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Crl.R.C.No.1557 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1557 of 2016

and

Crl.M.P.Nos.12781 and 12782 of 2016

Janakiraman,
S/o. Vijayarangam

... Petitioner/Accused

Versus

1.State by

Inspector of Police,
Kannamangalam Police Station,
Thiruvannamalai District.
Crime No.751 of 2004.

2.Elangovan

S/o.Varadhan,
Deputy Manager,
Department of Milk Development,
Thiruvannamalai.

... Respondents

PRAYER : Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to set aside the conviction imposed in the judgment dated 07.10.2016 made in C.A.No.8 of 2007 on the file of the learned Principal District and



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Sessions Judge, Thiruvannamalai confirming the judgment dated 31.01.2007 made in C.C.No.393 of 2005 on the file of the learned Judicial Magistrate, Arni by allowing this Criminal Revision Petition.

For Petitioner : Mr.S.Silambu Selvan

For Respondent-1 : Mr.L.Baskaran
Government Advocate

Respondent-2 : Died

ORDER

This Criminal Revision Case has been filed to set aside the conviction imposed in the judgment dated 07.10.2016 made in C.A.No.8 of 2007 on the file of the learned Principal District and Sessions Judge, Thiruvannamalai confirming the judgment dated 31.01.2007 made in C.C.No.393 of 2005 on the file of the learned Judicial Magistrate, Arni.

2. The petitioner was convicted by the learned Judicial Magistrate, Arani in C.C.No.393 of 2005 by judgment dated 31.01.2007 for offence under Section 406 I.P.C. and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo one year



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simple imprisonment. Aggrieved against the same, the petitioner preferred an appeal before the learned Sessions Judge, Thiruvannamalai in C.A.No.8 of 2007. The learned Sessions Judge, Tiruvannamalai by judgment dated 07.10.2016 dismissed the appeal confirming the judgment of the trial Court, against which, the present revision has been filed.

3. The gist of the case is that the de-facto complainant/P.W.1, who is the Deputy Registrar in Dairy Development Department, Thiruvannamalai, received the complaint from P.W.2./Special Officer of the Melnagar Milk Producers Co-operative Society stating that he had taken charge on 26.05.2001. At that time it was found that the petitioner, who is the Ex-President of the society, not handed over a sum of Rs.14,080.65 and requested some time to hand over the same and later failed to hand over, thereby he misappropriated the society amount. Based on which, P.W.1 nominated P.W.3 as enquiry officer, who conducted enquiry under Section 81 of the Tamilnadu Co-operative Societies Act. The report of P.W.2 was



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marked as Ex.P1, the order for 81 enquiry was marked as Ex.P2 and the enquiry report was marked as Ex.P3. Thereafter, based on the enquiry report, complaint has been lodged to the respondent police. The respondent on receipt of the complaint visited the scene of occurrence, prepared observation mahazar and rough sketch, enquired witnesses and thereafter filed a report. Further, the petitioner had given a written undertaking/Ex.P5 to hand over the amount of Rs.14,080.65 within a period of one month. Based on which, intimation was sent to the petitioner to remit the amount within the stipulated time.

4. During enquiry under Section 81 of the Act, P.W.2 appeared and given a statement/Ex.P7. The petitioner herein appeared and given a statement admitting that he has misappropriated the society amount, which was marked as Ex.P8. Further, on verification of resolution book and other documents of the society, it is found that the petitioner is responsible for the same. The petitioner also sent a letter/Ex.P10 stating that the President of the



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सोसायटी, i.e. petitioner is responsible for the cash balance and not the
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Secretary. Thus, from the evidence of P.W.1 to P.W.4 and Exs.P8, P10 and P14 it is confirmed that the petitioner misappropriated the funds of the society. The trial Court on the evidence and documents produced, convicted the petitioner as stated above, against which, the petitioner preferred an appeal and the same was dismissed and now the petitioner/accused is before this Court.

5. Before the trial Court, on the side of the prosecution 11 witnesses examined as P.W.1 to P.W.11 and marked 22 documents as Ex.P1 to Ex.P22. On the side of the defence, D.W.1 examined and no documents marked. After conclusion of trial, the trial Court convicted the accused as stated above.

6. The contention of the petitioner is that the petitioner is an elected member of Melnagar Milk Producers Co-operative Society from



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17.03.1997 to 25.05.2001. He took charge from the erstwhile Special Officer/P.W.8. As per the Society By-law, the petitioner was holding honorary post. It was P.W.4, the Secretary, who was the over all in-charge, looking after the business and day-to-day affairs of the society. The petitioner taken charge from P.W.8. P.W.8, held the post of Special Officer from 25.01.1996 to 31.03.1997. In this case none of the Executive Committee members were examined. D.W.1 one of the Executive member confirms the same.

7. It is submitted that P.W.1 admits that responsibility of the society vest with the petitioner as President and P.W.4/Secretary. P.W.2 admits that no letter dated 27.09.2001 was sent to P.W.3 by him. This letter/Ex.P10 projected as an admission of the petitioner. Ex.P8 is a statement recorded by P.W.3, who confirms that the petitioner confessed about the offences, which is not proved in the manner known to law. The two attesting witnesses, namely, P.W.7/Elumalai and P.W.10/Gandhi have denied the



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contents of the same. In view of the same, Ex.P8 loses its significance.

Ex.P8/statement as well as Ex.P10/letter dated 27.09.2001 projected as though the petitioner absolved P.W.4 of all his responsibilities. This letter was issued in the letter head of the society after the petitioner removed from the post of President. Further, P.W.2 states that he had not received any letter or forwarded it to P.W.3, then how P.W.3 received the letter, is not proved.

8. The trial Court as well as Lower Appellate Court placed heavy reliance on Exs.P8 and P10. The by-law of the society confirms that it is the Secretary, who has to carry out all the banking transactions and both P.W.4 and the petitioner were joint signatories to the banking documents. P.W.4/Secretary, to wriggle out of the situation, given a statement shifting blame on the petitioner. In this case, P.W.5, P.W.6, P.W.7 and P.W.10 not supported the prosecution. The other witnesses are all official witnesses. P.W.1 admits that earlier he lodged a complaint on 07.01.2004. Thereafter, the police not taken any action and again he lodged a complaint on



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28.10.2004, which was taken into consideration, enquiry conducted on 29.12.2004. P.W.1 admits that three years after the enquiry report, he lodged the complaint. Further, all the records and documents are in the custody of the Secretary. He also further confirms that it is as per Ex.P16/ Resolution.

9. The investigating officer denies about the earlier complaint lodged by P.W.1 and he states that only one complaint was received by him on 29.12.2004 and registered the complaint. The witnesses have admitted that no Executive Committee members examined in this case and report itself is not a complete report. D.W.1 is the Executive Committee member, who confirms that P.W.4 was the Secretary at that point of time, who was looking after the day to day affairs and all the financial transactions of the Society. After him, it was one Mathiyalagan, who was looking after the accounts of the Society. P.W.3/Enquiry officer and P.W.11/Sub Inspector of Police admit that they have not enquired the Executive Committee members. Thus, the trial Court without proper appreciation of the evidence and materials



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produced, wrongly convicted the petitioner. The Lower Appellate Court
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failed to consider all the evidence and materials produced and selectively taken a portion of evidence of P.W.1, P.W.2 and P.W.3 and placed heavy reliance on Exs.P7, P8, P10 and P11 and came to the conclusion that the appeal to be dismissed.

10. The learned counsel for the petitioner submitted that the Society was entrusted in the joint responsibility of the petitioner and P.W.4, who was the Secretary of the Society. He further submitted that the petitioner is now employed in the Transport Corporation as a conductor.

11. The primary allegation against the petitioner is that at the time of the termination of elected members, charges were handed over to the Special Officer namely P.W.2. While handing over the charge, it is alleged that the petitioner had not handed over a sum of Rs.14,080.65 (Rupees Fourteen Thousand Eighty and Sixty Five Paise only). Due to which, the



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above case has been lodged against the petitioner. Society account has been operated by both the petitioner and P.W.4/Secretary as Joint Signatories. In such circumstances, making P.W.4 as a witness and making the petitioner as an accused is not proper. Further in this case, enquiry not properly conducted.

12. The witness from the Co-operative Department, namely P.W.1 is the Deputy Registrar, who ordered enquiry. P.W.2 is the Special Officer, who took charge from the petitioner and P.W.3 is the Enquiry Officer, who conducted an enquiry under Section 81 of Tamil Nadu Co-operative Societies Act, 1983. P.W.4 is the Secretary. P.W.9 is the Sub-Registrar. The employees of the Co-operative Society namely P.W.8 and P.W.10 have not specifically implicated the petitioner. Further, the other Mahazar witnesses have not supported the case of the prosecution. Further, without prejudice to the rights of his contention, the petitioner had already paid a sum of Rs.14,080.60 in two installments. Initially a sum of Rs.5,000/- (Rupees Five Thousand only) (by cash) was paid on 06.09.2012 and



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thereafter, Rs.9080.60/- (Rupees Nine Thousand Eighty and Sixty Paise only)

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(by cash) was paid on 31.03.2020. Hence, prayed to allow the revision and the petitioner to be acquitted of all charges.

13. Learned Government Advocate (Crl. Side) appearing for the first respondent-Police submitted that P.W.1 is the Deputy Registrar of Dairy Development Department, who received the complaint from Special Officer/P.W.2 of the Society informing that the petitioner misappropriated the Society's funds to the extent of Rs.14,080.65. He further submits that P.W.1 appointed P.W.3 as 81 enquiry officer, who conducted enquiry, examined witnesses, perused records and during enquiry, the petitioner given an admission statement to P.W.3 as well as sent a letter/Ex.P10 absolving the Secretary/P.W.4. The conclusion of the enquiry report is that the petitioner misappropriated the Society fund and he is independently liable to pay the misappropriated amount. On receipt of the report, P.W.1 was directed to lodge a police complaint. P.W.1 lodged police complaint. P.W.9 produced all



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the documents and records to P.W.11, who registered the complaint, visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of P.W.5 and P.W.6. Thereafter, examined other witnesses. On completion of investigation it was found that the petitioner misappropriated the funds of the society.

14. During enquiry, the Special Officer/P.W.2, the petitioner/Ex-president, the Secretary/P.W.4 have given their statement to the enquiry officer. It has been marked as Exs.P7 to P9. Further submitted that P.W.8 statement is in the nature of confession of the petitioner. Added to it, the petitioner given a letter dated 27.09.2001 taking all the responsibility for the misappropriation and further excluded the Secretary. On the collection of the materials and documents, charge sheet filed before the trial Court, wherein, the prosecution has produced P.W.1 to P.W.11, marked Exs.P1 to P22. The defence have examined D.W.1. On conclusion of the trial, the trial Court found that the petitioner is guilty and convicted him for offence under Section



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406 I.P.C. and sentenced to undergo one year simple imprisonment and directed to pay fine of Rs.3,000/-, in default, to undergo one year simple imprisonment. Aggrieved against the same, the petitioner filed an appeal before the learned Sessions Judge, Thiruvannamalai in C.A.No.8 of 2007. The learned Sessions judge dismissed the appeal confirming the conviction and sentence of the trial Court. The points now raised by the petitioner were earlier raised by him before the trial Court as well as in Lower Appellate Court, which was considered and found no merits in the petitioner's contention.

15. Learned Government Advocate (Crl.Side) produced the report from the Deputy Registrar, Milk Producers Co-operative Society, Tiruvannamalai in Na.Ka.No.2132/voo/2001 dated 22.03.2022 confirming that the petitioner had paid the entire amount of Rs.14,080.60. He further submitted that the petitioner misappropriated the Society amount and later paid the amount. The payment would not absolve the petitioner from the



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above case. Hence, prays for dismissal of the revision and to confirm the conviction passed by the courts below.

16. Considering the submissions and on perusal of the material, it is seen that it is not in dispute that the petitioner was President of Melnagar Milk Producers Co-operative Society from 01.04.1997 to 26.05.2001. The petitioner is the elected president of the Society. The petitioner taken charge of the society from P.W.8, who was the Special Officer from 25.01.1996 to 31.03.1997. On the orders of the Registrar of the society, the elected members were terminated and thereafter the petitioner handed over charge to P.W.2/Special Officer. The Special Officer took charge of the society, received all documents. At that time he found that there was a shortage of cash balance of Rs.14,080.65 as to the cash book. The petitioner is said to have given an undertaking that he would repay the shortage amount within a period of one month and thereafter notice was sent to him. Even thereafter, he failed to make the payment. Since he misappropriated the society fund, P.W.1



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caused enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act to be conducted by P.W.3. P.W.3 conducted 81 enquiry, examined P.W.2, the petitioner as well as P.W.4/the Secretary of the society, and marked Exs.P7 to P9. Further, P.W.3 also stated that the petitioner herein given an admission letter dated 27.09.2001. The trial Court as well as Lower Appellate Court has placed heavy reliance on Ex.P8/statement and Ex.P10/admission letter of the petitioner.

17. On close scrutiny, it is seen that Ex.P8 was obtained in the presence of P.W.7 and P.W.10. Both the witnesses have disowned the contents in the letter. Likewise, Ex.P10 is in the letter head of the society. The petitioner no longer President of the society, how he had access to this letter head is not known. Further, Ex.P10 has been prepared to extricate Secretary of the society and to project him as witness, P.W.4. It is seen that the petitioner as well as P.W.4/Secretary of the society are jointly responsible for the banking operations. Further, as per Ex.P11/by-laws of the society, it is



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the Secretary, who is responsible for the day to day functioning and over all administration of the society. The trial Court giving reason that any by-law, which is against the rule, cannot be accepted. Further, the trial Court observation that as per 19(1)(a) of the Milk Producers Co-operative Society by-law, the President of the Society is over all incharge of the Society, hence, he is liable for the shortage of Rs.14,080.65, is not proper. The petitioner as President is only holding a honorary post and it is the Secretary, who is the full time employee of the society and takes care of day to day functioning of the Society. It is also admitted by P.W.1 to P.W.3 and other witnesses that the cash book ledger and other documents are all in possession of the Secretary/P.W.4.

18. It is also not in dispute that the banking operation is a joint operation done by both President and Secretary. In view of the above, extricating the Secretary and projecting him as P.W.4 is not proper. Exs.P8 and P10, on which both the Courts below have placed heavy reliance, not



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proved in the manner known to law. P.W.4/Secretary admits that the accounts of the Society is maintained by him and it is not necessary that the President to visit the society daily. Further, he admits that D.W.1 as well as Mathiyalagan, the Executive Committee Members were incharge of the Society's functioning and accounts. In this case, P.W.5, P.W.6, P.W.7 and P.W.10 are the independent witnesses, who have not supported the prosecution. The other witnesses are all formal witnesses. It is to be seen that P.W.1 admits that the complaint itself is a belated one i.e., more than three and half years after the receipt of enquiry report. He further states that earlier he had given two complaints on 07.01.2004 and 28.10.2004 and thereafter only complaint was registered on 29.12.2004. What had happened to the earlier complaint is not known. P.W.11/Sub Inspector of Police denies about the receipt of earlier complaint and he states that only on 29.12.2004, the complaint has been received.



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19. The trial Court placed heavy reliance on the evidence of P.W.1 to P.W.4, Exs.P8, P10 and P11. P.W.1 is the Deputy Registrar, who receives complaint from P.W.2, the Special Officer, who took over charge from the petitioner. P.W.3 is the enquiry officer, P.W.4 is the Secretary of the Society. All the witnesses admit that the petitioner is an elected member holding the President post as Honorary, he only visits occasionally and it is the Secretary, who is in over all incharge of day to day activities and functioning of the society. The bank account jointly operated by petitioner and P.W.4. The attesting witnesses P.W.7 and P.W.10 denied the contents of Ex.P8/statement. Ex.P10/admission letter in the letter head of the Society, which is well after the petitioner removed as President of the Society. Added to it, Ex.P10 created to exclude P.W.4 from all his liabilities. Ex.P11 is the bye-law of the Society, which is contra to the prosecution case. Exs.P8 and P10 are not proved in the manner known to law. Thus, the trial Court placing reliance on this above evidence and exhibits is not proper. Added to it, the



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Lower Appellate Court selectively taken the evidence of P.W.1 to P.W.3 and
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Exs.P8, P10 and P11 while confirming the conviction of the trial Court.

20. As discussed above, both the Courts below not considered the evidence in the proper manner. From the evidence of P.W.1 to P.W.4, Exs.P8, P10 and P11 it cannot be held that the prosecution had proved the case against the accused beyond all reasonable doubt. The amount deposited, Society suffered no loss. Hence, this Court is inclined to set aside the conviction and sentence passed by the trial Court, confirmed by the Lower Appellate Court.

21. In the result, this Criminal Revision Case is allowed. The judgment of conviction and sentence passed by the learned Sessions Judge, Thiruvannamalai in Crl.A.No.08 of 2007 dated 07.10.2016, confirming the order of conviction passed by the learned Judicial Magistrate, Arni in



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C.C.No.393 of 2005 dated 31.01.2007 are set aside and the revision petitioner is acquitted of all the charges. Consequently, connected miscellaneous petitions are closed.

23.12.2022

Index: Yes/No

Internet: Yes/No

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To

1.The Sessions Judge,
Thiruvannamalai.

2.The Judicial Magistrate,
Arni.

3.The Public Prosecutor,
High Court, Madras.

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and

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