



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

CORAM:

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

Crl.R.C.No.553 of 2015

D.Chittaranjan

... Petitioner/2nd Appellant/2nd Accused
Vs.

State Rep by
Inspector of Police,
C.C.I.W/C.I.D,
Thiruvellore.

... Respondent/ Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to allow this Revision by setting aside the conviction and sentence confirmed by the IV Additional District & Sessions Court at Ponneri in C.A.No.35/2009 dated 13.4.2015 on the order passed by the learned Judicial Magistrate II, Ponneri dated 24.7.2009 in C.C.No.77 of 1999.

For Petitioner : Mr.S.Karthikeyan
for Mr.L.J.Krishnamurthy

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

O R D E R

This Criminal Revision has been preferred challenging the judgment of the learned IV Additional District and Sessions Judge, Ponneri dated 13.04.2015 made in C.A.No.35 of 2009, which confirmed the judgment of the learned Judicial Magistrate-II, Ponneri dated 24.07.2009 made in C.C.No.77 of 1999.

2. The petitioner/second accused is the Secretary of Adhi Diravida Brick Chamber Labourers Co-Operative Society at Thathamaji Village. The first accused, who is no more now, was the President of the said Society. The case of the prosecution is that both the accused have misappropriated a sum of Rs.28,126.70/- by falsifying the accounts towards purchase of diesel, palm leaves, casuarina stick and also by preparing false vouchers etc., and they committed the offence under Sections 406, 406 r/w 109 and 477(A) and 408 IPC.

3. On the complaint given by PW1-Ramalingam/General Manager of Adhi Diravida Brick Chamber Labourers Co-Operative Society on 04.12.1996 before the Commercial Crime Investigation Wing, a case has been registered in Crime No.1 of 1997 by PW3/Sornavelayutham. The complaint was made on the



basis of the enquiry report submitted by PW2-Enquiry Officer. According to the Enquiry Officer/PW2, the enquiry was ordered to be conducted on 18.11.1993 in RC.No.913/IC 3/93 dated 18.11.1993 by the General Manager, Industries and Commerce, District Industries Centre, Guindy. The enquiry was completed on 09.08.1994 and the report had also been submitted. Only on the basis of the said report (Ex.P28), the complaint has been given by PW1. PW3/Sornavelayutham, Inspector of Police, after registering the FIR, took up the case for investigation seized various Registers and records maintained by the Society. After completing his investigation, he filed the charge sheet against the accused 1 and 2 for the offence under Sections 406, 408, 406 read with 109 and 477(A) IPC.

4. According to the final report, the total amount found to have been misappropriated is Rs.28,126.70/-. After the case was taken on file and on being satisfied with the materials available on record, the learned Trial Judge framed charges against the accused under Sections 408, 408 r/w 109 and 477A IPC. When the accused were questioned, they pleaded innocence and claimed to be tried.

5. During the course of the trial, on the side of the prosecution 3 witnesses were examined as PW1 to PW4 and 30 documents were marked as Exs.P1 to P30. On the side of the defence, no witness was examined and no document was marked.

6. At the conclusion of the trial and on considering the evidence available on record, the learned Trial Judge found the accused guilty for the offence under Sections 406, 408 read with 109 and 477(A) IPC and convicted and sentenced the accused as under:-

Accused	Conviction	Punishment
A1	406 IPC	To undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.5000/- in default 6 months Simple Imprisonment
	477 (A) IPC	To undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.5000/- in default 6 months Simple Imprisonment
A2	408 R/W 109 IPC	To undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.5000/- in default 6 months Simple Imprisonment
	477 (A) IPC	To undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.5000/- in default 6 months Simple Imprisonment

7. It is reliably learnt that the first accused died subsequent to the judgment of the trial Court. The appeal preferred by the second accused in C.A.No.35 of 2009 was dismissed on 13.04.2015 by confirming the judgment of the trial Court. Aggrieved over that, the second accused has



preferred this Revision.

8. Heard the learned counsel for the Revision petitioner and the learned Government Advocate (Crl. Side) appearing on behalf of the respondent. Perused the entire materials available on record.

9. The learned counsel for the revision petitioner submitted that the enquiry contemplated under Section 81(4) of Tamil Nadu Cooperative Societies Act, 1983 should have been completed within a period of three months or within a maximum period of six months on extension.

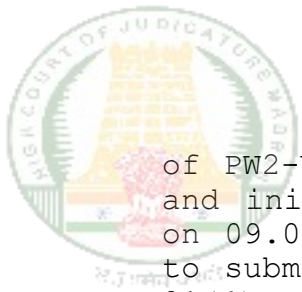
10. In the case on hand, the Enquiry Officer has initiated the enquiry on 18.11.1993 and completed the investigation on 09.08.1994 and submitted his report; the above enquiry proceedings are in violation of the statutory provisions, which is time bound; as per the enquiry report, the total amount misappropriated is found to be Rs.3,44,199.20/-; but at the conclusion of the investigation by the police, the total amount misappropriated was found to be Rs.62,153.70/-; so far as this case is concerned, the amount misappropriated is found to be Rs.28,126.70/-; the major contradiction between the report of the Enquiry Officer and the charge sheet filed by the police would itself make the case of the prosecution doubtful; the petitioner/second accused was holding Additional Charge as the Secretary for the subject Society and he was no way responsible for the criminal activities that might have occurred in the Society; the Courts below have omitted to give due credence to the above aspects placed before them and proceeded to convict the petitioner wrongly.

11. The learned Government Advocate(Crl. Side) appearing for the respondent submitted that the Investigation Officer has filed charge sheet on the basis of the records available; the variation between the enquiry report and the charge sheet will not falsify the case of the prosecution; even though Section 81 (4) of Tamil Nadu Cooperative Societies Act, 1983 contemplates a maximum time limit of six months for filing the Enquiry Report that could have its impact only for the enquiry proceedings; so far as the criminal offences are concerned the limitation is governed only under Section 468 Cr.P.C; the petitioner/second accused being the Secretary of a Society, can be held responsible for the misappropriation found to have been committed in the Society and hence, this Revision should be dismissed.

12. Point for consideration:-

Whether the conviction and sentence imposed on the accused for the offence under Section 406, 408 read with 109 and 477(A) IPC by the learned Sessions Judge based on the materials available on record is fair and proper?

13. There are some fundamental facts, which are not in dispute. The petitioner/second accused was the Secretary of the subject Society and he was in-charge of the Society only by holding an additional charge. It appears from the evidence



of PW2-Venkatesan that he was appointed as an Enquiry Officer and initiated enquiry on 18.11.1993 and submitted his report on 09.08.1994. The total time taken by the Enquiry Officer to submit his report was nearly nine months. As per Section 81(4), the enquiry report should be normally submitted within a period of three months. However, for appropriate reasons, the time can be extended for a further period of three months and so the enquiry report should be submitted within the maximum outer limit of six months. The evidence of PW2 would show that he was aware of the limitation prescribed under Section 81(4), but he has stated in his evidence that he has not requested any extension of time for filing his report belatedly.

14. For the purpose of convenience, the above provision is extracted as below:-

"81. Inquiry

(4) The inquiry shall be completed within a period of three months from the date of ordering the inquiry or such further period or periods not exceeding three months at a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate."

15. It is the patent admission of PW2/Enquiry Officer that enquiry report was filed beyond a period of six months, which is not legal. Even without the admission of PW2, it is clear from the law that the enquiry report is in violation of Section 81(4). When the above technical point was raised before the trial Court, the learned trial Judge observed that Section 81(4) has no relevance to the criminal proceedings initiated against the accused, in view of Section 468 Cr.P.C, which only prescribes the period of limitation for different category of offences.

16. The learned counsel for the petitioner stressed upon the point that the criminal proceedings would also lose its value if it is taken on the basis of an enquiry report, which has been filed beyond the period of six months. In support of his contention, he relied on the following decisions of this Court:-

- (I) Kannan Vs. State, CCIWCID, Coimbatore dated 21.06.2007;
- (II) Thambiraj Vs. State, CCIWCID, Karur dated 29.10.2010;
- (III) Govindan Vs. State, CCIWCID, Vellore dated 25.11.2013.

17. In the above cases, the learned Single Judges of this Court have held that in view of the delay in filing the enquiry report, the criminal proceedings would get vitiated. Section 81(4) does not directly govern the criminal proceedings. The limitation for the criminal offences has been prescribed only under Section 468 Cr.P.C. It is seen from the records that the above point was canvassed by the



petitioner/second accused before the lower Appellate Court also. However, the learned trial Judge overlooked the same, but observed that the petitioner had raised the said point for the first time only before the Appellate Court. But the records would show that the learned trial Judge himself has dealt with the above points and made his observations on the same.

18. Be that as it may, the fact remains that the complaint, which is the origin of this criminal proceedings lodged against the accused finds its basis only from the enquiry report filed by PW2. Apart from the above technical point, it is also seen that there are some factual difference in the case of the prosecution and that is not denied by the prosecution. The enquiry report reveals that the total amount misappropriated was to the tune of Rs.3,44,198.20/-. However, the investigation revealed that the amount misappropriated in all the three cases is to the tune of Rs.62,153.70/-. The Courts below had observed that despite there might be variations with regard to the quantum of the misappropriated amount, the fact remained that some amount was found to be misappropriated and hence, the final report of the police cannot be ignored. But this variation would show that there were some huge exaggeration in the allegations made against the accused and that would create a doubt. No explanation has been offered by the prosecution witnesses as to why there was a huge difference in the quantum of misappropriation found between the enquiry report and the final report. Had it been satisfactorily explained in the final report, then it will not be any scope for doubt. So the benefit of doubt which arose due to the above contradiction-should go in favour of the accused.

19. The Special Officer who was appointed as the Enquiry Officer conducted the enquiry for nine months and he had come out with the finding that there was a misappropriation for a sum of Rs.3,44,198.20/-. No doubt the enquiry report would have served as a material record for the purpose of investigation. If the Investigation Officer had opted not to accept the enquiry report, the whole case would have got closed. If the Investigator had preferred to accept the report partially, then he ought to have given some explanation as to the quantum as stated above.

20. Further, the Enquiry Officer, who was examined as PW3 has stated in his evidence that he was also enquired by the police during investigation and he had given his statement only based upon his enquiry report. As it has been already averred that there is gross variation in the quantum of misappropriated amount in the enquiry report (Ex.P.30). And he was not enquired as to the difference in the amount of misappropriation-and why it did not tally during the investigation. This explanation in this regard is important because of the fact that the enquiry report had been filed beyond the statutory period and without any request or approval for extension of time. In this background of the



facts, it cannot be denied that the above gap in the investigation would strike the case of the prosecution at its route by creating huge doubt.

21. The second accused was responsible for the affairs of the Society, but he was holding the additional charge. So, he could not have made himself always available in the Society. Hence, it would not have been possible to check the day-to-day affairs of the Society or to verify the records on a daily basis. PW3 has stated in his evidence that the second accused cannot be held directly responsible for the criminal proceedings because he could not be instrumental for any of the illegalities occurred in the Society. The above evidence of PW3 assumes significance in the other attending circumstances of the case, which has been discussed above. It is to be noted that the very complaint was filed by PW1 only on the basis of the enquiry report. If the enquiry report itself loses its legality and becomes invalid due to the violation of Section 81(4) of Tamil Nadu Cooperative Societies Act and the final report lacks clarity as to the difference in the figures of the misappropriated amount that would only render the investigation process incomplete and materially irregular.

22. But it is seen that the Courts below have omitted to take into consideration of the contradictions in the fundamental facts unearthed during the investigation and lack of clarity in respect of the difference in figures etc., the factual and legal issues ought to have been holistically appreciated by the Courts below in order to rely the case of the prosecution. Had that exercise was done the doubts in the case of prosecution could not have been overlooked and the accused would not have been deprived to get the benefit of the same.

23. In view of the above reasons, I feel that the judgment of the Courts below warrants interference.

24. In the result, this Criminal Revision is allowed and the judgment of the learned IV Additional District and Session Judge at Ponneri in C.A.No.35/2009 dated 13.4.2015 is hereby set aside.

Sd/-
Assistant Registrar(CS IX)

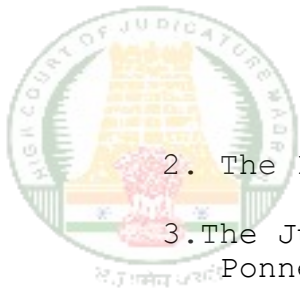
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Sub Assistant Registrar

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To

1.The IV Additional District & Session Court,
Ponneri.



2. The Principal District and Sessions Judge, Thiruvallur.

3. The Judicial Magistrate-II,
Ponneri.

4. Do through the Chief Judicial Magistrate, Thiruvallur.

5. The Inspector of Police,
C.C.I.W/C.I.D,
Thiruvellore.

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

+1 cc to Mr. L. J. Krishnamurthy, Advocate Sr. NO. 1290
CrI.R.C.No.553 of 2015

ssd(CO)
A.SK(24.02.2022)