trial Court. He would submit that this is not a case where the prosecution merely relied on the 81 enquiry report or the contents of the 81 enquiry. Independently, each and every transaction, in which the accused falsified the account and misappropriated the amount, has been proved by marking the documents through the appropriate witnesses. Therefore, the prosecution has proved the offence beyond any doubt and the technical objections, raised by the accused, are hyper-technical in nature, will not in any manner accrue to the benefit of the accused so as to acquit him in exercise of the revisional powers of this Court, upturning the findings of the Trial Court as well as the lower Appellate Court, which are based on sound principles of law.

11. I have considered the submissions made on behalf of the petitioner and on behalf the prosecution and I have gone through the material evidence on record. Upon going through the positive evidence let in by the prosecution and the documents marked, I am afraid that the findings of the Trial Court as well as the lower Appellate Court that the offence under Section 408 and 477-A stands proved can be interfered with in this revisional jurisdiction. There is positive evidence on record that the petitioner/accused was working as a Secretary in the relevant point of time and that the accounts were falsified and the consequential money which had to go to the coffers of the society did not go and was misappropriated by the accused. There is some force in the contention that the petitioner was only the Secretary and at the relevant point of time there were Special Officers and even P.W.6 was co-employee who was shown as an accused initially in the F.I.R. But, however, mere non-inclusion of the other persons who would have been responsible also per se will not entitle the petitioner for an acquittal, unless material and concrete evidence is let in that the accused was duty bound to act on their instructions or that they played a part in the commission of the crime.



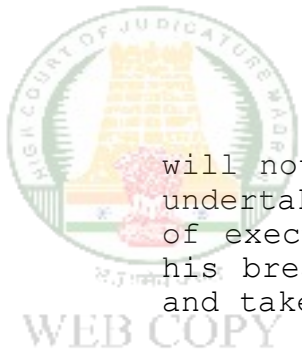
12. On the other hand, by his cross-examination or by the examination of D.Ws.1 and 2 to that fact that some other employee is also responsible or some other officer is responsible is not established by the defence. Therefore, I reject the said contentions. I also find that the Trial Court has rightly relied upon the judgement of this Court in S.V.K.Sahasramam Vs. Deputy Registrar of Co-op. Societies, Tiruvannamalai Circle, Tiruvannamalai and Others² cited supra where this Court had held that the prescription under Section 81 (4) is only directory and not mandatory and therefore, in the teeth of the same, since, in this case, independent evidence is also let in by the prosecution, by marking the documents and the ledgers and all the accounts, the two judgements cited by the learned Counsel for the petitioner may not be applicable to the facts and circumstances of the instant case.

13. Similarly, the finding of the Trial Court that this case is on the documentary evidence and therefore, the delay has not caused any prejudice cannot also be found fault with. I also reject the other technical submissions, advanced on behalf of the petitioner, as the same would not in any manner alleviate the seriousness so to consider that it caused prejudice leading to miscarriage of justice so as to acquit the accused. In that view of the matter, I reject the submissions made on behalf of the petitioner/accused and confirm the conviction of the petitioner/accused under Section 408 and 447-A of I.P.C by the Trial Court as well as the lower Appellate Court.

14. However, there is no previous conviction of the petitioner/accused. All these four convictions arise out of the same transaction and only because it related to a different periods, treated as different counts. The accused started to face the criminal cases at the age of 41 in the year 2001 and now he is 62 years of age. The accused has since shown remorse and has also been permanently dismissed from service of the Co-operative Society. He had been facing the proceedings defending the same in the manner known to law and also pending the appeal/revision, has been regularly appearing before the Trial Court complying with the condition every month without fail all these years.

15. Considering all the above and considering the age of the offender, the punishment of only one month Simple Imprisonment imposed by the lower Appellate Court, the nature of the offence, inspite of sentencing the accused to imprisonment, I am inclined to release the petitioner/accused on probation in exercise of the powers under Section 361 of the Code of Criminal Procedure. The accused shall appear before the learned Judicial Magistrate No.II, Ponneri and execute a bond to keep good behaviour that he

2 Refer Foot No.1



will not indulge in any other offence whatsoever and keep up the undertaking in the bond for a period of one year from the date of execution of the bond and to undertake that in the event of his breach of his undertaking he would appear before this Court and take the sentence.

16. The Criminal Revision is partly allowed as indicated above.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

grs

To

1. The IV Additional District and Sessions Judge,
Ponneri, Thiruvallur District.
2. The Chief Judicial Magistrate,
Thiruvallur. (for information)
3. The Judicial Magistrate No.II,
Ponneri, Thiruvallur District.
4. The Inspector of Police,
C.C.I.W., C.I.D,
Thiruvallur District.
5. The Public Prosecutor,
Madras.

COPY TO

6. The Section Officer,
Criminal Section,
High Court, Madras-104.

+4ccs to Mr.T.P.Sekar, Advocate, S.R.No.1721, 1720,1719,1718

Cr1.R.C.Nos.1182 to 1185 of 2015

SSV(CO)
CT 31/01/2022