WEB COPY

BAIL-SLIP

That the Petitioner/Accused No.2 namely, Perumal S/o.Dhanapal who was directed to be released on Bail as per order of this Court, dated 02.11.2016 made in Crl.R.C.No.1012/2016 and Crl.MP.8169/2016 and Crl.MP.8170/2016 on the file of this Hon'ble High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2022

CORAM

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

Crl.R.C.No.1012 of 2016

Perumal ... Petitioner/Accused-2

Vs.

The Sub Inspector of Police,
C.C.I.W.,C.I.D., Vellore,
(Crime No.8/2006) ... Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., to set aside the judgement dated 17.06.2016 made in Crl.A.No.291/2010 on the file of I Additional District Judge, Vellore, Vellore District, whereby upheld the judgment dated 26.11.2010 made in C.C.No.419/2007 on the file of Judicial magistrate No.2, Vellore, Vellore District convicting the petitioner for offences u/s.408 r/w 35, 477(A) r/w 35 of IPC and sentenced to undergo Rigorous Imprisonment for 3 months and also to pay a fine of Rs.500/- for each count with default stipulation and acquit the petitioner.

For Petitioner : Mr.R.Ganesh,
Legal Aid Counsel

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

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

ORDER

This Criminal Revision Case has been preferred challenging the judgment of the learned I Additional District and Sessions Judge, Vellore dated 17.06.2016 made in C.A.No.291 of 2010, confirming the judgment of the learned Judicial Magistrate No.II, Vellore dated 26.11.2010 made in C.C.No.419 of 2007.

2. The Revision Petitioner before this Court was the second accused before the trial Court.

3. The case of the prosecution is that the first accused was the Assistant Secretary cum Manager and the second accused was a Cashier cum Clerk of Thenkadappanthangal Primary Agricultural Co-operative Bank, Belliappa Nagar Branch. The first accused served in the said branch from 21.01.1999 to 30.06.2004 and the second accused was working from 01.03.2000 till date of filing this case. The first and second accused with an intention to misappropriate the funds of the society, had misappropriated a total sum of Rs.1,78,972/- by way of making false entries in the registers maintained by them and also by omitting to make relevant entries when the payment were made to the Co-operative Bank on different heads.

4. On the complaint given by P.W.1 - Deputy Registrar of Co-operative Bank, a case was registered in Crime No.8 of 2006 by P.W.12 - D.S.P, C.C.I.W. and F.I.R. was prepared; P.W.12 took up the case for investigation, examined the witnesses, seized the relevant records and found out that a total sum of Rs.1,78,972/- was misappropriated under 8 heads. After completing the investigation, he filed a charge sheet against the accused for the offence under Sections 408, 477(A), 468 & 471 r/w. 35 IPC.

5. The misappropriation have been made by making dishonest omission and commission in the relevant registers while dealing with the following transactions :-

S.No.	Amount Deposited	Amount misappropriated
1.	Rs.5,400/-	Rs.5,552/-
2.	Rs.50,500/-	Rs.62,620/-
3.	Rs.30,000/-	Rs.10,800/-
4.	Rs.1,50,000/-	Rs.1,00,000/-

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Total	Rs.2,35,900/-	Rs.1,78,972/-

6. After the case was taken on file and on being satisfied with the relevant materials available on records, the learned Judicial Magistrate framed the charges against the accused for the offence under Sections 408 r/w. 35 and 477(A) r/w. 35 of IPC and the accused was questioned. Since he pleaded innocence and claimed to be tried, the trial was conducted.

7. On the side of the prosecution, 12 witnesses were examined as P.W.1 to P.W.12 and 28 documents were marked as Exs.P1 to P28. When the incriminating materials surfaced in the evidence of the complainant was put to the accused under Section 313 Cr.P.C., the accused denied the same. On the side of the defence, no witness was examined and no document was marked.

8. After concluding the trial and on consideration of the materials available on record, the learned trial Judge found the accused guilty as under :-

Rank	Provision under which convicted	Sentence
A1	Sections 408 r/w. 35 & 477(A) r/w. 35 of IPC	Rigorous Imprisonment of One Year and a fine of Rs.1,000/- in default to undergo rigorous imprisonment of one month for each of the offence
A2	Sections 408 r/w.35 & 477(A) r/w. 35 of IPC	Rigorous Imprisonment of Three months and a fine of Rs.500/- in default to undergo fifteen days rigorous imprisonment for each of the offence.

The sentences shall run concurrentlly.

9. The Criminal Appeals filed by both the accused in C.A.Nos.291 of 2010 and 304 of 2010 was also dismissed on 17.06.2016 by a common judgment. Aggrieved over that, the second accused has preferred this present case.

10. Heard the learned legal aid counsel for the petitioner/second accused and the learned Government Advocate (Criminal Side) for the respondent State.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

11. The learned counsel for the petitioner submitted that the second accused/revision petitioner was not involved in any offence as alleged by the prosecution; as per the evidence of P.W.9 - Suseela, she had redeemed her jewels which was pledged in the society by repaying the amount; even the second accused has given a certificate by stating that a sum of Rs.5,552/- paid by P.W.9 for redeeming her jewels have been collected and entered in the registers; but the learned trial Judge and the Appellate Judge without considering the materials available on record in a proper perspective, had convicted the second accused and hence, this Revision Case should be allowed.

12. The learned Government Advocate appearing for the respondent State submitted that both the first and second accused have got the copy of the chest box key and they have access to it; the learned First Appellate Court has observed that even payment of Rs.5,552/- paid by P.W.9 was not entered in the Day Book maintained for collecting jewelery loan repayment; and in the Cash Chitta maintained by the second accused also, the loan repayment was not recorded by him; the Courts below have adverted the other evidence available on record with regard to misappropriation of the amount of the society under other heads also and hence, it does not suffer from any factual or legal infirmity.

13. Point for consideration :-

Whether the finding of the guilt of the second accused for the offence under Sections 408 r/w. 35 and 477(A) r/w. 35 of IPC by the learned Judicial Magistrate II, based on the materials available on record is fair and proper?

14. The fact that the first accused was the Manager and the second accused was working as a Cashier with the Thenkadappanthangal Primary Agricultural Co-operative Bank, was not denied. The misappropriation to the tune of Rs.1,78,972/- has been found out during their respective tenure at the Bank. The Enquiry Officer who was examined as P.W.11, has also made an exhaustive enquiry and in the course of enquiry, it is seen that this accused/revision petitioner has also given a confession statement - Ex.P26 and in which, he had admitted his liability.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

15. It is not the defence of the petitioner that he has given a confession statement only due to threat or coercion. P.W.11 - Enquiry Officer is not a Police Officer and hence, the confession given to P.W.11 can be considered as an extra judicial confession. Apart from the above documents, the learned trial Judge has also dealt with the various entries found in the various records marked in Exs.P14 to P25 in order to arrive at a finding that on various dates, the various sums have been misappropriated by making false entries or by making no entries. When a question of fact has been appreciated by the trial Judge and was re-appreciated by the First Appellate Judge as well as in the Revision Case, the High Court has got limited scope to once again examine the facts. Unless the appreciation of the material facts have been made with any patent illegality or the appreciation was done with any patent omission or commission, this Court can advert to re-appreciate the evidence. The grounds of appeal does not make out any questions of law as well. Since the Courts below have appreciated the evidence only on the basis of the reliable materials produced by the prosecution, I find no reason for interference. Further, the document which the Revision Petitioner attempted to produce before this Court by way of filing his additional typed set of papers did not form part of the evidence produced before the trial Court. Without the author of those records examined as defence side witnesses and the prosecution had an opportunity for cross-examination, the probative value of those documents cannot be examined. So, I find no merits in this case.

In the result, this Criminal Revision Case is dismissed and the judgment of the learned I Additional District and Sessions Judge, Vellore, dated 17.06.2016 passed in C.A.No.291 of 2010 is confirmed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

Sni

To

1.I Additional District Judge, Vellore,
Vellore District

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

2.Judicial Magistrate No.II, Vellore,
Vellore District.

3.The Chief Judicial Magistrate,
Vellore(For information)

4.The Sub-Inspector of Police,
C.C.I.W, C.I.D, Vellore.

5.The Public Prosecutor,
High Court, Madras.

Copy to:
1.The Secretary,
High Court Legal Service Committee,
Chennai-104.

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

+1cc to M/s.R.Ganesh, Advocate SR.3729

Crl.R.C.No.1012 of 2016

BP(CO)

CB(01/04/2022)

https://hcservices.ecourts.gov.in/hcservices/