IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :12.09.2022

Pronounced on :22.09.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.706 of 2016

S.Poongavanam .. Revision Petitioner

/versus/

State Rep.by
The Inspector of Police,
C.C.I.W., C.I.D.,
Thiruvannamalai,
Thiruvannamalai District.
(Crime No.6 of 2007) .. Respondent

Prayer: Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., to call for records pertaining to the case and set aside the conviction and sentences passed by the learned Judicial Magistrate No.II, Vellore in C.C.No.308 of 2011, dated 10.03.2011 which was confirmed by the learned 1st Additional District and Sessions Judge, Vellore in C.A.No.80 of 2011 by judgment dated 12.04.2016.

For Petitioner :Mr.Ali Hassan Khan for
Mr.S.Sivakumar

For Respondent :Mr.N.S.Suganthan
Government Advocate (Crl.Side)

ORDER

The Revision Petition is filed against the judgment of conviction and sentence under Sections 408 and 477A IPC. The term of imprisonment to undergo 2 years RI and fine of Rs.1,000/- in default,to undergo SI for 3 months for each of the offences imposed by the trial Court and confirmed by the Lower Appellate Court is challenged in this Revision Petition.

2. The brief facts leading to the Revision Petition:

The Deputy Registrar of Co-operatives, Thiruvannamalai appointed an Enquiry Officer under Section 81 of the Tamil Nadu Co-operative Societies Act based on the report received from the Special Officer regarding misappropriation of funds in Kadaladi Primary Co-operative

Society Bank. The enquiry revealed that, the Revision Petitioner herein, who was the Secretary of Kadaladi Primary Co-operative Society Bank had committed criminal breach of trust and misappropriated the funds of the Bank by falsification of accounts. Specific cases of premature withdrawal of 7 Fixed Deposits with interest without debit note and without the knowledge of the depositors and disbursement of loans in the names of 31 persons who were either not admitted as members of the society or without their request and knowledge by fabricating accounts as if the loans were disbursed to them and thereby committed appropriation of the amount. Besides, the Enquiry Report also disclosed misappropriation of Bank money, by fabrication documents pertaining to jewel loans and withdrawal of money from the account holders by falsifying accounts. By fabricating receipts, loan for lesser amount been altered to higher amount and the difference amount defrauded, thereby a total sum of Rs.17,45,491/- found cheated.

3. The Enquiry Report submitted by the Co-operative Sub-Registrar, was taken as First Information Report by the respondent police and a case was registered in Crime No.6 of 2007 for offences under Sections 406, 420, 468, 471 and 477A of IPC. The two Final Reports after investigation were filed and the same were taken cognizance by the Learned Judicial Magistrate in C.C.No.308 of 2007 and in C.C.No.307 of 2007.

4. In C.C.No.308 of 2007, based on the records, the trial Court framed charges against the accused/appellant herein for offences under Sections 408, 468, 471 and 477A of IPC.

5. The prosecution to prove the charges had examined 27 witnesses and marked 105 Exhibits. On the side of the defence, 2 witnesses and 3 documents relied.

6. The trial Court on appreciation of evidence, found the accused guilty only of offences under Sections 408 IPC and 477A IPC. So, for the offence under Section 408 of IPC convicted him to undergo 2 years RI and fine of Rs.1000/- in default, 3months SI and identical term of sentence for the offence under Section 477A IPC. Taking note of the fact that the accused tried for similar offence in C.C.No.307/2007, the trial Court ordered the substantive sentences in both the case shall run concurrently.

7. The accused, being aggrieved filed appeal against the judgment of conviction and sentence in C.C.No.308/2007 dated 10/03/2011 and also in C.C.No.307 of 2007 dated 01.03.2011. The Criminal Appeals were heard by the Hon'ble I Additional District Judge, Vellore in C.A.No.80/2011 and C.A.No.79 of 2011 respectively and dismissed the appeals on 12/04/2016 by confirming the trial Court judgment of conviction and sentence.

8. The Revision Petition as against the lower Appellate Court judgment in C.A.No.80 of 2011 confirming the trial Court judgment in C.C.No.308 of 2007 is now under consideration.

9. The Revision Petition against the concurrent finding is filed on the ground that the Courts below failed in appreciating the evidence properly. The petitioner as Secretary of the Bank was not in-charge of the whole proceedings regarding making entries in the jewels loan book and other registers. It is the duty of the Special Officer and the jewel appraiser to maintain the relevant documents. He was entrusted with the duty only to supervise the work done by his subordinates. The false entries which were alleged to be made by the petitioner were not sent for hand writing expert opinion. The inordinate delay in lodging the complaint after 3 years of the incident was not duly considered by the Courts below. The Enquiry Officer whose Report (Ex P-104) being the cause for the registration of the criminal complaint, has admitted that there were two Special Officers working during the relevant period and the loans were sanctioned by those Special

Officers. However, the Investigating Officer has not examined them. Failure to examine them has caused prejudice to the petitioner. The original documents regarding crop loans and day book relevant to those loans were not produced by the prosecution, therefore the conclusion of the Courts below that the petitioner has misappropriated the crop loans is baseless. The Courts below failed to consider the evidence of the defence witnesses and the documents Ex.D-1 to Ex.D-3.

10. The Learned Government Advocate (Crl.Side) representing the State submitted that, this is a case of misappropriation of the money entrusted to the petitioner, who was employed as the Secretary of Bank. The prosecution has examined PW-3, PW-12, PW-13 and PW-21 in whose name the Fixed Deposit's stood and closed as premature without their knowledge and consent. The non-receipt of the money on the day in which it was withdrawn from the Bank is clearly established through these witnesses. The prosecution has examined PW-4, PW-5, PW-6, PW-7, PW-8, PW-9, PW-10, PW-11, PW-15, PW-16, PW-18, PW-19, PW-22, PW-23, PW-24 to

prove the loan disbursed in their names were not raised by them and their names were misused by fabricating documents like day books and ledgers were relied by the prosecution to prove the case of misappropriation and forgery of documents.

11. Heard both sides. Records perused.

12. The petitioner served as the Secretary of the Kadaladi Primary Agricultural Co-operative Bank from 01/11/1989 to 29/03/2004. He was in charge of the accounts, stocks and records. During his tenure as the Secretary of the said Bank, the following customers invested money and the same was entered in the Fixed Deposit Register and the Daily Ledger. Before its date of maturity, the petitioner without any debit note has made false entries in the Day Book as if the principal amount along with interest disbursed to the depositors. In fact, the money was not given to the depositors but misappropriated by this petitioner.

Sl. No.	Customer Name	Amount Deposited and date	Amount withdrawn and date
1.	Murugesan (PW-3)	Rs.40,000/- on 23.11.1998	Rs.68,910/- on 09.06.2003
2.	Neelavathy (not examined)	Rs.10,000/- on 08.09.1999	Rs.16,195/- on 12.06.2003
3.	Pandurangan (PW-21)	Rs.20,000/- on 09.01.1999	Rs.34,445/- on 12.06.2003
4.	Bhuvaneswari (PW-12)	Rs.25,000/- on 10.02.1999	Rs.42,618/- on 17.06.2003
5.	Venkatachalam (PW-13)	Rs.25,000/- on 10.02.1999	Rs.42,618/- on 17.06.2003
6.	Krishnan (not examined)	Rs.30,000/- on 27.03.1999	Rs.53,918/- on 2.06.2003

13. From the Fixed Deposit Ledger marked as Ex.P32 and day book entries Ex.P33, Ex.P34, Ex.P37 and Ex.P42 the misappropriation of the fixed deposit amount with interest misappropriated is established from the fact that the deposit holders were in custody of the original Deposit receipts and without any debit note, the money has been withdrawn prematurely by making false entry in the day book.

14. Similarly, witnesses Shanmugam (PW-11) Radhakrishnan

(PW-10), Raman (PW-22), Arumugam (PW-4), Govindaraj (PW-5), Mannan (PW-23), Kuppusamy (PW-6), Thangavel (PW-7), Ayothi (PW-8), Ramajayam (PW-9), Prabakaran (PW-26) had deposed that they did not seek for any loan but loan has been disbursed in their names and money misappropriated. PW-24 [Vijayakumar] has deposed that he had Rs.30,000/- in his account, but in the year 2003 when he went to the bank for withdrawal of the amount, the Bank informed him he already withdrawn. Similarly, complaint by PW-14[Vetrivel] who has deposed that he had balance of Rs.32,616/- in the year 2003 in his Savings Bank Account. When he went to withdraw money, he was informed that only Rs.100/- is in his account.

15. All these witnesses have given statement to the Enquiry Officer PW-25 [Anbalagan] and those statements are marked and accepted by the respective witnesses as their previous statement in Section 81 Enquiry.

16. The Courts below had made a detail analysis of the evidence.

Though the prosecution witness PW-18 [Munikannu] had admitted that they availed loan and PW-12 [Bhuvaneswari] has deposed she got back her FD amount with interest, rest of the prosecution witnesses have categorically stated about loans in their name, without application by them, siphoning money from their account without withdrawal slip signed by them will go to show that the revision petitioner has forged the documents and appropriated the money. He cannot escape from the criminal liability when he as Secretary of the Bank responsible for sanctioning loan and for maintenance of records. The plea raised by the learned counsel for the revision petitioner that the entries in day books and ledgers were not sent for handwriting expert for his opinion deserves no merit for consideration. The revision petitioner is the custodian of those records and register. He is the person entrusted with the responsibility to make entries in the day books and ledger and verify the correctness of those entries. While so, there is no necessity to send the entries for handwriting expert.

17. The plea that the Investigating Officer is not made any

independent investigation apart from the enquiry report [Ex.104] given by PW-24[Vijayakumar] also does not deserve any favourable consideration since the witnesses for prosecution have mostly confirmed, their previous statements recorded during Section 81 Enquiry and they were admitted into evidences and marked as Ex. P4 to Ex.P14, Ex.P16 to Ex.P20, Ex.P22, Ex.P24, Ex.P26 and Ex.P28.

18. The learned counsel for the revision petitioner relying upon few judgments of this Court wherein the limitation prescribed in Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 for further action for surcharge proceedings had contended that the criminal prosecution is barred by limitation. With great respect to the learned Judges who have delivered those judgments the limitation prescribed for action under Section 81 and 87 of the Act, for recovery and the departmental enquiry cannot be applied to action for criminal prosecution. When grave charges of criminal breach of trust and falsification of account to misappropriate several lakhs of rupees of the bank and its customers, the delay in completion of departmental

enquiry cannot bar the criminal proceedings.

19. As far as limitation for criminal prosecution concern, Sections 468 and 473 of Cr.P.C., will apply and in this case, since the accused charged for offence under Section 477-A of IPC which is punishable for a term extending upto a term of 7 years, there is no legal impediment in taking cognizance of the offence. Though there seems to be delay in launching the prosecution, the gravity of the offence and the voluminous documents and number of witnesses involved in the investigation has caused the delay. The Court which has taken cognizance being abreast of law had rightly exercised its power to take cognizance and tried the case. Hence, the plea of latches not in tune with law and the same is rejected.

20. In the case of this nature, the documents speak for itself. The entries made for disbursement of loan without necessary documents for granting loan and absence of necessary debit notes proves the guilt of the petitioner beyond any doubt. Therefore, the judgment of conviction and

sentence of the trial Court as confirmed by the lower Appellate Court is hereby confirmed.

21. In the result, ***Criminal Revision Case No.706 of 2016 is dismissed.*** Bail bond executed by the petitioner shall stand cancelled. The accused/petitioner shall be secured and committed to prison to undergo the balance period of sentence imposed by the trial Court in C.C.No.308 of 2011 which shall run concurrently with the period of imprisonment sentenced in C.C.No.307 of 2011.

22.09.2022

Index:yes/no
speaking order/non speaking order
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To :

1.The 1st Additional District and Sessions Judge, Vellore.
2.The Judicial Magistrate No.II, Vellore.
3.The Inspector of Police, CCIW, CID, Thiruvannamalai,
Thiruvannamalai District.
4.The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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Delivery Order made in
Crl.R.C.No.706 of 2016

22.09.2022