IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :26.10.2022

Pronounced on :02.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.R.C.Nos.974 and 1154 of 2016

Crl.R.C.No.974 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.

For Petitioner :Mr.C.Prakasam

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

Crl.R.C.No.1154 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.290 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.64 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)

COMMON ORDER

These two Criminal Revision Petition Nos.974/2016 and 1154/2016 are filed by accused 1 and 2 respectively in C.C.No.64/2009 on the file of the Judicial Magistrate No.II, Vellore. The revision petitioners are against the concurrent finding of conviction by the Courts below.

2. Facts of the case and finding of the trial Court:

On receipt of complaints about misappropriation of the fund by the staff of the Verrichettipalli Primary Agricultural Co-operative Bank, Mr.Sundaramoorthy, the Special Officer of the Bank informed the Deputy Registrar of Co-operative Society about the complaint and sought for intervention. Accordingly, Mr.Nagarajan (PW-44) was appointed as Enquiry Officer under Section 81 of the Tamilnadu Co-operative Societies Act. He after conducting enquiry and recording the statements of the witnesses submitted his report Ex.P-88. The report revealed that during the period between 30/11/2001 and 05/11/2002, Thajudeen (A-1) the Secretary of the said Society and Rathinam (A-2) the Assistant Secretary of the said

Society connived with each other and with the intention to misappropriate the funds of the society fabricated documents as if loan to 52 members to a tune of Rs.19,88,439/- has been disbursed and without actual disbursement to the borrowers, the said money was misappropriated and thereby committed offences under Sections 408 and 477 A of IPC.

3. The said Report was given as a complaint to PW-45 Alamelu Mangaithayar, the Sub-Inspector of Police. She, after investigation filed 3 Final Reports touching upon different loan transactions during different period. This case is in respect of 59 loans based of forged loan applications, to a tune of Rs.19,88,439/- which was alleged to have been misappropriated by the petitioners herein without being disbursed to the borrowers.

4. Initially, a complaint from one Anantha Naidu received in respect of loan in his name, without his knowledge. Mr.Sundaramoorthy (PW-4) the Special Officer on receipt of the complaint has forwarded it to the Deputy Registrar Co-operatives for action. Accordingly, the Deputy

Registrar appointed Mr.Nagarajan (PW-44) to conduct enquiry under Section 81 of the TamilNadu Co-operative Societies Act. Mr.Nagarajan in the course of the enqiry, found without disbursing the loan, records were created as if loans were disbursed to the concern members, but the money to a tune of Rs.19,88,439/- had been siphoned and misappropriated by the then Secretary and Assistant Secretary, who are A-1 and A-2. In the course of Section 81 Enquiry, these two accused have given statement admitting their guilt and promised to repay the money misappropriated. A-1 admitted that he has misappropriated the Bank fund to a tune of Rs.8,19,709/- and A-2 had admitted that he has misappropriated the Bank fund to a tune of Rs.18,25,127/-. The statements of A-1 and A-2 were marked as Ex.P-6 and Ex.P-7.

5. The trial Court on considering the evidence of PW-9 to PW-37, PW-40 to PW-42 had concluded that loans in the name of these witnesses were recorded to have been disbursed. However, these witnesses have deposed that they have not received the loan amount. In Ex.P-34, Ex.P-37,

Ex.P-39 to Ex.P-87 the files related to loan disbursement, there is no evidence to show that the above witnesses and others (totally 59 persons) have received the loan amount. Without loan applications or after receiving loan applications, money has been withdrawn through withdrawal slips, but not paid to the borrowers. Some of the loans are sanctioned to non members. The accounts were falsified in the day book as if the loan was disbursed to the respective borrowers. Thus, A-1 and A-2 as Secretary and Assistant Secretary of the Bank being responsible for sanctioning of loan to the eligible persons on proper verification had colluded together and committed criminal breach of trust and misappropriated money by falsifying the accounts.

6. The trial Court relying the Enquiry report Ex.P-88 and the evidence of the enquiry officer PW-44, who gave the report has held that these two accused have direct control and responsibility in administration of the Bank. They were in charge of preparing proposals to sanction loans to the members, disbursement of the loans and collection of the loan dues.

Therefore, the defence plea that they are not responsible for the alleged breach of trust and falsification of account was negatived. The discrepancy in the actual amount misappropriated as mentioned in the surcharge proceedings Ex.D-3 and the Enquiry Report Ex.P-88 , FIR also found not in favour of the defence since, the difference in the amount misappropriated need not be same before investigation based on FIR and in the final report after completion of the investigation.

7. The trial Court held A-1 and A-2 are guilty of offences under Sections 408 and 477 A of IPC, sentenced them to undergo 2 years RI with fine of Rs.1000/- in default 1 month SI for each of the offences.

8. Appellate Court finding in the appeals preferred by A-1 and A-2:

On being aggrieved by the trial Court judgment of conviction and sentence, A-1 and A-2 appealed to the District and Sessions Court at Vellore. The Criminal Appeal of A-1 was taken on file as

Crl.A.No.288/2010 and the Criminal Appeal of A-2 was taken on file as Crl.A.No.290/2010 and heard by the I Additional District Judge, Vellore. Vide a common judgment dated 10/06/2016, both the appeals were dismissed and the trial Court judgment was confirmed.

9. The lower appellate Court, after appreciating the evidence of PW-4 Mr.Sundaramoorthy, Special Officer, who conducted inspection of the society on 18/10/2004 and found the fabrication of false documents and misappropriation of bank fund as if Ananda Naidu and 58 persons applied for loan and amount was disbursed to them. The Enquiry report of PW-44, the loan files of recovered during investigation by PW-45 and the deposition of the borrowers had arrived at the concurrent finding of the trial Court. The plea of the first accused that he is not conversant with tamil language and he signed wherever A-2 asked to sign and his plea that he had no culpable mind to commit misappropriation and he did not misappropriate the money was not found any favour. Likewise, the plea of the second accused that he is no way responsible for the sanction of loan or

disbursement also negatived. His plea that the Special Officer is responsible for the sanction of loan and Secretary (A-1) is responsible for disbursement of the loan, he as Assistant Secretary has no role in sanctioning the loan or disbursement of money was negative, in view of the evidence of PW-4, PW-5, PW-6 and PW-44, who have spoken about the role and responsibility of the Secretary and Assistant Secretary in the Bank and also about their overt act in falsifying the account to commit criminal breach of trust. The statements of the accused persons admitting their guilt and promise to repay 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 day book loan ledger, loan card and withdrawal slip and confirmed the judgment of the trial Court.

10. Grounds raised in the Revision Petitions:

In these two Criminal Revision Petitions, it is canvassed that the prosecution has not sent the disputed documents for opinion by writing expert to fix the responsibility. Most of the borrowers were not examined to prove that they did not avail the loans as found in the day book and ledgers. The vouchers and withdrawal slips indicating the disbursement of money not marked separately. The evidence of borrowers, who were examined as PW-9 to PW-37, PW-40 to PW-42 ought to have been disbelieved, since they are monetarily benefited, if they claim that the loan amount was not received by them and falsely deposed.

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, in view of the evidence of PW-4 to

PW-6 and PW-44, who are the officials of Co-operative Department and competent to speak about the roles and responsibilities of the Secretary and Assistant Secretary of a Bank. The evidence let in by the prosecution has clearly proved that the loan in the name of members sanctioned and withdrawn but not disbursed to them. Out of 59 such bogus loans, PW-9 to PW-37, PW-40 to PW-42 who were shown as borrowers in the accounts maintained by the appellants herein summoned and examined. They have denied receipt of any loan. The files related to the loan disbursement are marked and they does not contain any poof to show that they applied for loan and received loan. The files containing all the documents based on which the loans disbursed in marked. Therefore, vouchers for payment though not marked individually, the marking of the files containing the vouchers and allowing it to be marked without any objection, at the stage of revision it cannot be agitated that the vouchers were not separately marked.

12. In this regard, the relevant evidence incriminating the appellants for breach of trust and amount misappropriated as tabulated by

the lower appellate Court is also worth extracting, hence extracted below:-

P.W. No.	**Name of Witness**	**Loan Ledger Ex.No.**	**Day Book Ex.No.**	**Page no.**	**Withdrawal Slip Ex.No.**	**Misappropriated Amount Rs.**
PW-12	Jagathambal	34	35	132		37,200
PW-13	Govindammal	37	35	192		45,000
PW-10	Anandan	39	35	192		37,200
PW-14	Jaisankar	41	38	5	10	45,000
PW-29	Kothadaram	42	38	5		45,000
PW-19	Sri Ramulu	43	38	8		43,400
PW-17	Asokan	44	38	8	15	43,400
PW-30	Kesavan	45	38	8		40,000
PW-20	Jayanthi	48	38	31		31,000
PW-15	Pal Raj	52	38	36	12	45,000
PW-21	Subramani	54	38	40		43,400
PW-31	Hari Babu	55	38	40		43,400
PW-18	Kanniah	56	38	40	17	35,000
PW-23	Govindasamy	57	38	52		45,000
PW-16	Sundaram	58	38	52		43,400
PW-36	Parandaman	63	38	60		25,400
PW-22	Ayyasamy	66	38	78		31,300
PW-26	Dhanammal	69	38	78		24,800
PW-33	Rajendran	72	38	78		35,000
PW-27	Munirajilu	76	38	78		43,400
PW-42	Kamalanathan	77	38	82		37,200
PW-37	Maharani	78	38	101		45,000
PW-24	Devarajan	80	38	127		44,000

P.W. No.	Name of Witness	Loan Ledger Ex.No.	Day Book Ex.No.	Page no.	Withdrawal Slip Ex.No.	Misappropriated Amount Rs.
PW-28	Kasinathan	81	38	127		35,500
PW-34	Muniyammal	82	38	128		45,000
PW-41	Krishnan	85	38	127		34,000
PW-35	Kuppusamy	87	38	169		35,000

14. In fine, this Court finds no error or illegality or perversity in the judgment of the Courts below passed in C.C.No.64/2009 as confirmed in C.A.Nos.288 and 290 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 period of imprisonment.

02.11.2022

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

l.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
Crl.R.C.No.974 and 1154 of 2016

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