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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 10.01.2022
Order Pronounced on : 25.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.Nos.1309 and 1125 of 2013

T.Perumal

...Petitioner/Accused
(in Crl.R.C.No.1309 of 2013)

S.Ramamurthy

...Petitioner/Accused
(in Crl.R.C.No.1125 of 2013)

Versus

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

...Respondent/Complainant
(in both Crl.R.Cs)

Prayer in Crl.R.C.No.1309 of 2013: Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to call for the records from the file of the learned I Additional District and Sessions Judge, Vellore in Criminal Appeal No.53 of 2011, dated 22.07.2013 and ordered to revise the judgment of the learned I Additional Session Judge, Vellore in C.A.No.53 of 2011, dated 22.07.2013, consequently, set aside the conviction and sentence imposed on the revision petitioner by the learned Judicial Magistrate No.II, Vellore in C.C.No.48 of 2009, dated 11.02.2011 and acquitting the petitioner from the charges.

Prayer in Crl.R.C.No.1125 of 2013: Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to call for the records from the file of the learned I Additional District Judge, Vellore in Criminal Appeal No.62 of 2011, dated 22.07.2013 and ordered to revise the judgment of the learned I Additional Judge, Vellore in C.A.No.62 of 2011, dated 22.07.2013, consequently, set aside the conviction and sentence imposed on the revision petitioner by the learned Judicial Magistrate No.II, Vellore in C.C.No.48 of 2009, dated 11.02.2011 and acquitting the petitioner from the charges.



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For Petitioner : Dr.S.Padma
(in both CrI.R.Cs)

For Respondent : Mr.L.Baskaran
(in both CrI.R.Cs) Government Advocate
(Criminal Side)

ORDER

The Criminal Revision No.1125 of 2013 is filed by the first accused, namely, B.Ramamurthy, aggrieved by the judgment of the learned Judicial Magistrate No.II, Vellore, dated 11/02/2011 in C.C.No.48 of 2009, thereby, finding the petitioner guilty of an offence under Section 408 of Indian Penal Code and imposing a punishment of 6 months Rigorous Imprisonment and a fine of Rs.3,000/- and in default, to undergo one month Simple Imprisonment and the judgment of the learned I Additional District Judge, Vellore in CrI.A.No.62 of 2011, dated 22/07/2013, thereby, dismissing the appeal and confirming the conviction and sentence imposed by the Trial Court.

2. The Criminal Revision No.1309 of 2013 is filed by fifth accused in the same case, namely, T.Perumal, aggrieved by the judgment of the learned Judicial Magistrate No.II, Vellore, dated 11/02/2011 in C.C.No.48 of 2009, thereby, finding the petitioner guilty of an offence under Section 406 of Indian Penal Code and imposing a punishment of 3 months Rigorous Imprisonment and a fine of Rs. 1,000/- and in default, to undergo 15 days Simple Imprisonment and the judgment of the learned I Additional District Judge, Vellore in CrI.A.No.53 of 2011, dated 22/07/2013, thereby, dismissing the appeal and confirming the conviction and sentence imposed by the Trial Court.

3. Since both matters arise out of the same case, both these revisions are taken up together. Pursuant to an inquiry under Section 81 of the Tamilnadu Co-operative Societies Act, in respect of Nallavanpalayam Primary Agricultural Co-operative Society, a complaint, dated 11/08/2006 was lodged by P.W.1, the Special Officer and a case was registered in Cr.No.2 of 2007 and P.W.4 took up the case for investigation and laid a charge sheet against the Petitioners herein and 3 other accused proposing them guilty for the offences under Sections 120(B), 408 and 477(A) of the Indian Penal Code.

4. The case was taken on file as C.C.No.48 of 2009 by the learned Judicial Magistrate No.II, Vellore and upon issue of



summons and furnishing of copies as per Section 207 Cr.P.C., the accused denied the charges and stood trial. Thereafter, the prosecution examined P.W.1 to P.W.4 and marked Exs.P-1 to P-17 and rested its case. Upon being question about the adverse evidence and circumstances, under Section 313 of the Cr.P.C., the accused denied them as false. Thereafter, no oral or documentary evidence was let in on behalf of the defence.

5. The Trial Court therefore, proceeded to hear the learned Assistant Public Prosecutor for the prosecution and the learned counsel for the accused and by a judgment, dated 11/02/2011, acquitted accused Nos.2 to 4, in respect of all charges and in respect of the first accused, convicted him for an offence under Section 408 and in respect of the fifth accused, convicted him for an offence under Section 406 and sentenced as aforesaid.

6. Aggrieved, the first accused preferred Crl.A.No.62 of 2011 and the fifth accused preferred Crl.A.No.53 of 2011 and by two separate judgments on 22/07/2013, the learned Appellate Court, after independently appraising the evidence, found that the Trial Court did not commit any error in convicting the appellants and dismissed the appeal and confirmed the conviction and sentence. Aggrieved by the same, the present revisions are laid before this Court.

7. Heard Dr.S. Padma, the learned Counsel appearing on behalf of the accused and Mr.L.Baskaran, the Learned Government Advocate (Crl.Side) for the prosecution.

8. It is seen from the records, the charge in this case is that the fifth accused applied for grant of fertilizer and agricultural loan. He owned only 4 Acres and 15 cents of lands. However, the first accused by marking as if he has Acres 11.06 cents of land, sanctioned and disbursed a total sum of Rs. 57,485/- while he is actually entitled to only Rs. 24,340/- and thus, an excess amount of Rs. 33,145 /- is disbursed and hence the charge.

9. At the outset, there is no any charge of cheating or forgery which is levllled against the fifth respondent who is the loan applicant. He is charged and convicted for an offence under Section 406 of the Indian Penal Code. Obvviously, there is no any domain or entrustment to the fifth accused over the property and hence on the face of it, the charge under Section 406 of the Indian Penal Code is not made out against the fifth accused and hence, he is liable to be acquitted. The Hon'ble



Supreme Court of India, in Robert John D'Souza & Ors Vs. Mr. Stephen V. Gomes¹, has clearly laid down that 'entrustment' is the key element for making out an offense under Section 406 of Indian Penal Code.

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10. Now, coming to the offence alleged against the first accused, he has the secretary of the society has disbursed the loan. It is not the case that without disbursing the loan, he shared the money with the other accused. As a matter of fact, loan was disbursed and subsequently, the Government of Tamilnadu has by G.O.Ms.No.70, dated 13/06/2006, waived the loan and the loan of the fifth accused is in Sl.No.24 of the communication of the society, dated 10/02/2014 and therefore, even against the first accused, no offence of Section 408 of the Indian Penal Code is made out as there was neither any misappropriation nor loss to the society. As such, in this case, the investigation officer without taking into account all these aspects, has laid the charge sheet merely on the basis of an erroneous inquiry report under Section 81 of the Tamilnadu Co-operative Societies Act. The Trial Court and the first Appellate Court grievously erred in overlooking these vital aspects resulting in miscarriage of justice to the petitioner herein and as such, this is a fit case for interference by this Court in exercise of revisional jurisdiction.

11. Therefore, the

(i) The judgment of the learned Judicial Magistrate No.II, Vellore dated 11/02/2011 in C.C. No.48 of 2009 and the Judgment of the learned I Additional District Judge, Vellore in CrI.A.No.62 of 2011 and CrI.A.No.53 of 2011, dated 22/07/2013 are set aside;

(ii) The petitioners/accused 1 and 5 are acquitted of the charges;

(iii) The fine amount, if any paid by them, is ordered to be refunded to them.

12. The Criminal Revision Cases are allowed accordingly.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar



grs

To

- 1.The I Additional District and Sessions Judge, Vellore.
 - 2.The Judicial Magistrate No.II, Vellore .
 3. The Chief Judicial Magistrate, Vellore
 - 4.The Inspector of Police,
C.C.I.W., C.I.D
Tiruvannamalai.
 - 5.The Public Prosecutor,
High Court of Madras.
- +2 Ccs to Dr.S.Padma, Advocate sr 4371 & 4372.

Cr1.R.C.Nos.1309 and 1125 of 2013

EV(CO)
SP(23/02/2022)