



BAIL SLIP

The Petitioner/Accused viz., S.Ramamurthy S/o.Somukoon was directed to be released on bail vide order in MP.1 of 2013 in Crl.RC.No.1130 dated 17.09.2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.1130 OF 2013

S.Ramamurthy

.. Petitioner/
Appellant/Accused

Versus

State by Inspector of Police
C.C.I.W., C.I.D,
Tiruvannamalai,
(Cr.No.2/2007)

.. Respondent/
Complainant

Prayer:

Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to call for records from the file of the learned I Additional District Judge, Vellore in Crl.A.No.61 of 2011, dated 24.07.2013 and order to revise the judgment of the learned I Additional District Judge, Vellore in C.A.No.61 of 2011, dated 24.07.2013, consequently, set aside the conviction and sentence imposed on the revision petitioner by the learned Judicial Magistrate No.II, Vellore in C.C.No.47 of 2009, dated 11.02.2011 and acquitting the petitioner from all the charges.

For Petitioner : Dr.S.Padma

For Respondent : Mr.L.Baskaran
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case in Crl.R.C.No.1130 of 2013 is filed by the petitioner/accused No.1, namely Ramamurthy,



S/o.Somukon, aggrieved by the judgement of the learned Judicial Magistrate No.II, dated 11.02.2011 in C.C.No.47 of 2009 by finding him guilty of the offence under Section 408 of Indian Penal Code and imposing a punishment of one year Rigorous Imprisonment and a fine of Rs.3000/-, in default, to undergo three months Simple Imprisonment and the judgement of the learned I Additional District Judge, Vellore in CrI.A.No.61 of 2011, dated 24.07.2013, thereby, confirming the conviction and the sentence imposed by the trial court.

2. On 11.08.2006, P.W.1, the Special Officer of the Co-operative Society, based on an report under Section 81 of the Co-operative Societies Act forwarded a complaint, on the basis of which P.W.4, Manoharan, registered a case in Cr.No.2 of 2007 and took up the case for investigation and laid a chargesheet as against the petitioner hearin being the first accused and four other accused. The same was taken on file as C.C.No.47 of 2009 by the learned Judicial Magistrate No.II, Vellore. Upon appearance of the accused, copies were furnished as per Section 207 of the Code of Criminal Procedure and upon being questioned, the accused denied the charges and stood trial. Thereafter, the prosecution examined P.Ws.1 to 4 and marked Exs.P-1 to P-17. Upon being questioned about the material evidence on record and the incriminating circumstances, as per Section 313 of the Code of Criminal Procedure, the accused denied the same. Thereafter, no evidence was let in on behalf of the defense. The Trial Court, therefore, proceeded to hear the learned Assistant Public Prosecutor on behalf of the prosecution and the learned Counsel for the petitioner/accused and by a judgement, dated 11.01.2011, even though acquitting A2 to A4, convicted the first and fifth accused alone. The Trial Court held that the first accused is guilty for an offence under Section 408 of Indian Penal Code and the fifth accused, for an offence under Section 406 of Indian Penal Code and sentenced them as above.

3. Aggrieved by the same, the first accused, namely Ramamurthy, filed CrI.A.No.61 of 2011 on the file of the learned I Additional District Judge Vellore. As far as the fifth accused is concerned, it seems that he has, since, passed away. Under these circumstances, the learned I Additional District Judge, Vellore, independently appraised the evidence on record and after considering the contentions made on behalf of the appellant, concluded that there has been no payment as per the Ex.P-11, daily ledger and therefore, confirmed the guilt of the accused and the sentence imposed by the trial court. Aggrieved by the said judgement, the present Revision is laid before this court.

4. Dr.S.Padma, the learned Counsel appearing on behalf of the petitioner would submit that in this case, the basis of the



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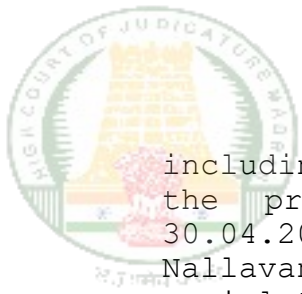
charge itself is erroneous. She would submit that firstly, even on a perusal of the Trial Court judgement in paragraph No. 9, it can be seen that is not the case where the fifth accused has given any false document claiming ownership of any land. In the relevant column, no lands were specified as being owned by A5, since, A5 did not own any land.

5. On the other hand, he was only cultivating the land belonging to the others and that is why even in the loan application, rightly, no ownership of any land has been specifically mentioned. This apart, in order to make out an offence under Section 408 of I.P.C as well as Section 406 of I.P.C, misappropriation of money or non-repayment of loan is an important ingredient. In this case, the complaint itself was dated 11.08.2006, but, however, even before the complaint, on 30.04.2006 itself, vide receipt No.270088, the entire loan outstanding including interest and penal interest are paid by Zarina, wife of the fifth accused and due receipt has been issued for a total sum of Rs.110,256/- by the society itself. The said receipt is very much part of the 81 enquiry proceedings. She would also further relay upon a certificate issued by the Special Officer of the society in certificate No.3272, thereby, categorically clarifying that no amount is due in respect of the said loan.

6. This being the position, it is her submission that the very basis of the charge that a sum of Rs.62,417/- has been misappropriated/defrauded is factually incorrect and therefore, the Trial Court as well as the lower Appellate Court went on an erroneous footing as if after obtaining loan, there was no repayment and P.W.4, the Investigating Officer, did not even investigate as to this basic fact and went merely on the 81 Enquiry Report submitted by the Co-operative Society officials without any application of mind whatsoever.

7. Mr.L.Baskaran, the learned Government Advocate (Criminal Side) appearing on behalf of the prosecution would submit that even though it was not mentioned in the appropriate column about the particulars of the land, in the other column in the application, it is mentioned as if A5 was owing Ac.6.00 acres of land, which amounts to misrepresentation. The mere fact that they have repaid the amount or that the Government has waived the loan amount will not absolve them from the offences and therefore, he would submit that the Trial Court has correctly come to the conclusion as to the guilt of the petitioner/accused A1 and A5 and therefore, he would pray that this Revision should be dismissed.

8. I have considered the rival submissions made on behalf of either side and perused the material evidence on record



including the 81 Enquiry Report and the documents submitted by the prosecution. It is clear from the receipt, dated 30.04.2006, which is signed by the Secretary of the H.H.583, Nallavan Palayam Primary Agricultural Co-operative Society in serial No.270088 that one Zarina, wife of the fifth accused had paid the entire amount due in respect of the subject matter loan, whereby, it is seen that the loan amount of Rs.62,417/-, and interest amount of Rs.13,715/-, penal interest of Rs.525/- and charges of Rs.100/- in all totalling to Rs.76,792/- has been received. The same was done on 30.04.2006 itself, while the complaint, in this case, has been forwarded as if the amount remains unpaid and the society has been put to loss only on 11.08.2006, which is factually incorrect. In that view of the matter, the very basis of the charge is factually erroneous and therefore, the said fact has been overlooked by the Trial Court as well as the first Appellate Court and therefore, the I am of the view that in exercise of the powers of revision, this is a fit case for interference and I hold that in view of the repayment of the money coupled with the fact that no false claim of any survey numbers is made, by producing any forged document, A1 and A5, in this case, did not commit any offence whatsoever and therefore, the findings of the guilt by the Trial Court as well as the first Appellate Court is erroneous.

9. The Criminal Revision Case in CrI.R.C.No.1130 of 2013 is allowed. The judgment of the learned Judicial Magistrate No.II, Vellore in C.C.No.47 of 2009, dated 11.02.2011 and the judgment of the learned I Additional District Judge, Vellore in CrI.A.No.61 of 2011, dated 24.07.2013 are set aside. The petitioner is acquitted of the charges. Fine amount, if any, paid by him, shall be refunded to him.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

grs

To

1. The Principal District Judge, Vellore.
2. The I Additional District and Session Judge, Vellore.
3. The Judicial Magistrate No.II, Vellore.



6. The Public Prosecutor,
Madras.

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

SSN (CO)
PM/21/03/2022