IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2021

Delivered on : 07.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Crl. R.C. No.549 of 2020
and
Crl.M.P.No.4333 of 2020

1.R.P.Ramasamy
(Criminal Revision Case is dismissed as against the 1st petitioner)

2.S.Dhanapal ...Revision Petitioners

Vs.

State by :

1.The Inspector of Police,
District Crime Branch,
Salem.

2.M.Sundaram
(Criminal Revision Case is dismissed as against the 2nd respondent) ...Respondents

[Amended as per order in Crl.R.C.No.549 of 2020 and Crl.M.P.No.4333 of 2020 dated 20.04.2021]

Criminal Revision Case filed under Section 397 Cr.P.C., against the judgment of the III Additional District and Sessions Judge, Salem, in Crl.A.No.105 of 2019 dated 12.02.2020, reversing the judgment of acquittal passed by the Judicial Magistrate No.I, Attur, in C.C.No.492 of 2006, dated 10.03.2017.

1st Petitioner : Died
(Criminal Revision Case dismissed as against 1st petitioner)

For 2nd Petitioner : Mr.S.Jeyakumar

For R1 : Mr.S.Sugendran
Government Advocate (Crl. Side)

R2 : Died
(Criminal Revision Case dismissed as against R2)

O R D E R

This Criminal Revision Case has been filed against the judgment of the III Additional District and Sessions Judge, Salem, in Crl.A.No.105 of 2019, dated 12.02.2020, reversing the judgment of acquittal passed by the Judicial Magistrate No.I, Attur, in C.C.No.492 of 2006, dated 10.03.2017.

2.The respondent Police registered a case against the petitioners based on the complaint given by the 2nd respondent, in Crime No.55 of 2005. The 1st respondent Police, after registering the case for the offences under Sections 120(b) r/w. 420, 408, 409 & 477(A) IPC and after completing the investigation, laid a charge-sheet before the learned Judicial Magistrate No.I, Attur.

3.The learned Judicial Magistrate, after completing the formalities under Section 207 Cr.P.C., framed charges for the offences under Sections 120(b) r/w. 420, 408, 409 and 477 (A) IPC against the 1st petitioner (A1) and for the offences under Sections 120(b) r/w. 420, 408, 409, 109, 477(A) and 109 r/w. 420 IPC against the 2nd petitioner (A2). The learned Magistrate, after trial, found the petitioners not guilty of the offences and acquitted the petitioners.

4.Challenging the said judgment of acquittal, the de facto complainant/2nd respondent herein, filed Criminal Appeal before the Principal District and Sessions Judge, Salem. The learned Principal District and Sessions Judge, Salem, had taken the case on file in Crl.A.No.105 of 2019 and made over the same to the III Additional District and Sessions Judge, Salem, for disposal in accordance with law. The learned III Additional District and Sessions Judge, after receiving the file and hearing the arguments advanced on either side, as an Appellate Court which is a fact finding Court, re-appreciated the entire evidence and found the petitioners guilty of the offences and set aside the judgment of the learned Judicial Magistrate and reversed the judgment and convicted and sentenced the petitioners (A1 and A2) as follows :

Petitioners/ Accused	Provision under which convicted	Sentence
A1 & A2	Section 120(b) r/w. 420 IPC	Five years Rigorous Imprisonment and a fine of Rs.2,000/-, in default, to undergo Rigorous Imprisonment for six months
	Section 408 IPC	Five years Rigorous Imprisonment and a fine of Rs.2,000/-, in default, to undergo Rigorous Imprisonment for six months
	Section 477-A IPC	Five years Rigorous Imprisonment
A1	Section 409 IPC	Seven years Rigorous Imprisonment and a fine of Rs.3,000/-, in default, to undergo Rigorous Imprisonment for six months
A2	Section 409 r/w.109 IPC	Seven years Rigorous Imprisonment and a fine of Rs.3,000/-, in default, to undergo Rigorous Imprisonment for six months
The sentences shall run concurrently.		

5.Challenging the above said judgment of conviction and sentence passed by the Appellate Court, both the accused have filed the present Criminal Revision Case before this Court.

6.During the pendency of this Revision, the 1^{st} petitioner died and the 2^{nd} respondent/de facto complainant also died. Therefore, the Revision Case was dismissed against the 1^{st} petitioner (A1) and also the 2^{nd} respondent/de facto complainant. Now, the matter is between the 2^{nd} petitioner/A2 and the 1^{st} respondent/Inspector of Police, District Crime Branch.

7.The learned counsel for the petitioners submitted that the Appellate Court failed to appreciate the fact that the petition to condone the delay in filing the appeal was not filed by the appellant/de facto complainant. Since there is a delay in filing the appeal, without condoning the delay, the appeal should not have been taken on file and should not have been decided on merits. The learned counsel would further submit that the alleged misappropriation is said to have taken place during the year 1997-98 and the complaint was lodged only during the year 2004 and a case was registered only in the year 2005, which was politically motivated and tainted with malafides. He would further submit that P.W.1 had taken charge as the President of Appammasamuthiram Village Panchayat during the year 2001 and the complaint was lodged only in the year 2003, which is tainted with an oblique political motive, since the de facto complainant belongs to ADMK Political Party and the petitioners are the members of the Communist Party.

8.The learned counsel for the petitioners would further submit that, though the Investigating Agency has stated that the misappropriation had taken place during the year 1997-98, no legally admissible materials were placed before the Court to substantiate the alleged misappropriation. A2, the 2nd petitioner herein, has sent a telegram to the higher official regarding the corrupt practice done by P.W.1, which was the motive behind P.W.1 lodging the complaint (Ex.P1) against the petitioners. Even the demand notice given by P.W.1 to Salem Textiles Private Limited was not marked before the trial Court.

9.The learned counsel for the petitioners would further submit that the Appellate Court failed to consider the fact that, in Ex.P1, there is no proof that the accused had collected Professional Tax and collection of House Tax alone was shown in the column. Exs.P2, P4 and P5 are totally irrelevant to the present case. The Appellate Court failed to consider the fact that Ex.P7/Chitta Book is also irrelevant to the case. Now, 1st petitioner/A1 also died. He was the President of the Panchayat, however, the present petitioner/A2 is only a Clerk of the Panchayat and he has nothing to do with any of the transactions independently and he would act only as per the instructions of the President, Secretary or other superior officials and the trial Court rightly appreciated the entire evidence and found the petitioners not guilty of the offences. However, the Appellate Court failed to appreciate the entire evidence and simply allowed the appeal and convicted the petitioners, which warrants interference by this Court.

10.The learned Government Advocate (Crl. Side), appearing on behalf of the 1st respondent, would submit that, during the relevant point of time, A1 was working as President of the said Panchayat and A2 was working as Clerk and they misappropriated the funds of the Panchayat during the Financial Year 1997-98 for unlawful gains, causing loss to the Panchayat. Though the learned Judicial Magistrate failed to appreciate the evidence of P.W.1 and P.W.2 and wrongly acquitted the petitioners, the Appellate Court, as a final Court of fact finding Court, had re-appreciated the entire evidence and has rightly convicted both the petitioners. Now, A1/1st petitioner is no more and the Revision Case as against A1/1st petitioner has already been dismissed and now, the Revision is only as against A2/2nd petitioner alone. The learned Government Advocate would further submit that there is no merit in this Revision Case and this Criminal Revision is liable to be dismissed.

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

12.The case of the prosecution is that the 1st petitioner/A1 was the President of Appamma Samuthiram Village Panchayat during the period from 1996 to 2001 and the 2nd petitioner was working as a Clerk of the above said Panchayat for the past 15 years. During the period between 04.04.1997 and 07.03.1998, at the said Panchayat Office, the petitioners conspired together to do certain illegal acts, i.e., to commit criminal breach of trust, falsification of accounts and cheating of funds collected under the head of Professional Tax, Library Tax and House Tax by serving demand notice to the Salem Textiles Private Limited situated at Selliyampalayam to the tune of Rs.2,02,400/-, by which, they misappropriated the amount of Rs.95,700/- by way of bringing out in the Cash Chitta Book of Panchayat. Furthermore, the petitioners, using their official capacity, committed criminal breach of trust to a tune of Rs.95,700/- and caused wrongful loss to the Panchayat. Moreover, the petitioners falsified the accounts of registers by way of issuing undated receipts to the above said Textile Mill, as if the said amount was remitted into the accounts of the Village Panchayat. Therefore, the petitioners have jointly committed the offences charged against them as above.

13.Before the trial Court, in order to prove the case of the prosecution, totally 6 witnesses were examined as P.W.1 to P.W.6, 11 documents were marked as Exs.P1 to P11. No Material Object was exhibited.

14.On completion of examination of prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the petitioners, by questioning under Section 313 Cr.P.C. However, they denied the same as false and pleaded “not guilty”.

15.On the side of the defence, no oral or documentary evidence was produced.

16.On completion of trial and on hearing the arguments advanced on either side and on perusal of the entire materials on record, the trial Court, by judgment dated 10.03.2017, acquitted the petitioners of all the charged offences.

17.Challenging the judgment of acquittal, the de facto complainant/2nd respondent preferred an appeal before the Appellate Court and the Appellate Court, being a fact finding Court, on hearing the arguments advanced on either side and on re-appreciation of entire evidence on record, found the petitioners guilty of the charged offences and convicted and sentenced them as above.

18.Challenging the judgment of conviction and sentence passed by the Appellate Court, the petitioners have preferred the present Criminal Revision Case before this Court.

19.The specific case of the prosecution is that the petitioners/accused misappropriated the funds of the Panchayat and there is falsification of accounts, in order to get unlawful gains, belonging to the Village Panchayat and they have committed the offences as charged above.

20.P.W.1/de facto complainant has stated in his evidence that, P.W.1 took over the charge of the President of the above Panchayat with effect from 25.10.2001 and prior to him, the 1st petitioner/A1 was the President from 1996 to 2001 and the 2nd petitioner was working in the said Panchayat as a Clerk for the past 15 years; there were arrears of House Tax, Professional Tax from Salem Textiles Private Limited, Selliyampalayam, for the periods FYs 1997-98, 1999-2000 and 2000-01; when P.W.1 asked about the arrears of Tax to be paid to the Panchayat, the above said Textile Mill Management told that they have already paid the Taxes; when he looked into the accounts of the Panchayat, the House Tax of Rs.2,02,400/- had to be recovered for the period 1997-98 from the above said company, but the accounts maintained by the Panchayat shows that only Rs.55,143/- alone has been received from the above said company; the balance amount of Rs.1,47,257/- was not brought into the accounts of the Panchayat; the above Mill Management told that the entire Tax amount of Rs.2,02,400/- was already paid and it was informed to P.W.1 along with the receipts on 12.06.2004. On a perusal of records, it is seen that the cash vouchers and Tax receipts were marked as Ex.P1 series as stated by P.W.1 in his evidence.

21.P.W.1 has further stated that, even when he asked about the balance amount, the Mill Management showed the receipts issued by the petitioners (A1 and A2); after getting the copy of the receipts, P.W.1 verified the records as to whether the amount was remitted into the account of the Panchayat for the year 1997-98, however, he found that, in the Cash Register, entries were available only for three months and for the remaining nine months, the accounts were not written in the Cash Register concerned. On a perusal of Ex.P2 Cash Book, Cash Receipt were entries made only on 27.03.1997 and thereafter, Page Nos.57 to 61 were left as blank; further, entries from 02.05.1997, there is no other entry for the period between 28.03.1997 and 01.05.1998 and the pages were kept blank in the Cash Book, which clearly shows that there is a falsification of accounts in order to get unlawful gains out of the Village Panchayat amount. He further stated that the petitioners have collected the Tax amount from Tax payers and they did not remit the entire amount received from the assessees; they collected Rs.2,02,400/-, however they remitted only Rs.55,143/-, and the remaining Rs.1,47,257/- was not remitted into the Bank by both the petitioners; even in the FY 1999-2000, they collected Rs.82,500/- from the assessee Mill, but failed to remit the same into the account; moreover, regularly conducted Audit also reveals that there is misappropriation of funds; the petitioners collected the Tax amount from the assessees and failed to remit the collected amount into the account of the Village Panchayat.

22.The evidence of P.Ws.2, 3 and 4 also would show that the petitioners/accused have committed the offences.

23.Though the 2nd petitioner/A2 has stated that he was working only as a Clerk and he has not committed any offence and he has not done any misappropriation, as a Public servant, working as a Clerk in the Village Panchayat, soon after receiving the Tax amount, he should have remitted the same to the account of the Panchayat. If the President/1st petitioner refused or failed to remit, he should have immediately reported to the superiors and he failed to do the same and therefore, the records clearly reveal that the amounts were received from the assessee and the same were failed to be remitted into the account of the Village Panchayat.

24.The Appellate Court, as a final Court of fact finding, re-appreciated the entire evidence and came to the conclusion that the prosecution proved its case beyond all reasonable doubt. Further, the records clearly reveal that, from the evidence of the assessee and the de facto complainant, it is proved that the amount for the financial years 1997-98, 1999-2000, 2000-01 have been collected from the assessee Mill and were failed to be remitted into the account of the Panchayat during the relevant period. The petitioners were working as President and Clerk of the Panchayat during the relevant period and they are responsible for the same. Therefore, though the learned Judicial Magistrate failed to appreciate the evidence and acquitted the petitioners, the Appellate Court, as a fact finding Court, had found that the findings of the trial Court are perverse and the Appellate Court can always interfere with that and reverse the same.

25.As a Revision Court, this Court cannot sit in the arm-chair of the Appellate Court and revisit the entire evidence and re-appreciate the entire evidence. In a Revision Case, the scope of interference with the findings of the trial Court or the Appellate Court is very limited. Once the Appellate Court, as a final Court of fact finding, re-appreciated the entire evidence and found the petitioners guilty of the charged offences, this Court has to see as to whether there is any perversity in the re-appreciation of the evidence by the Appellate Court. Unless there is any perversity in the re-appreciation of the evidence, the Revision Court should not interfere with the findings on facts, given by the Appellate Court. Unless there is violation of principles of natural justice or violation of any Law or Rules, the Revision Court will not interfere with the findings on facts rendered by the Court below, unless the appreciation of evidence is totally perverse and there are compelling circumstances to reverse the judgment of the lower Court.

26.However, in the present case on hand, this Court finds that there is no perversity in appreciation of the evidence by the Appellate Court and there is no merit in the present Revision Case.

27.Therefore, this Criminal Revision Case is liable to dismissed and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

mkn

To :

1.The III Additional District and Sessions Judge,
Salem.

2.The Judicial Magistrate No.I,
Attur.

3.The Inspector of Police,
District Crime Branch,
Salem.

4.The Public Prosecutor,
High Court, Madras.

5.The Deputy Registrar (Criminal Section), High Court, Madras.	with a direction to send back the original records to the Court(s) below if any, immediately

SRA (CO)
PR (07/02/2022)