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.707 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 the records pertaining to the case and set side the conviction and sentences passed by the learned Judicial Magistrate No.II, Vellore in C.C.No.307 of 2011, dated 10.03.2011 which was confirmed by the learned I Additional District and Sessions Judge, Vellore in C.A.No.79 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 petitioner herein is the sole accused in C.C.No.307/2007 of the file of the Judicial Magistrate No.II, Vellore. He was tried for the charges under Sections 408, 468, 471, 420 and 477 A of IPC. After trial, the Learned Judicial Magistrate held him guilty of charges under Sections 408, 420 and 477A of IPC and acquitted him from the charges under Sections 468 and 471 of IPC. The Trial Court convicted him to undergo one year RI and to pay fine of Rs.1000/- in defaul, to undergo 1 month SI for each of the offences. The period of sentence ordered to run concurrently.

2. Being aggrieved by the trial Court judgment of conviction and sentence, the Revision Petitioner preferred appeal before the I Additional District and Sessions Judge, Vellore in C.A.No.79/2011. The Lower

Appellate Court confirmed the trial Court judgment and dismissed the appeal. Hence, this Criminal Revision Petition has been filed.

3. The brief facts leading to the Revision Petition:

The Revision Petitioner herein was the Secretary of the Kadaladi Primary Agricultural Co-operative Society Bank between the year 1989 and 2004. PW-2 [Pandurangan], the Deputy Registrar appointed PW-23[Anbalagan] as Enquiry Officer to enquire into the Report of Special Officer alleging irregularities in the Kadaladi Primary Agricultural Co-operative Society Bank. Based on the Enquiry Report [Ex.P-89] dated 20/06/2006 indicating breach of trust and falsification of documents to defraud a tune of Rs.17,45,491/- by the Secretary of the Society Mr. Pongavanam the revision petitioner herein, C.C.I.W., CID, Thiruvannamalai registered case in Cr.No.6/2007 against the revision petitioner for offences under Sections 408, 409, 477A IPC and took up the investigation.

4. Two separate final reports were filed against the accused Poongavanam and they were taken cognizance by the Judicial Magistrate in C.C.No.307/2007 and C.C.No.308/2007. The present revision petition arises from the judgment of conviction and sentence passed in C.C.No.307/2007 and subsequently confirmed by the lower Appellate Court in C.A.No.79/2011.

5. The substance of the charges framed against this petitioner is that, he while working as the Secretary of the Kadaladi Primary Agricultural Co-operative Society Bank between 01/11/1989 and 29/03/2004 was responsible for supervising the sub-ordinates, disburse loans to the members, receive the payments and make due entries in the registers and maintain proper accounts. While so, he by fabricating the documents tampered records as if jewel loans to 20 of the Society Members was granted for a higher amount than the amount actually lend. In the suspense account, a sum of Rs.30,000/- and Rs.20,000/- was drawn and it was shown against the loan account of Govindaraj and Subramanian. Had withdrew a sum of Rs.40,000/- against One lakh rupees in the Fixed Deposit of one Mahalingam without his knowledge and consent. He withdrew money from the accounts of Selvam and Munusamy without debit note and even before sanction of loans.

6. To prove the charges, the prosecution examined 24 witnesses. Marked 90 exhibits. The accused to disprove the case of the prosecution examined 2 witnesses and marked 5 exhibits.

7. The judgment of conviction passed based on the evidence of PW-3 to PW-18 and PW-22, the members of the Society, who availed jewel loans, deposed about the actual amount they received for pledging their jewels. Whereas, in the disbursement register, higher amount has been mentioned and withdrawn. The difference has been misappropriated by the accused who was the Secretary and in-charge of the loan disbursement. From the evidence of Mahalingam [PW-19], the fraudulent withdrawal of Rs.40,000/- from the FD account of Mahalingam found proved and from the evidence of Munusamy [PW-20] and Elumalai [PW-21], the misappropriation of Rs.30,000/- and Rs.25,000/- as if the money from their accounts been withdrawn found proved, since these two witnesses never availed loan or had any money worth in their account. By falsifying their accounts, the amount has been withdrawn and false entry has been made in the day book.

8. The revision against the concurrent finding is filed on the ground that the Courts below failed in appreciating the evidence properly. The prosecution failed to produce the original documents to prove its case. Without production of the original documents, the Courts below had concluded that the accused is guilty of falsification of accounts. The petitioner as Secretary of the Bank was not in-charge of the whole proceedings in the Bank regarding making entries in the jewel loan book and other registers. It is the duty of the Special Officer and the jewel appraiser to maintain the relevant documents. He is only entrusted with the duty of supervising the work done by his subordinates.

9. The entries, which were alleged to be made by the petitioner, was 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-89) 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. Mahalingam (PW-19) admits his signature in the voucher Ex P-83 and there is no clear evidence, who handled the cash on 20/05/2003 to disburse the money and who made the entries in the day book. While so the Courts below failed to consider the lacuna in the prosecution case and also failed to consider the defence evidence as spoken by witnesses DW-1, DW-2 and the documents Ex.D-1 to Ex. D-3.

10. The Learned Government Advocate (Cri Side) representing the State submitted that, this is a case of misappropriation by fabricating the documents by employee. Through oral evidence of the members who maintain loan accounts and saving accounts, the excess drawal of money by falsifying the accounts is proved. PW-23[Anbalagan] the Enquiry Officer who gave the report Ex.P-89 had marked Jewel loan ledger, day book vouchers and loan applications which are the documents to show that the excess amount paid by the Bank than the loan amount applied and the entries are corrected by the appellant, who was incharge of the loan disbursement and records. It is incorrect to say that the original documents not produced and it is not imperative to send the documents for handwriting experts opinion, when there is no doubt or contra evidence about the custody of the documents and responsibility to maintain the accounts was with the accused at the relevant point of time. The members, who availed jewel loans have given statements to the effect that in their loan account excess amount shown as borrowing, whereas they applied and received loan only a lesser amount. The delay in filing the complaint is due to the fact that the enquiry got delayed due to the voluminous records and numerous witnesses enquired. The exact amount misappropriated by the act of fraud committed by the appellant came to light on the receipt of the Enquiry Report Ex.P-89 dated 20/06/2006 and the FIR was lodged on 09/04/2007 (Ex P-90). For the offences under Sections 408, 420 and 477A IPC, the term of punishment is upto 7 years. Therefore, the complaint is not barred by limitation.

11. Heard the Learned counsels for the petitioner and the Learned Government Advocate (Crl.Side) for the respondents. 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 the records. During his tenure as the Secretary of the said Bank, jewel loans were disbursed to its members. Later it was found that as Secretary of the Bank in-charge of sanctioning the jewel loans, the appellant had falsified the documents with an intention to cheat the bank and its customers. The falsification of the loan documents, day books and ledgers were found and the same is spoken by the Enquiry

Officer [PW-23]. Through the loan applications marked as Ex.P-4, Ex.P-7, Ex.P-16, Ex.P-20, Ex.P-22, Ex.P-25, Ex.P-28, Ex.P-31, Ex.P-37, Ex.P-41, Ex.P-44, Ex.P-51, Ex.P-59, Ex.P-68 and Ex.P-72, the actual amount sought as loan and paid to the customers is proved. The vouchers and debit notes for the relevant transactions discloses the excess drawing. The trial Court as well as the lower Appellate Court on proper analysis and appreciation of the evidence has held the petitioner herein guilty for the offences under Sections 408, 420 and 477A IPC since the intention to deceive found proved and pursuance to the said intention, the documents were altered and falsified. Being the Secretary of the Bank, he is liable to be punished for the offences under Sections 408,420 and 477A IPC. As far as the other charges under Sections 468 and 471 IPC, the trial Court has found that for the allegation of withdrawal of Rs.7,300/- on 26/12/2002 from the account of Duraipandurangan, when in his account, only a sum of Rs.65.35 was in balance and fraudulent withdrawal of Rs.25,000/- from the account of Elumalai on 27/07/2003, the prosecution has failed to prove the allegation by examining Duraipandurangan and Elumalai. Therefore, the trial Court rightly acquitted the accused from the charge under Sections 468 and 471 IPC.

13. Therefore, the grounds raised in the revision petition, for the reasons stated and discussed are unsustainable and liable to be rejected.

14. Accordingly, ***this Criminal Revision Case No.707 of 2016 is dismissed.*** The Judgment of conviction and sentence of the trial Court dated 10.03.2011 as confirmed by the lower appellate Court dated 12.04.2016 is hereby confirmed. 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.

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, C.C.I.W., C.I.D.,
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.707 of 2016

22.09.2022