



Crl.R.C.Nos.973 and 1152 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.10.2022

Pronounced on :02.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.R.C.Nos.973 and 1152 of 2016

Crl.R.C.No.973 of 2016:

S.Thajutheen

.. Petitioner

/versus/

State by
The Inspector of Police,
CCIW CID, Vellore,
Vellore District.
Crime No.5 of 2009

.. Respondent

Prayer: Criminal Revision Case has been filed under Section 397 of Cr.P.C., to call for the entire records in so far relates to order passed in C.A.No.288 of 2010, dated 10.06.2016 on the file of I Additional District and Sessions Judge, Vellore, Vellore District whereby confirming the conviction and sentence dated 24.11.2010 passed in C.C.No.64 of 2009 on the file of the Judicial Magistrate-II, Vellore, Vellore District and set aside the same.



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For Petitioner :Mr.C.Prakasam
For Respondent :Mr.N.S.Suganthan
Govt. Advocate (Crl.Side)

Crl.R.C.No.1152 of 2016:

K.Rathinam

.. Petitioner

/versus/

The Inspector of Police,
C.C.I.W., C.I.D.,
Vellore.
Crime No.5 of 2009

.. Respondent

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the orders passed in Crl.A.No.289 of 2010, dated 10.06.2016 on the file of the I Additional District and Sessions Judge, Vellore confirming the judgment passed in C.C.No.63 of 2009 dated 24.11.2010 on the file of the Judicial Magistrate No.II, Vellore set side the same.

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



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COMMON ORDER

The Criminal Revision Petition No:973/2016 is filed by the first accused and Criminal Revision Petition No:1152/2016 is filed by the second accused in C.C.No.63/2009 on the file of the Judicial Magistrate No.II, Vellore. Being convicted for the offences under Sections 408 and 477 A IPC and sentenced to undergo 3 months RI and to pay a fine of Rs.500/- in default to undergo 15 days RI for each of the offences, both the accused preferred appeal individually. The Criminal Appeal No:287/2010 by first accused and the Criminal Appeal No.289/2010 by the second accused before the I Additional District Judge, Vellore. Both the appeals were dismissed by a Common Judgement on 10th June, 2016 confirming the conviction and sentence imposed by the trial Court. Hence, these petitions for revision.

2. Brief facts leading to the revision:

Thiru.Thajutheen and Thiru.Rathinam were the Secretary and Assistant Secretary respectively of Veerachettipalli Primary Agricultural



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Co-operative Society during the relevant period. On 18/10/2004

Mr.Sundaramoorthy, the Special Officer of the Society conducted inspection of records and found that for about 59 persons, loans were sanctioned improperly and committed criminal breach of trust and misappropriation. When show cause notice was issued to the persons concern, they admitted the guilt and promised to repay the misappropriated amount within 90 days. The Special Officer, after recording their confession statement forwarded a special report to the Deputy Registrar of Cooperatives on 07/11/2004 and 21/10/2004. Earlier, when similar inspection was conducted by Mr. Gurunathan, grant of crop loan illegally by misuse of power vested with Rathinam, Assistant Secretary in connivance with Thajutheen, the Secretary of the Society was noticed and Special Reports dated 24/04/2004 and 21/05/2004 were submitted to Deputy Registrar of Co-operative Societies. Another inspection conducted by Mr.Yoganantham, misappropriation of society fund by creating false records as if cash loans were disbursed to the members without actual disbursement of loans. Totally, a sum of Rs.8,19,700/- found to be



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misappropriated fraudulently.

3. Departmental Enquiry under Section 81 of the TamilNadu Cooperative Societies Act was initiated. The Enquiry Officer found that on 17/11/2000, a sum of Rs.30,690/- sanctioned as loan to one Kanthammal was not disbursed to her, but misappropriated after making entry in the day book. Similarly, on 03/11/2001 a sum of Rs.24,800/- sanctioned as loan to one Janaki, after making due entry in the day boo the said amount not disbursed to her but misappropriated. The enquiry report about these misappropriation was submitted to the Deputy Registrar of Co-operative Society.

4. Based on the said enquiry report, the Deputy Registrar of Co-operatives, Mr.Chandrasekar gave complaint to the CCIW CID, for appropriate action. Accordingly, on receipt of the complaint the case in Crime No.5/2009 came to be registered and taken up for investigation. On completion of investigation, for misappropriation of the loan amount raised



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fraudulently in the name of Kanthammal and Janaki, final report was filed against Thajudeen, Secretary and Rathinam, Assistant Secretary and taken on file in C.C.No.63/2009. Charges under Sections 408 and 477 A IPC were framed and tried.

5. To prove the charges, the prosecution examined 16 witnesses and marked 21 exhibits. For defence, one witness and 3 exhibits were marked.

6. PW15(Mr.Nagarajan), who is the enquiry officer, who conducted the enquiry and submitted the report (Ex.P19) had deposed about the material collected during the Departmental Enquiry and the statements recorded by him. As far as this case is concerned, Kanthammal was examined as PW-11 and Janaki examined as PW-12. The said Kanthammal is not a member of the accused society, however, she was assigned Membership No.1749 and cash loan of Rs.30,690/- shown to have disbursed on 16/11/2000. PW-11 has deposed that she is not a member of the society.



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She did not avail any cash loan from the society. The signature found in the loan application is not her signature. In the Loan Card marked as Ex.P-14 for sanction of Loan of Rs.30,690/- and disbursement of Rs.27,210/- on 16/11/2000, the signature of the borrower not obtained. Though in the Loan Card, a sum of Rs.27,210/- shown as disbursed, in the debit voucher, a sum of Rs.30,690/- is shown as disbursed and signed by the first accused.

7. As far as the cash loan in the name of Janaki, who was examined as PW-12, the prosecution through PW-12 has proved that the husband of Janaki had borrowed a loan in the accused Bank. In the year, it was informed by the bank that if Rs.5000/- is paid, the entire loan will be waived. Therefore, they paid Rs.5000/- and got receipt for it from the accused. When the Special Officer enquired, she came to know that the second accused has availed loan in her name without her knowledge or consent. He promised to repay it, when the same came to her knowledge. The file marked as Ex.P-16, relates to the loan transactions in the name of Janaki and the trial Court on perusing this file has found that on 3/11/2001 a



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cash loan of Rs 24,800/- been sanctioned in the name of Janaki and loan card prepared as if the said amount was disbursed to Janaki on 03/11/2001. In the withdrawal slip, the first accused has signed as if the laon amount was disbursed.

8. The trial Court taking note of the evidence of PW-11 (Kanthammal) and PW-12 (Janaki). Their loan documents found in Ex.P-14 and Ex.P-16 files. Their categorical denial of availing loan and the admission of the accused persons about the misappropriation and undertaking to repay the amount within 90 days, their undertaking marked as Ex.P-6 and Ex.P-7 held them guilty of offences under Sections 408 and 477 A IPC.

9. Before the Lower Appellant Court, the appeals filed by the accused were dismissed. The plea of the first accused that he is not conversant with tamil language and he signed where ever A-2 asked to sign. The plea of the first accused that he had no culpable mind to commit



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misappropriation and he did not misappropriate the money was not found in any favour. Likewise, the plea of the second accused that he is no way responsible for the sanction of loan or disbursement also negated. The plea that the Special Officer is responsible for the sanction of loan and Secretary (A-1) is responsible for disbursement of the loan, A-2 as Assistant Secretary has no role in sanctioning the loan or disbursement of money was negative, in view of the evidence of PW-11 and PW-12, who have implicated A-2. The extra judicial confession admitting the guilt and promise to repay the money appropriated held as voluntary confession. However, the lower appellate Court pointing out that the conviction is not solely based on the confession but on material evidence like daybook loan ledger, loan card and withdrawal slip confirmed the judgment of the trial Court.

10. In this revision petitions, it is canvassed that the prosecution has not sent the disputed documents for handwriting expert opinion to fix the responsibility. The vouchers were not marked separately and the



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evidence of PW-11 and PW-12 ought to have disbelieved, since they are monetarily benefited, if they claim that the loan amount was not received by them.

11. This Court on considering the evidence and the reasoning given by the Courts below based on the appreciation of evidence finds no error or illegality in appreciation of facts. The revision petitioners as Secretary and Assistant Secretary of the Bank are directly responsible for the maintenance of the records like day book, loan ledgers, withdrawal slips and vouchers. They are responsible for disbursement of loan and its collections. The plea of the secretary that he is not conversant with the language and the plea of the Assistant Secretary that he has no role in sanctioning loan, disbursement of loan and the entries found in the loan ledgers and day book are not tenable. The evidence let in by the prosecution has clearly proved that loan in the name of non-member and in the name of a member who did not seek any loan been sanctioned and disbursed without signatures of the borrowers. The first accused has signed the withdrawal slip



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indicating the money has been paid. The responsibility and duties of the Secretary and Assistant Secretary of the bank is spoken by PW-15. They are responsible for the day to day affairs of the bank and primarily responsible for sanction of laon and its recovery. Also responsible for maintaining records pertaining to loan transaction. The first accused as Secretary and the second accused as Assistant Secretary cannot claim ignorance for the fraudulent disbursement of loan without obtaining the signature of the borrower. Further, they both have admitted their guilt in the meeting held by the members in the presence of Senior Officer of the Department and both have agreed to repay the money misappropriated. Being an extra judicial confession given voluntarily, the same is admissible. However, as observed by the lower appellate Court, the conviction is not solely based on the confession statement marked as Ex.P-6 and Ex.P-7 but on the oral evidence of PW-11, PW-12 and PW-15 and the documentary evidences like Ex.P-14 and Ex.P16. The crime of misappropriation been committed by A-1 in connivance with A-2 and therefore both the petitioners are criminally liability for the money misappropriated.



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12. In fine, this Court finds no error or illegality in the judgment of the Courts below passed in C.C.No.63/2009 as confirmed in C.A.Nos.287 and 289 of 2010. Hence, both the Revision Petitions are dismissed. The revision petitioners are directed to surrender before the trial Court within 30 days from today to undergo the remaining period of imprisonment.

02.11.2022

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

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



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DR.G.JAYACHANDRAN,J.

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Delivery Common Order made in
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