BAIL SLIP

The Petitioner herein namely C.Jeyagopi S/o.Chinnappa was directed to be released on bail as per order of this Court dated 29.02.2016 and made in CRL.MP.No.2303/2016 in CRL.RC.No.340/2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2022

DELIVERED ON : 17.06.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.340 OF 2016

C.Jeyagopi

... Petitioner/Accused

Versus

The Sub Inspector of Police,
D.C.B. Vellore.
(Cr.No.76/2008)

... Respondent/ Complainant

PRAYER :

Criminal Revision petition filed under Sections 397 r/w.401 Cr.P.C. praying to set aside the order dated 12.06.2015 passed in C.A.No.249 of 2010 by the I Additional District and Sessions Judge, Vellore, Vellore District, confirming the order of conviction and sentence dated 13.09.2010 passed in C.C.No.36 of 2010 by the Judicial Magistrate-II, Vellore.

For Petitioner : Mr.K.Venkateswaran
For Respondent : Mr.R.Kishore Kumar
Government Advocate

O R D E R

The petitioner/Accused in C.C.No.36/2010 was convicted by the learned Judicial Magistrate No.II, Vellore by judgment dated 13.09.2010 and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.500/- for the offence under

Section 408 I.P.C. and one year Rigorous Imprisonment and to pay a fine of Rs.500/- for the offence under Section 477-A I.P.C. The sentences are directed to run concurrently. Aggrieved against the same, the petitioner preferred an appeal before the learned I Additional District and Sessions Judge, Vellore in Crl.A.No.249 of 2010. The learned Sessions Judge by judgment dated 12.06.2015, dismissed the appeal confirming the conviction and sentence passed by the trial Court, against which, the present revision.

2. During trial, P.W.1 to P.W.8 examined and Exs.P1 to P24 marked. On the side of the defence, no witness was examined and Ex.D1 marked.

3. The gist of the case is that the petitioner worked as Secretary in the Kaniyampadi Primary Agricultural Co-operative Bank from 18.02.1985 to 22.02.2005. As per the by-law of the Society, the petitioner as Secretary was assigned with administrative work, responsible for the day-to-day money transactions, control over the movable and immovable properties and to supervise the income and expenditure of the said Bank. During the period of his tenure as Secretary on 08.12.2003, the petitioner with an intention of misappropriating the said Bank money forged the no due certificate in favour of one of its member, namely, Mohanakrishnan, Membership No.2690 (P.W.6)., despite knowing the fact that the said Mohana Krishnan had dues to the Bank. Using the same as genuine, he falsified the accounts in the Bank Registers and misappropriated Rs.45,000/- in the name of Mohanakrishnan as Bank loan and converted the same for his own use. Similarly, on 28.08.2004, the petitioner with an intention of misappropriating the bank money, falsifying the accounts in the Bank registers in the name of Chokkanathan and misappropriated an amount of Rs.42,460/-.

3.1. P.W.1-Deputy Registrar of Co-operative Society, Vellore sent a complaint/Ex.P2 that the petitioner in the name of Mohanakrishnan/P.W.6 and in the name of Chokkanathan/P.W.7 misappropriated a sum of Rs.45,000/- and Rs.47,382/-. On receipt of the complaint, F.I.R./Ex.P24 registered by P.W.8. Thereafter he conducted investigation, recorded the statement of witnesses/P.W.1 to P.W.7, collected documents and on completion of investigation, filed final charge sheet on 28.01.2010 for the offence under Sections 465, 466, 468, 471, 477(A) and 408 I.P.C. The trial Court on perusal of the evidence and materials produced, and on conclusion of trial, convicted the petitioner as stated above.

4. The contention of the petitioner is that P.W.6, who is the member of the society, availed a loan of Rs.45,000/-. Further it is contended that initiation of the case itself is

clouded with mystery. P.W.1 lodged a complaint stating that on 02.09.2004, he had seen the news item in Dinamalar daily, based on which, he issued proceedings dated 24.04.2005, to conduct enquiry under Section 81 of the Tamilnadu Co-operative Societies Act in the Kaniyambadi Primary Agricultural Co-operative Bank, nominating one Saravanan, the Vellore Field Officer. The said Saravanan conducted enquiry and on completion of enquiry, he submitted a report on 16.08.2005. Based on the report, P.W.1 lodged a complaint. In his evidence, he deposes otherwise. Further, in this case there are two loanees, namely, P.W.6 and P.W.7, on whose loan account, the petitioner is said to have misappropriated and fabricated the documents. Both P.W.6 and P.W.7 not made any complaint. For the first time, during the enquiry under Section 81 of the Act, on the compulsion of the authorities, they made allegations against the petitioner. The petitioner by producing documents and cross examination clearly proved that the allegations are false and on compulsion, such allegations made against him. Further as regards P.W.6, the petitioner issued No Objection certificate/Ex.P9 dated 28.01.2005, though P.W.1 and P.W.4 state that the petitioner was acting as Secretary up to 22.02.2005. P.W.3 in her evidence admits that on 01.01.2005, all the records and documents taken away from the petitioner and thereafter his responsibility as Secretary revoked. Hence, the petitioner could not have issued Ex.P9 dated 28.01.2005. P.W.6 admits that for his earlier loan, which was availed by him on 28.04.2001, he had paid the entire loan amount on 22.01.2002. Thereafter, he applied for loan in the year, 2003. At that time, he handed over signed blank disbursement receipt, but he had not availed any loan and that is the reason he obtained no objection certificate from the Bank. Only during enquiry under Section 81 of the Act, he was informed that there is a loan due of Rs.45,000/-. Similarly, P.W.7 earlier taken a crop loan on 27.01.2000 and repaid the same and again obtained another loan on 08.12.2003 and the same was also repaid on 16.07.2004. Later during the police enquiry he came to know that repayment not recorded in the Bank registers and he is shown as defaulter. He admits the signature in the receipt but, gives an explanation that it was signed blank receipts and handed over to the petitioner. P.W.7 is none other than the retired Block Development Officer, held responsible position in the Government could not have handed over any blank signed receipts. He further states that he had signed and handed over a letter/Ex.D1, which is now conveniently denied. Both the loanees have now admitted that the loan amount repaid. Further, in this case P.W.2 is the Extension Officer attached to the Rural Development Department, who was also Special Officer of the Bank, used to visit the bank regularly. He categorically states that he was having regular interaction with members, loanees and others of the Bank and no complaint received from any member. Further, in his evidence he state that there are several others working in the society-bank such as Assistant, Accountant, Cashier and others and there is a work order assigning specific work to each persons. He further submitted that Ex.P7 has been approved, following the procedure. Likewise, the recordings in Ex.P14 about the loan dues will be known to the loanees. As a Special Officer he received no complaints. P.W.3 is the accountant, presently working as Secretary, Incharge of the society bank. She states that the loan particulars of P.W.6 and P.W.7 were recorded in the registers by her and the disbursement registers were handed over by the Secretary. Further states that as per the circular dated 03.08.2002 of the Bank, the cashier is the responsible officer for any receipts and payment of the Bank. She further states that P.W.4-Ramesh signed Ex.P7. Though she states that she made oral complaint against the petitioner to the higher officials, it is not followed with written complaint or by any other records. She further submits that the Primary Co-operative Bank was functioning as per the work allocation order and each one of them was assigned specific work. The petitioner as Secretary was incharge of all administrative functioning of the Bank. She admits that the register entered by her and K.C.C. loan document was filled by her and all the loanees have signed before her. Thus falsifying the claim of P.W.6 and P.W.7 that the filled up documents were used by the petitioner. P.W.4 is the Assistant of the Primary Co-operative Society Bank. He clarifies that the petitioner used to give oral instructions and all records entered on the directions of the petitioner. He admits that all writings made by him. P.W.4 attempts to wriggle out stating that on the instructions of the petitioner he used to enter the register. P.W.5 is the cashier of the Primary Co-operative Society Bank. He admits that it is his duty to handle all the receipts and payment of the Society, and to reconcile the accounts of the Bank. He gives an explanation that he acted only at the instructions of the petitioner. As regards the evidence of P.W.8/Investigating Officer, except for collecting documents submitted by P.W.1, he filed final report, not conducted any independent investigation to verify the truthfulness and genuineness of the statement by the witnesses and the documents produced. In this case, the statements given by the witnesses as well as the petitioner to the enquiry officer Saravanan, are not admissible and cannot be looked into for the reason that the said Saravanan could not be examined as witness, since he passed away earlier and no other witnesses examined to prove the same. The witnesses namely, P.W.3, P.W.4 and P.W.5, who are Accountant, Assistant and Cashier of the Primary Co-operative Society Bank, clearly state that the Society has a work allocation order and each employee is allocated specific work and as per the work order they have to function. All these witnesses conveniently now state that as per the instructions of the Secretary/petitioner, records were filled up, which is not proper. In order to escape from the misdeeds committed by them, now they have teamed up and shifted blame on the petitioner. P.W.2-Special Officer states that he used to visit the Primary Co-operative Bank regularly and there was no complaint against the petitioner. These facts have not been considered by the trial Court as well as the Lower Appellate Court. Without prejudice to his submissions he submitted that after enquiry under Section 81 of the Act, surcharge proceedings under Section 84 of the Tamilnadu Co-operative Societies Act was initiated and an order was passed on 29.05.2006 in Tha.Thi.No.8/05-06. In that order, it is recorded that P.W.7-Chokkanathan admit that he availed the loan and undertook to pay the loan amount. With regard to due of P.W.6 loan amount of Rs.45,000/-, surcharge proceedings order was passed and the amount was directed to be paid along with 15% interest as on 28.08.2004. Accordingly, a sum of Rs.56,836/- was directed to be paid by the petitioner with interest. The surcharge proceedings amount has been now remitted by two Demand Drafts, viz., D.D.No.001205 dated 14.03.2022 for a sum of Rs.56,836/- and for the further interest period D.D.No.000537 dated 13.04.2022 for a sum of Rs.18,164/-. A copy of these two Demand Drafts produced. These two Demand Drafts submitted to the Kaniyambadi Primary Agricultural Co-operative Bank on 13.04.2022. The same received by the Bank and issued receipt in ADJ No.42904. The total amount of Rs.75,000/- was directed to be paid by this Court by order dated 06.04.2022. Thus the alleged loss sustained by the society, made good and hence prayed for acquittal.

5. Learned Government Advocate appearing for the respondent Police submitted that P.W.1/Deputy Secretary of the Co-operative Society received a complaint from various persons and also came across the news item published in Dinamalar daily about the misappropriation committed in the Primary Co-operative Society, thereafter he caused Section 81 enquiry to be conducted by one Saravanan. The said Saravanan conducted an enquiry and found that the petitioner had committed forgery, falsification of accounts and misappropriation of Rs.45,000/- on the account of one Mohanakrishnan and Rs.47,382/- on the account of one Chokkanathan. Thereafter, a complaint/Ex.P2 was lodged to P.W.8, who received the same, registered an F.I.R., collected documents, recorded statement of witnesses/ P.W.1 to P.W.7 of which, P.W.6 and P.W.7 are the members of the Society and loanees, who had categorically stated that they have not taken any loan. On the other hand, from the Bank records, it is found that they have availed loan. Using the signed blank disbursement receipts, the petitioner instructed his subordinates, namely, P.W.3 to P.W.5 to make entries in the register and misappropriated the loan amount in the name of P.W.6 and P.W.7. The witnesses have categorically stated about the role played by the petitioner and the entries made in the register. The trial

Court on the evidence of the witnesses and the documents produced, finding that the petitioner had committed the offence of misappropriation and falsification of accounts and convicted him. The Lower Appellate Court confirmed the same. The petitioner having misappropriated the society amount, now cannot absolve himself by claiming that the misappropriated amount made good and paid back. Hence, opposed this petition.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. Considering the submissions and on a perusal of materials, it is seen that in this case P.W.1/Deputy Registrar of Co-operative Society on coming across the news item dated 02.09.2004 in Dinamalar daily, caused Section 81 enquiry under the Co-operative Societies Act by one Saravanan. The said Saravanan conducted enquiry thereafter, he submitted report dated 16.08.2005 fixing the liability and responsibility on the petitioner. The petitioner being the Secretary of the Primary Co-operative Bank, prepared loan documents and entered the same in the register and availed loan amount of Rs.45,000/- in the name of one Mohanakrishnan and one Chokkanathan. Correspondingly in K.C.C. pass book, there is no entry and the members were not aware about the loan amount. Hence, a complaint was lodged to P.W.8. On receipt of the complaint, P.W.8 examined the witnesses, recorded the statement, collected documents and filed charge sheet in this case. P.W.2 is the Special Officer, who categorically states that the receipts and payments details about the disbursement of loan were carried by the employees of the Society and the petitioner being the Secretary was over all incharge of the Society and whenever there was any misappropriation, it would be brought to the notice of P.W.2 and he would enquire about the same. As regards the petitioner-Society, he did not receive any complaint. He further clarifies that the loan was given to P.W.6 following procedure. In this case, through P.W.1, Exs.P1 to P24 marked. All these documents were submitted by Saravanan, the Enquiry Officer. Since Saravanan passed away, through P.W.1, entire documents were marked. Apart from just marking documents, he has not stated anything more. From the statement of the employees of the Society, namely, P.W.3, P.W.4 and P.W.5, who are Secretary incharge/Accountant, Assistant and Cashier, it is seen that they work as per the work order and each one of them has been assigned specific work. P.W.3 the present Secretary incharge states that there is a circular issued on 03.08.2002. As per the circular, all the receipts and payments of the Society, to be carried only by the cashier/P.W.5. She further confirms that the petitioner was relieved from the post of Secretary on 22.02.2005. As per records, from 01.01.2005 all the documents were collected from him and he was not permitted to function as

Secretary thereafter, which would falsify the case of the prosecution that Ex.P9/No due certificate dated 28.01.2005 given to P.W.6 by petitioner. She further submits that in Ex.P7, P.W.4/Assistant had dealt with it and the loan was issued after following procedure. P.W.4 admits that he entered all the registers and dealt with the loan documents. P.W.5/Cashier admits that it is his responsibility to deal with all the receipts and payments, preparing reconciliation statement, maintaining the records of the Society. But these three witnesses give an explanation as though it was at the instance of the petitioner that they were forced to make such entries and dealt with the loan disbursements as per the instructions of the petitioner. None of the witnesses made any complaint to the higher officials or to the Special Officer/P.W.2, who regularly visits the Primary Co-operative Society. It is also seen that the Central Co-operative Bank officials used to visit the society regularly, they did not receive any complaint. P.W.4 confirms that the loanees signed in his presence. P.W.6 and P.W.7 are the loanees. P.W.6 states that he had earlier taken loan and repaid the same and thereafter sought for further loan at that time he handed over blank signed disbursement voucher and thereafter he had not availed any loan. On the contrary, during enquiry under Section 81 of the Act, he states that he came to know then only that in the society register it is recorded as though he availed loan of Rs.45,000/-. In K.C.C. pass book, no such recording made. Further it is seen that Ex.P9/No due certificate has been issued to him. This amount of Rs.45,000/- is said to have been misappropriated by the petitioner. P.W.6 admits that the loan amount repaid as stated above. From the evidence of P.W.3, it is seen that from 01.01.2005, the petitioner not allowed to act as Secretary and all the registers and records, handed over by him. In such case, issuance of Ex.P9 dated 28.01.2005 is doubtful. P.W.7 retired B.D.O., who is a responsible officer, handing over signed blank disbursement receipt is highly doubtful. Added to it, he admit that he availed loan and repaid the same, which is recorded in surcharge proceedings. In this case, there is no evidence and materials to prove that the loan amount availed in the name of P.W.6 and P.W.7 was received by the petitioner and he misappropriated the same. The entrustment/receipt is pre-condition and thereafter only discharge of the entrustment has to be proved by the accused person. In this case, the primary requirement of entrustment/receipt of the loan amount by the petitioner not proved. In view of the same, this Court, finds that the conviction under Section 408 is not maintainable. Likewise to convict the petitioner under Section 477-A I.P.C, there is nothing to show that there has been falsification of records by the petitioner. In view of the same, this Court set aside the conviction and sentence passed by the trial Court. The petitioner without prejudice to his right had come forward and deposited a sum of Rs.75,000/- by way of two Demand Drafts and the receipt is also recorded.

8. Accordingly, this Criminal Revision Case is allowed. The judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Vellore in Crl.A.No.249 of 2010 dated 12.06.2015, confirming the order of conviction passed by the learned Judicial Magistrate-II, Vellore in C.C.No.36 of 2010 dated 13.09.2010 are set aside and the revision petitioner is acquitted of the charges.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District and Sessions Judge,
Vellore.

2. The Judicial Magistrate-II,
Vellore.

3. The Chief Judicial Magistrate,
Vellore.

4. The Sub Inspector of Police,
District Crime Branch,
Vellore.

5. The Superintendent,
Central Prison,
Vellore.

6. The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.340 of 2016

SSI(CO)
PM/01/07/2022